No. B295935

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

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

APPLICATION TO FILE *AMICI CURIAE* BRIEF; AND BRIEF OF SENATOR RICHARD POLANCO (RET.), COUNCILMEMBER SERGIO FARIAS, COUNCILMEMBER JUAN CARRILLO, COUNCILMEMBER RICHARD LOA AND COUNCILMEMBER AUSTIN BISHOP AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS AND AFFIRMANCE

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

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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

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[ ] Continued on attachment 2.

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Date: February 4, 2020

Brian Panish
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

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TO THE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL

Pursuant to Rule 8.200(c) of the California Rules of Court, Senator Richard Polanco (Ret.), Councilmember Juan Carrillo, Councilmember Richard Loa, Councilmember Austin Bishop and Councilmember Sergio Farias request permission to file the accompanying Amici Curiae Brief in Support of Respondents Pico Neighborhood Association, et al.

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A. Palmdale Councilmembers Juan Carrillo, Richard Loa and Austin Bishop

Juan Carrillo, Richard Loa and Austin Bishop are three of the five members of the Palmdale City Council, acting in their individual capacities.[1] The City of Palmdale ("Palmdale") is a California charter city located in Los Angeles county. Palmdale now has an election system that uses single-member districts. This system was adopted to replace an at-large system that was found to be discriminatory in an action brought against Palmdale under the California Voting Rights Act (Elec. Code §§ 14025 – 14032, hereinafter "CVRA"). While these changes in Palmdale were brought about in response to a CVRA lawsuit, see *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, the lessons learned are pertinent to the Court's understanding of the CVRA, and that statute's likely effect on California municipalities generally, and Appellant City of Santa Monica particularly. Councilmen Juan Carrillo, Richard Loa and Austin Bishop, therefore, submit the attached brief in order to share the unique experiences of Palmdale

[1] As a majority of the Palmdale City Council, Messrs. Carrillo, Loa and Bishop could pass a Resolution for the City of Palmdale to formally join this Amici Brief; however, the timing of the council meetings did not allow them to have a Resolution placed on the agenda in time to submit this brief under this Court's rules, and therefore they submit this brief in their individual capacities.

relevant to this case and protect the interest of Palmdale as a jurisdiction subject to the CVRA.

Palmdale's prior election system for its city council was the subject of voting rights litigation under the CVRA. That case made its way to Division Five of the Second District Court of Appeal on several occasions, two of which resulted in significant opinions by the Court, one published and one unpublished (See *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781 and *Jauregui v. City of Palmdale* (2nd DCA, June 10, 2015) Case No. B253713)[2]. Following a trial, Palmdale was ordered to scrap its at-large election system and implement a district-based system. Following a series of appeals, Palmdale complied with the court's judgment, and has since implemented the district elections ordered by the court in two election cycles (2016 and 2018).

With the change in its election system, Palmdale has removed barriers to Latino participation in the electoral process and also achieved other significant benefits in its local government. These changes have included not only the more inclusive operation of Palmdale but also a variety of positive public policy developments. Since the implementation of district elections in 2016 (for all of the council seats), all policy decisions are made by the council with input from, and consideration of, the eastern side of Palmdale, where minority residents are a greater proportion of the residents.

[2] Amici mention this unpublished case only to note its existence, not as authority for any legal proposition therein.

Therefore, Palmdale, as well as the members of its city council, have a strong interest in the proper interpretation and implementation of the CVRA, which provides even stronger protections of voting rights than does the federal Voting Rights Act. Councilmembers Juan Carrillo, Richard Loa and Austin Bishop believe that the strong voting rights protections of the CVRA may help other jurisdictions in the State to share in the successes that Palmdale has achieved through a more inclusive political process.

Moreover, Councilmembers Juan Carrillo, Richard Loa and Austin Bishop welcome the protections afforded Palmdale's citizens by the CVRA, which prohibits Palmdale from implementing a discriminatory at-large election system to entrench the power of any majority at the expense of fair access for minority voters.

As discussed in further detail in the accompanying brief, Palmdale's experiences with voting rights litigation and its consequences contradict the propositions that the strong protections for minority voters embodied in the CVRA are burdensome or otherwise problematic for municipalities, and that only with a district in which the majority of voters are Latino can a district election system achieve the electoral inclusion for which the CVRA was enacted. The attached brief will assist the Court in understanding the practical importance of addressing discriminatory vote dilution, the need for the strong State protections for voting rights contained in the CVRA, and the

benefits to local government of safeguarding voting rights and ensuring an inclusive democratic process.

B. Senator Richard Polanco

As a State Senator, Richard Polanco was the principal legislative author and sponsor of Senate Bill 976 (2001), which passed both the Assembly and Senate and was signed by Governor Davis in 2002, and is now known as the California Voting Rights Act. Senator Polanco was not only the legislative author and sponsor of SB 976, he also, over the course of nearly two years, refined SB 976 to address the unique circumstances of California, and advocated for its passage.

For sixteen years, Richard Polanco was a member of the California State legislature - first elected to the California State Assembly in 1986 and then elected to the California State Senate in 1994, where he served for 8 years until he retired in 2002. Mr. Polanco served as the Senate Majority Leader from 1998 to 2002, and also served as the Chair of the Latino Legislative Caucus from 1990 to 2002. During his tenure in the Legislature, Richard Polanco was a champion for racial equity and inclusive government.

The CVRA sponsored by Senator Polanco has been largely successful in achieving its purposes – combating minority vote dilution and making California's municipal governments more inclusive and responsive. As the principal legislative author and sponsor of SB 976, Senator Polanco has a strong interest in the proper interpretation and implementation of the CVRA. Mr.

Polanco believes that the strong voting rights protections of the CVRA are essential to ensuring minority communities are included in the political process.

As discussed in further detail in the accompanying brief, the legislative history of the CVRA, including Senator Polanco's advocacy for the passage of the CVRA, contradict the proposition that vote dilution can only exist where a compact majority-minority district is possible.

C. Councilmember Sergio Farias

Sergio Farias is a member of the City Council of San Juan Capistrano, a California city located in Orange county. San Juan Capistrano now has an election system that uses single-member districts. Sergio Farias competed in San Juan Capistrano's at-large election in 2008, coming in sixth out of six candidates for two available seats. Eight years later, in San Juan Capistrano's first district elections, Sergio Farias won a seat on the San Juan Capistrano City Council, and has since served as Mayor of San Juan Capistrano.

The district election system was adopted to replace an at-large system, in response to an action brought against San Juan Capistrano under the CVRA, *Southwest Voter Registration Education Project, et al. v. City of San Juan Capistrano*, Orange County Superior Court Case No. 30-2016-00832243-CU-CR-CJC, and the lessons learned are pertinent to the Court's understanding of the CVRA, and that statute's likely effect on California municipalities generally, and Appellant City of Santa Monica

particularly. Sergio Farias, therefore, submits the attached brief in order to share his experiences, and those of the city he was elected to represent, relevant to this case and to protect his interest as an elected official representing a jurisdiction subject to the CVRA.

San Juan Capistrano's prior election system for its city council was the subject of voting rights litigation under the CVRA. A few months after that CVRA case was filed, the parties agreed to a stipulated judgment, requiring San Juan Capistrano to scrap its at-large election system and implement a district-based system. San Juan Capistrano has since implemented the district elections ordered by the court in two election cycles (2016 and 2018). Notably, there are no majority-Latino city council districts in San Juan Capistrano; only 44% of the eligible voters are Latino in the district with the highest proportion of Latinos – the district that elected Sergio Farias.

With the change in its election system, San Juan Capistrano has achieved greater inclusiveness in its electoral and democratic processes. These changes have allowed the Latino community in particular to know they have a voice in their city government.

Therefore, Sergio Farias has a strong interest in the proper interpretation and implementation of the CVRA. Mr. Farias believes that the strong voting rights protections of the CVRA may help other jurisdictions in the State to share in the successes that San Juan Capistrano, and specifically its Latino community, has achieved through a more inclusive political process.

As discussed in further detail in the accompanying brief, Mr. Farias' experiences with at-large and district elections, even in a district that is not majority-Latino, contradict the proposition that only with a district in which the majority of voters are Latino can a district election system achieve the electoral inclusion for which the CVRA was enacted. The attached brief will assist the Court in understanding the practical importance of addressing discriminatory vote dilution, the need for the strong State protections for voting rights contained in the CVRA, and the benefits to local government of safeguarding voting rights and ensuring an inclusive democratic process.

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For these reasons, Senator Richard Polanco (Ret.) and Councilmembers Juan Carrillo, Richard Loa, Austin Bishop and Sergio Farias respectfully request that the Court accept the attached Amici Curiae Brief in Support of Respondents.

Dated: February 4, 2020

PANISH SHEA & BOYLE LLP

/s/Brian Panish
Brian Panish

Attorneys for Amici Sen. Richard Polanco (Ret.), Councilman Sergio Farias, Councilman Juan Carrillo, Councilman Richard Loa and Councilman Austin Bishop

RULE 8.200(c)(3)(A) CERTIFICATION

No party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the proposed brief. (See Cal. Rules of Court, rule 8.200(c)(3)(A).) Nor do there exist any persons or entities whose identities must be disclosed under Rule 8.200(c)(3)(B) of the California Rules of Court.

Dated: February 4, 2020

PANISH SHEA & BOYLE LLP

/s/Brian Panish
Brian Panish

Attorneys for Amici Sen. Richard Polanco (Ret.), Councilman Sergio Farias, Councilman Juan Carrillo, Councilman Richard Loa and Councilman Austin Bishop

I. INTRODUCTION

The CVRA is similar to, but also purposely different than the federal Voting Rights Act, which has been interpreted in a way that California believes unduly restricts the access of its citizens to necessary and appropriate voting rights protections. The CVRA was designed to provide stronger protections than those offered under Section 2 of the federal Voting Rights Act and to allow California courts the flexibility to fashion a constitutionally sound remedy that is tailored to the particular jurisdiction.

The arguments of Appellant, specifically Appellant's insistence that the inability to draw a majority-Latino single member district in Santa Monica is fatal to Respondents' CVRA claim, belies the text, purpose and legislative history of the CVRA. As the principal legislative author and sponsor of the CVRA, Amicus Richard Polanco can provide insight on that purpose and legislative history. The CVRA provides California courts with an important tool to combat vote dilution in this State with its unique demographics and politics. The State of California has, in several areas, such as civil rights, provided stronger protections for its citizens than does federal law, and there is nothing that prevents the State of California from doing exactly that in the field of voting rights.

Moreover, California governments stand to benefit from more robust civil rights protections like the CVRA. As councilmembers for California municipalities that have been the subject of lawsuits brought under the CVRA, Amici Sergio Farias,

Juan Carrillo, Richard Loa and Austin Bishop can definitively say that the experience of cities like Palmdale and San Juan Capistrano shows that protecting the rights of minority voters is ultimately beneficial, rather than burdensome, for municipalities.

II. THE CVRA RECOGNIZES VOTE DILUTION EXISTS WHERE THERE IS RACIAL BLOC VOTING IN AT-LARGE ELECTIONS, REGARDLESS OF THE SIZE OR COMPACTNESS OF THE MINORITY COMMUNITY.

In their brief (ROB, pp. 63-66), Respondents correctly point to the text of the CVRA, which rejects Appellant's view that an at-large election system may only be considered to dilute the vote of a protected class if that protected class is numerous and compact enough to constitute the majority of eligible voters in a single member district. (Elec. Code §14028(a) ["A violation of [the CVRA] is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision …"]; §14028(c) ["The 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 [the CVRA]"].)[3] But while focusing on the text of the CVRA,

[3] In its reply brief, Appellant seems to acknowledge that dilution may exist if the protected class is numerous and compact enough to constitute a "near-majority" in a single member district. (ARB, pp. 51-52). But that begs the question – what percentage is sufficient to be called a "near-majority"? As discussed below, it is a variety of factors unique to each political subdivision that determine what minority proportion will be needed for a single member district to be effective, and the Superior Court properly analyzed those factors in deciding to order a district remedy rather

Respondents don't mention the legislative history of the CVRA, which also supports their position, and explicitly rejects Appellant's contrary view of "dilution."[4] Directly refuting Appellant's view, the bill analysis by the Assembly Committee on Judiciary states:

> "[G]eographical 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." [5]

Rather, the CVRA was intended to combat racially polarized voting, regardless of the size or compactness of a protected class.

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than one of the other available remedies, such as cumulative voting or ranked choice voting, which the Superior Court acknowledged would also improve Latino voting power.

[4] The legislative record about the initial passage of CVRA in 2001-02 is long and rich. LRI History LLC, a respected source for California legislative history, has scanned 489 pages of files from a dozen file folders. They contain not only staff reports for the various committees, but drafts of statements by the principal legislative author of the bill, Sen. Richard Polanco, committee worksheets and other materials, committee and roll call votes, endorsement letters by outside organizations, and drafts of the bill and amendments to it. This brief refers to the materials by the name of the file folder in which they appear – for example, "Bill Versions (LRI History)." Amici respectfully request that this Court take judicial notice of these materials, and submits a separate motion for judicial notice for that purpose. (See *Pacific Gas & Electric Co. v. Hart High-Voltage Apparatus Repair & Testing Co., Inc.* (2017) 18 Cal. App. 5th 415, 425-26 [taking judicial notice of LRI History materials].)

[5] Bill Analysis for Assembly Comm. on the Judiciary, S.B. 976, June 3, 2002, at p. 3.

As Sen. Polanco pointed out in testimony regarding SB 976 before the Assembly Elections and Reapportionment Committee, "This measure says that we need to attack block [sic] voting and, if block [sic] voting is established in a court of law, then it allows a court to impose remedies including district elections."[6] "Members," Sen. Polanco explained, "block [sic] voting, particularly when associated with racial or ethnic groups[,] is harmful to a state like California due to its diversity."[7]

The statement that the bill was aimed at the problem of bloc voting, which was particularly harmful to California because of its diversity, was repeated many times. Bill analyses for several committees used the same language to describe the purpose of the bill:

> According to the author, SB 976 "addresses the problem of racial block [sic] voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block [sic] voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem.

[6] Sen. Richard G. Polanco, Statement Prepared for Hearing Before Assembly Comm. on Elections & Reapportionment, in Author's File pp. 5, 7 (LRI History) (emphasis in original).

[7] *Id. at p. 5*

> In California, we face a unique situation where we are all minorities." [8]

As Sen. Polanco put it in a letter to Gov. Davis requesting that Governor Davis sign the bill, "Senate Bill 976 addresses the problem of racial bloc voting in California – a state without a majority racial or ethnic group. . . . Governor, after the 2000 Census, in California we are facing a unique situation where we are all minorities."[9] Letters to Gov. Davis from the League of United Latin American Citizens, the ACLU, the Mexican-American Political Association, the National Association of Latino Elected Officials, and Mexican American Legal Defense and Education Fund all focused on "racial bloc voting" as the problem addressed by the bill.[10] Governor Davis's statement to the State Senate upon signing the bill emphasized "the diverse make up of California voters."[11]

California's unique demography, proponents of SB 976 contended, not only made racial bloc voting a more serious

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[8] Bill Analysis for Assembly Comm. on Elections, Reapportionment & Const. Amendments, S.B. 976, Apr. 2, 2002, at p. 3; *see also* Bill Analysis for Assembly Comm. on the Judiciary, S.B. 976, June 3, 2002, at p. 2; *cf.* Bill Analysis for Sen. Comm. on Elections & Reapportionment, S.B. 976, May 2, 2001, at p. 3.

[9] Letter from Sen. Richard G. Polanco to Gov. Gray Davis, July 2, 2002, *in* Author's File 54, 54 (LRI History).

[10] *See* Letters to Gov. Gray Davis, *in* Author's File, pp. 48-52, 56-57 (LRI History).

[11] Signing Statement of Gov. Gray Davis, July 9, 2002, *in* Governor's Chaptered Bill File 2 (LRI History).

problem. It also justified eliminating the requirement in federal Voting Rights Act cases to prove that a compact majority-minority district can be drawn. As a bill analysis for SB 976 put it:

> "[G]eographical 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). . . . To clarify that there is more than one protected class, the author properly wishes to change references to "the protected class" to "a protected class." [12]

That is, because there were so many potential groups in California that might be discriminated against through racially polarized voting in an at-large election system, and because in a racially diverse community, any single group might not be quite large enough or concentrated enough to form a compact majority of a potential district, California needed a different standard. As Sen. Polanco put it in a press release after Gov. Davis signed the bill,

> "SB 976 is necessary because the federal Voting Rights Act's remedy fails to redress California's problem of

[12] Bill Analysis for Assembly Comm. on the Judiciary, S.B. 976, June 3, 2002, at p. 3

> racial bloc voting. . . . If a minority community were at 49 percent, then the federal courts cannot provide a remedy. Such a bright-line test establishes an artificial threshold which often serves to deny minority voting rights in California simply because the minority community is not sufficiently compact." [13]

And because California's problems were different than the black/white southern conflicts that had primarily motivated the federal Voting Rights Act, California did not have to limit itself to the precise choices of the federal statute and its jurisprudence. As Saeed Ali, the Principal Consultant to Senate Majority Leader Polanco, substituting for his boss in a hearing before the Senate Elections and Reapportionment Committee on May 2, 2001, put it:

> . . . this legislature can and does enact laws that provide Californians with better and more specific statutes than those in similar federal legislation. For example, we created the Unruh Civil Rights Act as we needed to provide better and more specific statutes suited to our needs than those in federal civil rights statutes. After the 2000 Census, in California, we are facing a unique situation where we are all minorities.[14]

[13] Press Advisory, Sen. Richard G. Polanco, California's New Voting Rights Act, Senate Bill 976, Signed Into Law (July 10, 2002), *in* Author's File 134 (LRI History)

[14] Saeed Ali, Statement Before Sen. Comm. on Elections & Reapportionment, May 2, 2001, *in* Author's File 8, 10 (LRI

III. THE TRIAL COURT APPROPRIATELY ENGAGED IN A FACT INTENSIVE INQUIRY TO DETERMINE THAT THE DISTRICT REMEDY IT ADOPTED WOULD BE EFFECTIVE.

As demonstrated by its Statement of Decision, the Superior Court engaged in precisely the sort of case-specific fact-intensive analysis of the likely effectiveness of the Pico Neighborhood District contemplated by the legislative history of the CVRA. (Tr. Court Statement of Decision, pp. 39, 65-67; see also Grofman, Handley & Lublin, *Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence*, (2001) 79 N.C. L. Rev. 1383, 1423 ["A case-specific functional analysis … must be conducted to determine the percentage minority necessary to create an effective minority district."].) The Superior Court considered the experiences of other cities, in California and elsewhere, that have switched from at-large to district elections, particularly in districts where Latinos were not a majority of eligible voters:

> Trial testimony revealed that jurisdictions that have switched from at-large to district elections as a result of CVRA cases have experienced a pronounced increase in minority electoral power, including Latino representation. Even in districts where the minority group is one-third or less of a district's electorate,

History). Passed in 1959 and amended since then, the Unruh Civil Rights Act is Civ. Code §§ 51 et seq.

> minority candidates previously unsuccessful in at-large elections have won district elections.

(Tr. Court Statement of Decision, pp. 65-66, citing Florence Adams, *Latinos and Local Representation: Changing Realities, Emerging Theories* (2000), at pp. 49-61). The Superior Court then turned to the proportion of Latinos in the remedial district and the performance of Latino candidates preferred by the Latino electorate within that remedial district:

> The particular demographics and electoral experiences of Santa Monica suggest that the seven-district plan would similarly result in the increased ability of the minority population to elect candidates of their choice or influence the outcome of elections. Mr. Ely's analysis of various elections shows that the Latino candidates preferred by Latino voters perform much better in the Pico Neighborhood district of Mr. Ely's plan than they do in other parts of the city – while they lose citywide, they often receive the most votes in the Pico Neighborhood district. The Latino proportion of eligible voters is much greater in the Pico Neighborhood district than the city as a whole. In contrast to 13.64% of the citizen-voting-age-population in the city as a whole, Latinos comprise 30% of the citizen-voting-age-population in the Pico Neighborhood district.

(Tr. Court Statement of Decision, p. 66). The Superior Court then considered the political organization of Latinos in the Pico Neighborhood, because that sort of people-power is critical in district elections, due to the more manageable size of the electorate:

> Testimony established that Latinos in the Pico Neighborhood are politically organized in a manner that would more likely translate to equitable electoral strength [in a district election system].

(Tr. Court Statement of Decision, p. 67). Finally, the Superior Court considered the wealth disparity between Latinos and non-Hispanic whites in Santa Monica because district elections, by reducing the size of the electorate, make expensive forms of campaigning (e.g. mailers and television and radio advertising) that are almost mandatory in at-large elections, much less important:

> Testimony also established that districts tend to reduce the campaign effects of wealth disparities between the majority and minority communities, which are pronounced in Santa Monica.

(Tr. Court Statement of Decision, p. 67; also see *id*. at p. 36)

Appellant fails to address the majority of the Superior Court's analysis and instead focuses on the election recreations of demographer David Ely. But, as the Superior Court notes in its Statement of Decision, those recreations actually support the view

that the remedial Pico Neighborhood district will be effective. (Tr. Court Statement of Decision, p. 66 ["Mr. Ely's analysis of various elections shows that the Latino candidates preferred by Latino voters perform much better in the Pico Neighborhood district of Mr. Ely's plan than they do in other parts of the city – while they lose citywide, they often receive the most votes in the Pico Neighborhood district."].) That Latino candidates preferred by Latino voters do not always get the most votes in the Pico Neighborhood District (they do so only sometimes), does not undermine the Superior Court's conclusion that the Pico Neighborhood District will be effective in giving Latino voters the opportunity to have their voices heard in their local government.

Moreover, Appellant's heavy reliance on Mr. Ely's recreations fails to recognize that the dynamics of a district-based election are very different from those of an at-large election. Due to the larger size of the electorate and the larger size of the geography in an at-large system, campaigning in an at-large election is much more expensive than a district election. While personal contact with a candidate is an effective campaign method in a geographically small district with less than 10,000 registered voters, that low-cost campaigning method is impractical when the electorate is seven times as large in a citywide election. Rather, more expensive methods of campaigning, such as slates and mailers, are necessary and expected in those citywide elections. That greater cost of campaigning in citywide elections particularly disadvantages minority communities that have less financial resources than the majority, as is certainly the case for the Latino

community in Santa Monica. (Tr. Court Statement of Decision, p. 36).

In its reply brief, Appellant argues that the Superior Court's finding that the 30% Latino CVAP district encompassing the Pico Neighborhood would be effective is inconsistent with its finding of racially polarized voting. (ARB, p. 41). Not so. Simple math demonstrates the fallacy of Appellant's argument. Consider the following hypothetical – a matchup between two candidates for one seat: Candidate A receives 100% of Latino votes and 30% of non-Latino votes; Candidate B receives 0% of Latino votes and 70% of White votes. In an at-large election with an electorate that is 13.64% Latino and 86.9% non-Latino (as it is in Santa Monica)[15], Candidate B wins with 60.45% of the vote, and Candidate A, though overwhelmingly preferred by Latino voters, loses with 39.55% of the vote: [16]

Candidate	Latino % of Electorate	Latino Support %	Non-Latino % of Electorate	Non-Latino Support %	Total %
A	13.64	100	86.36	30	**39.55**
B	13.64	0	86.36	70	**60.45**

[15] See Tr. Court Statement of Decision, p. 66

[16] The total vote received by each candidate can be calculated by multiplying the proportion of the Latino vote that candidate received by the proportion of the electorate that is Latino, and adding the product of multiplying the proportion of the non-Latino vote that candidate received by the proportion of the electorate that is non-Latino. For example, for Candidate A the total is calculated as follows: (100% x 13.64%) + (30% x 86.36%) = 39.55%

These starkly differing levels of support unquestionably demonstrate racially polarized voting in an at-large system – Candidate A is preferred by Latino voters, and lost. In contrast, using the same levels of support, in a district that is 30% Latino, Candidate A wins:

Candidate	Latino % of Electorate	Latino Support %	Non-Latino % of Electorate	Non-Latino Support %	Total %
A	30	100	70	30	**51**
B	30	0	70	70	**49**

The fallacy of Appellant's argument is not just demonstrated by a hypothetical matchup, it is also demonstrated by Appellant's actual elections. For example, while there may be disagreement over the import of some of Appellant's elections, the parties and the Superior Court seem to agree that the 2004 election exhibited racially polarized voting – Maria Loya was overwhelmingly preferred by Latino voters and she lost in that at-large election. (See ROB, pp. 26, 47, 60-61; ARB, p. 32). And, though she lost in the at-large election, Ms. Loya received the most votes of any candidate in the Pico Neighborhood District. (Reporter's Transcript pp. 2132:26 – 2134:14, 2321:13 – 2322:2).

IV. THE EXPERIENCES OF AMICI AND CITIES THROUGHOUT CALIFORNIA DEMONSTRATES THAT THE CVRA WORKS, EVEN ABSENT MAJORITY-MINORITY DISTRICTS.

The Legislature's decision to provide an action for vote dilution in California even absent the ability to draw a district with

a particular proportion of minority voters, makes perfect sense in light of California's electoral and political realities. Influence districts, like the 30% Latino citizen-voting-age-population district in this case, are known to be effective in California. (See, e.g., Kousser, *Beyond Gingles: Influence Districts and the Pragmatic Tradition in Voting Rights Law* (1993) U. San. Fran. L. Rev., Vol. 27 at pp. 566-569 [noting Latino success in California has primarily occurred in districts that have a significant Latino proportion but not a majority – districts between 16% and 45%, and explaining that in California "any hard-and-fast definition of a minimum level of minority population necessary for [a] group to influence an election is nonsensical"]; Epstein and O'Halloran, *A Social Science Approach to Race, Redistricting, and Representation, The American Political Science Review* (1999) Am. Pol. Sci. Rev. Vol. 93, No. 2 [concluding that while "concentrated minority districts are optimal in the South," influence districts "are optimal in other regions of the country."].) No less than the U.S. Supreme Court has recognized the legitimacy and desirability of such influence districts. (*Georgia v. Ashcroft* (2003) 539 U.S. 461, 482-483 ["various studies have suggested that the most effective way to maximize minority voting strength may be to create more influence or coalitional districts," citing five prominent articles].)

The experience of Amicus Sergio Farias further demonstrates the point.[17] In 2008, Mr. Farias competed in the at-

[17] At trial, Justin Levitt described the electoral experiences of Mr. Farias. (Reporter's Transcript, pp. 6935:24 – 6938:18)

large election for San Juan Capistrano's City Council. He lost by a significant margin, placing sixth out of six candidates for three council seats. Mr. Farias did not receive the most votes in any voting precinct; thus, an election recreation like that done by Mr. Ely in this case would not have shown that he received the most votes in any district. In response to a CVRA lawsuit, the City of San Juan Capistrano agreed to implement district elections, and stipulated to a judgment. (*Southwest Voter Registration Education Project v. City of San Juan Capistrano*, Orange County Superior Court Case No. 30-2016-00832243-CU-CR-CJC). San Juan Capistrano's first district elections were held in 2016. Though he had no appetite for running in another at-large election, Mr. Farias was encouraged to seek a seat on the city council in the new district election format. Mr. Farias ran in the district with the highest Latino proportion – but even that district was only 44% Latino by citizen-voting-age-population. With the smaller electorate and smaller geography in which he had to campaign, Mr. Farias focused his campaign on making personal contact with potential voters – knocking on nearly every door in the district. That campaign strategy was not only appropriate because of the size of the electorate, it was also necessary because Mr. Farias is not particularly wealthy, nor did he have a well-financed campaign. Mr. Farias prevailed in that district election, with 58.6% of the vote, and was even then elected Mayor by his colleagues on the city council. Mr. Farias' success would not have been possible without the CVRA.

Moreover, a change from at-large to district elections not only impacts who is elected, but also improves the responsiveness of those who are elected, particularly to the minority community, once they are elected. While at-large elections are known to lead elected officials to being unresponsive to minority communities, the experiences of Amici demonstrate that district elections lead to more responsive and inclusive government. (See *Thornburg v. Gingles* (1986) 478 U.S. 30, 48, n. 14 ["Not only does voting along racial lines deprive minority voters of their preferred representative in [at-large elections], it also allows those elected to ignore minority interests without fear of political consequences, leaving the minority effectively unrepresented.], quoting *Rogers v. Lodge* (1982) 458 U.S. 613, 623 (internal quotations omitted).)

In 2018, as Orange County cities lined up to pass resolutions condemning the California Values Act, also known as SB 54 or California's Sanctuary State Law, the issue came to the San Juan Capistrano City Council. Though he could not defeat the resolution outright, Mr. Farias, who was Mayor at the time, not only voted against the resolution, he also made sure the Latino community understood they had a voice on the council by explaining his opposition to the resolution: "As mayor of everyone who calls San Juan Capistrano home, regardless of their legal status, … I work for everybody that calls San Juan Capistrano home. I wish I could have heard that from my mayor years ago." (See https://yubanet.com/california/five-ca-cities-reject-anti-immigrant-agenda-amidst-community-outcry/) Had Mr. Farias been subject to an at-large race for re-election in the notoriously

anti-immigrant city of San Juan Capistrano, his remarks would have spelled his political doom, in his next re-election or even perhaps in a recall election. (See aschaper1.blogspot.com/2018/04/san-juan-capistrano-report-on-epic-win.html [calling for Mr. Farias' removal from office due to his remarks in support of the California Values Act].)

V. CONCLUSION

This detailed view of the legislative history of the CVRA, and the unique demographics and electoral history of California that prompted its development and enactment, makes clear that it was intended to combat vote dilution in the nation's most multi-ethnic state regardless of whether a minority group could constitute a majority, or even "near-majority," in a single-member district. And it has resulted in the largest changes in California local government since the Progressive Era, changes that are increasingly making local government more responsive and inclusive. The judgment of the Superior Court should be affirmed.

Dated: February 4, 2020

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CERTIFICATE OF WORD COUNT

I, the undersigned appellate counsel, certify that this brief consists of 3,990 words exclusive of those portions of the brief specified in California Rules of Court, rule 8.204(c)(3), relying on the word count of the Microsoft Word computer program used to prepare the brief.

Dated: February 4, 2020

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PROOF OF SERVICE

I, Brian Panish, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years, and I am not a party to this action. My business address is 11111 Santa Monica Blvd., Suite 700, Los Angeles, CA 90025. On February 4, 2020, I served the following document(s):

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☒ **(*State*)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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