

No. S263972

*In the*

**Supreme Court**

*of the*

**State of California**

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City of Santa Monica,  
*Defendant and Appellant,*

v.

Pico Neighborhood Association, *et al.*,  
*Plaintiffs and Respondents.*

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**SANTA MONICA CITY COUNCIL MEMBER OSCAR DE LA  
TORRE'S APPLICATION (IN HIS INDIVIDUAL CAPACITY) FOR  
LEAVE TO FILE AMICUS CURIAE BRIEF; [PROPOSED]  
AMICUS CURIAE BRIEF**

After a Published Decision of the Court of Appeal  
Second Appellate District, Division Eight  
Case No. BC295935  
(Subsequently Depublished by this Court)

Appeal from the Superior Court of Los Angeles  
Case No. BC616804  
Honorable Yvette M. Palazuelos

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## APPLICATION TO FILE AMICUS BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, Santa Monica City Council Member Oscar de la Torre, in his individual capacity and not as a council member, respectfully requests leave to file the attached Amicus Curiae brief. Though he is a member of the governing board of Defendant, he, like two of his city council colleagues who would have joined this brief but for the threats of Defendant's interim city attorney incorrectly asserting they cannot join an amicus brief, supports *Plaintiffs'* position in this case.

Amicus finds the positions taken by his self-interested colleagues on the Santa Monica City Council to be wrong, and is disturbed by the misrepresentations found in Defendant's brief to this Court – about the City of Santa Monica, its elections and its history. Amicus therefore submits this brief to address some of those misrepresentations and make clear that he, unlike some of his colleagues, supports the California Voting Rights Act and the minority voting rights it protects.

As a member of the Santa Monica City Council, charged with the task of representing the residents of Santa Monica, Amicus has a special interest in protecting those residents' voting rights. As set forth in more detail below, the residents of Santa Monica support the *Plaintiffs*; it is only certain self-interested members of the city council that support the deeply offensive positions expressed in Defendant's Answer Brief. Yet, if only the

position of those councilmembers is presented, this Court might get the false impression that the City of Santa Monica is opposed to district-based elections, the California Voting Rights Act, and minority voting rights more generally.

Amicus has read the parties' briefs, as well as the briefing concerning Defendant's motion for judicial notice. While Plaintiffs address the arguments of Defendant generally, and do so thoroughly and convincingly, Amicus focuses on two issues: 1) why it would be improper for this Court to consider the 2020 election; and 2) how the obstinate and expensive refusal of Defendant's city council majority to adopt district-based elections, contrary to the will of the Santa Monica residents, demonstrates that democracy is broken in Santa Monica.

As discussed in further detail in the accompanying brief, Amicus' experiences with Defendant's elections and knowledge of Defendant's history, contradict Defendant's factual misrepresentations in its Answer Brief to this Court. The attached brief will assist the Court in understanding the electoral and political reality of Santa Monica, its history, and the ways Defendant's Answer Brief distorts that reality.

Amicus does not take lightly that the attached brief criticizes Defendant's "official position." But, the gravity of this case, and the dysfunctionality of Santa Monica's city government which allows a majority of the city council to take positions that are so contrary to the will

of the people, require that Amicus ensures that the voices of the Santa Monica residents he represents, are heard.

### **INTEREST OF AMICI CURIAE**

Amicus Curiae Oscar de la Torre is a member of the Santa Monica City Council, but submits this brief in his individual capacity. As discussed more fully below, he was elected in November 2020 in an extraordinarily unusual election. In the campaign leading up to that election, Amicus, along with two of his council colleagues, each expressed their support for district-based elections because they recognized that the at-large election system employed by Defendant violates the California Voting Rights Act, denies a large swath of Santa Monica residents their due voice in local government, and was adopted and maintained for the purpose of depriving Latinos in the Pico Neighborhood of their due representation.

Amicus has long roots in Santa Monica dating back to the 1970s. Having lived in Santa Monica all of his life, and having also been involved in local Santa Monica politics for several decades, Amicus is uniquely positioned to inform this Court of the history and political reality of Santa Monica and its election system. Defendant distorts that history and political reality in its Answer Brief, and Amicus has an interest in correcting those distortions.

Amicus is now tasked, as a member of the Santa Monica City Council, to represent the interests of Santa Monica residents – a task at

which some of his colleagues on the city council have failed. With other members of the Santa Monica City Council taking positions in this case that are contrary to the will of Santa Monica residents, Amicus, as a representative of Santa Monicans, has a unique interest in ensuring that Santa Monica residents' voices are heard by this Court. Ultimately, it is their voting rights that will be decided in this case – voting rights that some of Amicus' self-interested colleagues on the city council are fighting *against* because those voting rights are incompatible with their political ambitions.

For these reasons, Santa Monica City Council Member Oscar de la Torre, in his individual capacity, respectfully requests that the Court accept the attached Amicus Curiae Brief in Support of Plaintiffs-Respondents Pico Neighborhood Association and Maria Loya.<sup>1</sup>

Dated: June 11, 2021

Respectfully submitted,

By: /s/ Todd W. Bonder  
Todd W. Bonder

Attorney for Amici Curiae

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<sup>1</sup> Defendant-Appellant will no doubt point out that Amicus Oscar de la Torre is the husband of Maria Loya. That is true, but, as set forth herein, Amicus has advocated for district elections in Santa Monica long before Maria Loya was included as a plaintiff in this case.

## AMICI CURIAE BRIEF

### I. INTRODUCTION

Though he is a member of *Defendant's* city council, Amicus Curiae Oscar de la Torre ("Amicus") submit this brief in his individual capacity in support of *Plaintiffs*. Amicus, like two other members of Defendant's city council who would have joined this brief but for the threats of Defendant's interim city attorney, find the positions and arguments expressed in Defendant's Answer Brief to be both wrong and offensive. Indeed, Defendant's own behavior in this case belies its primary argument – that the implementation of a remedial election system would make no difference. If replacing the existing at-large election system would make no difference, surely Defendant would not have spent millions of dollars on attorneys to obstinately insist on keeping its at-large system. But Plaintiffs amply address, in their briefs, the fallacy of Defendant's positions, so Amicus refrains from addressing those same issues here.

Rather, Amicus writes separately to specifically address two issues:

1) Defendant's reliance on, and mischaracterization of, the 2020 election; and 2) the Court of Appeal's erroneous suggestion that democracy is working in Santa Monica. The 2020 election should not even be considered by this Court because it is a post-judgment event not in the record. But even if the 2020 election were considered, it would not support Defendant's position. Rather, the 2020 election further demonstrates what



was already demonstrated at trial – a significant majority of the Santa Monica electorate favors a switch to district-based elections. The refusal of Defendant’s city council to do the will of the people by adopting district-based elections just demonstrates that democracy is not working in Santa Monica.

## **II. THE 2020 ELECTION**

Amicus and his colleagues Phil Brock and Christine Parra have long been critical of Defendant’s unresponsiveness to the needs of its residents, particularly those of the historically marginalized Pico Neighborhood, and its general incompetence in providing the basic services entrusted to municipal government. Failings of municipal government often go unnoticed by most residents, but they were glaringly obvious in Santa Monica on May 31, 2020. An unprepared Santa Monica Police Department responded to peaceful protests of the killing of George Floyd by brutalizing protestors with tear gas, batons and rubber bullets, while at the same time allowing looters to destroy and burn dozens of local businesses.<sup>2</sup> Residents justifiably coined May 31, 2020 the “worst day in Santa Monica’s history,” and, as later reported by the local press, this “perfect storm” resulted in a

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<sup>2</sup> This was recently confirmed by an after-action investigative report commissioned by Defendant. (See Casuso, J. “*Report Harshly Criticizes Police Response to May 31 Riots, Chronicles Department in ‘Disarray’*” (Santa Monica Lookout, May 6, 2021), available at: [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2021/May2021/05\\_06\\_2021\\_Report\\_Harshly\\_Criticizes\\_Police\\_Response\\_to\\_May\\_31\\_Riots.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2021/May2021/05_06_2021_Report_Harshly_Criticizes_Police_Response_to_May_31_Riots.html))

formidable anti-incumbent sentiment. (See Casuso, J. “*A Perfect Storm Swept Incumbents Out of Office*” (Santa Monica Lookout, Nov. 23, 2020)<sup>3</sup>.)

Amicus, along with Phil Brock and Christine Parra, formed the “Change Slate” and campaigned on a platform that much was wrong with Santa Monica city government and the incumbent councilmembers who had allowed, and in many cases caused, it to rot. Amicus and his Change Slate colleagues also recognized that the at-large election system was largely to blame. Rather than being connected to the residents of each of the seven neighborhoods that make up Santa Monica, the incumbent councilmembers were beholden to wealthy business interests that spend unlimited sums through political action committees on the extraordinarily expensive at-large city council campaigns. Therefore, the Change Slate prominently included their support for a switch to district-based elections in their campaigning, while all of the incumbents opposed any change to the unlawful and discriminatory at-large system. (See, e.g., “City Council Candidate Pop Quiz” (Santa Monica Lookout, Oct. 2020)<sup>4</sup>)

Largely because of the extraordinary anti-incumbent sentiment, and corresponding desire to change the election system that had benefited those

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<sup>3</sup> Available at [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2020/November-2020/11\\_23\\_2020\\_NEWS\\_ANALYSIS\\_A\\_Perfect\\_Storm\\_Swept\\_Incumbents\\_Out\\_of\\_Office.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2020/November-2020/11_23_2020_NEWS_ANALYSIS_A_Perfect_Storm_Swept_Incumbents_Out_of_Office.html)

<sup>4</sup> Available at [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2020/October-2020/City\\_Council\\_Candidates\\_Pop\\_Quiz.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2020/October-2020/City_Council_Candidates_Pop_Quiz.html)

incumbents, the Change Slate were all elected to the Santa Monica City Council in 2020, unseating three incumbents. That result is nothing short of remarkable. In the previous 25 years, only two incumbents had lost re-election – Michael Feinstein in 2004 and Pam O’Connor in 2018.

Unseating three incumbents could not have occurred except in the unusual circumstances of a global pandemic and a fierce anti-incumbent sentiment prompted by an extraordinary display of the city government’s ineptitude. Though Amicus and his Change Slate colleagues would like to believe the 2020 election indicates a lasting shift in Santa Monica politics, the results of several more typical elections over decades suggest that the 2020 election was an aberration. The sort of “perfect storm” that occurred in 2020 is unlikely to repeat itself.

In its Answer Brief, Defendant attempts to use the Change Slate’s 2020 election victory, particularly that of Christine Parra and Amicus Oscar de la Torre, to thwart one of the very policies on which they campaigned – the reform of Defendant’s illegal and racially discriminatory at-large election system. According to Defendant, the 2020 election – without any analysis of that election or any context whatsoever – demonstrates that its at-large election system is just fine, or that it’s okay to delay the relief ordered by the Superior Court. Defendant’s superficial view belies the reality of that election, and illustrates the wisdom of the rule that post-judgment evidence is not considered by appellate courts.

**A. The 2020 Election Occurred After the Judgment, and  
Should Therefore Not Be Considered By This Court**

As Plaintiffs amply explain in their opposition to Defendant's motion for judicial notice, the 2020 election occurred after the judgment in this case, and therefore should not be considered by this Court. (See also, *In re Zeth S.* (2003) 31 Cal.4th 396, 405-414 [post-judgment events are not properly considered by appellate courts absent "exceptional circumstances"]; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 793 [refusing to consider November 2013 election in California Voting Rights Act case because it occurred after the trial court's issuance of the injunction challenged on appeal].)

If post-judgment elections were considered by appellate courts in voting rights cases, there would never be finality. Most political subdivisions, including Defendant here, hold elections every two years. A typical appeal of a judgment takes well over a year, and can take several years as this case has. The judgment in this case occurred more than two years ago, and the appeal is still pending. It's almost certain then, that at least one intervening election will occur in any case between the trial court's judgment and the final resolution of an appeal of that judgment. Appellate courts are ill-suited to evaluate those intervening elections anew; rather, that is the role of the trial courts, where both sides can proffer testimony and documentary evidence. And if trial courts were called upon

by the appellate courts to evaluate new elections after entry of judgment, there would be a never-ending cycle of amended judgments and remands. As the court recognized in *Jauregui*, this reality necessitates a firm rule that post-judgment elections may not be considered by appellate courts. (*Jauregui*, 226 Cal.App.4<sup>th</sup> at 793.)

Even where an election occurs after trial, but prior to entry of judgment, courts have declined to consider those elections in voting rights cases. The court in *Missouri State Conference of the NAACP v. Ferguson-Florissant School District* (E.D. Mo. 2016) 219 F.Supp.3d 949 summed it up, with an analysis that is equally applicable to this case:

[Defendant's] argument seems to be that I should forgo the detailed analysis I conducted of all of the evidence and expert analysis presented over the course of a six-day trial, accept their expert's analysis of the 2016 election results without giving the Plaintiffs a chance to respond and without considering any context, and simply conclude that because there are currently three African Americans (who, they argue, are all Black-preferred candidates) on the Ferguson-Florissant School Board, the current system results in proportionality and is thus legally acceptable and superior to any of the systems Plaintiff propose.

I decline to do so. It would be neither fair nor helpful to consider the School District's expert analysis on the 2016 election results at this stage. A finding of proportional representation at this moment would not, standing alone, negate my liability finding.

See *Harvell v. Blytheville Sch. Dist. No. 5*, 71 F.3d 1382, 1388 (8th Cir. 1995) (en banc) (“Just as proportional representation is not mandated under Section 2, it also does not preclude finding a violation, because racial reference points do not necessarily reflect political realities.”). Plaintiffs have not had the opportunity to respond or offer their own expert analysis. Cf. *Cottier v. City of Martin*, 604 F.3d 553, 561 n.4 (8th Cir. 2010) (en banc) (rejecting suggestion to consider election data appended to plaintiffs' brief, as the court would not “allow one party to augment its evidentiary presentation in a case involving extensive statistics that were the subject of complex analysis by experts for both parties”). If I were to reopen the case again and give them the chance to do so, we would necessarily extend the case, perhaps past the next election, and then there would seem to be no reason not to reopen the case again to include those results, and so on.

(*Id.* at 954.)

**B. The Circumstances of the 2020 Election Illustrate Why Post-Judgment Elections Should Not Be Considered.**

In evaluating elections in voting rights cases, courts are required to engage in a “searching practical evaluation.” (*Thornburg v. Gingles* (1986) 478 U.S. 30, 76; see also *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5<sup>th</sup> 385, 470 [“California's statute demands an equally fact-intensive expedition through the factors for ascertaining racially polarized voting.”]) Where an election is an outlier, or is the product of unusual circumstances, courts are justified in disregarding that election, or at least

giving that election less weight. (*Thornburg v. Gingles*, 478 U.S. at 76 [Where an at-large election system “generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters.”]; *Yumori-Kaku*, 59 Cal.App.5<sup>th</sup> at 462-465 [approving of trial court giving less weight to certain elections – “the court may need to extend its inquiry to consider factors likely to have influenced the electoral outcomes.”].)

The 2020 election was very much an outlier. But, because it occurred after the judgment, the parties have no opportunity to present testimony and documentary evidence to demonstrate just how much of an outlier it was. As discussed above, the election occurred shortly after “the worst day in Santa Monica’s history,” in the midst of a global pandemic and unprecedented anti-incumbent sentiment, where Amicus and his Change Slate colleagues could present themselves as the only alternative to the inept incumbents. Of course, appellate courts do not take testimony, so considering post-judgment elections for the first time in an appeal necessarily deprives the litigants of the opportunity to fully address those elections, and would result in appellate courts relying on a superficial view of the elections rather than the “searching practical evaluation” that is required.

Moreover, the issue of district-based elections – the subject of this case – was a central issue in the 2020 campaign. Amicus and his Change

Slate colleagues recognized the electorate’s desire for a switch to district-based elections, and used that issue to garner support. That is likewise reason enough to disregard the 2020 election. (Compare *United States v. Village of Port Chester* (S.D.N.Y. 2010) 704 F. Supp. 2d 411, 442 [where the subject of a voting rights lawsuit becomes a central campaign issue in a post-lawsuit election, that election is rightly disregarded as an outlier fueled by that “special circumstance”].) It would be tragically ironic and undemocratic to allow Defendant to use the electorate’s support for district-based elections to thwart the implementation of district-based elections.

This case exemplifies the reason post-judgment evidence is not considered by appellate courts.

**C. Even if Considered, the 2020 Election Should Not Change the Outcome of This Case.**

Unlike Defendant, Amicus and his Change Slate colleagues recognize that the present composition of the Santa Monica City Council reflects a sliver in time, compared to the long history of exclusion of Latinos. And, if the at-large election system remains, the composition of the Santa Monica City Council is likely to return to where it has been for 65 of its 75 years – the *complete* exclusion of the Latino minority.

When Defendant’s Charter Review Commission considered whether Defendant’s at-large election system should be replaced in 1992, it could have reasoned that the election of the first Latino councilmember in 1990



demonstrated there was no need for change. The Charter Review Commission nonetheless concluded “a shift from the at-large plurality system currently in use” was necessary “to distribute empowerment more broadly in Santa Monica, particularly to ethnic groups.” (24AA10716 [Trial Court Statement of Decision, p. 48].) Two years later, the Charter Review Commission was proved correct – when the only Latino ever elected to Defendant’s city council lost his bid for re-election following a campaign riddled with racist appeals. (24AA10704, 24AA10725 [Trial Court Statement of Decision, pp. 36, 57].) Defendant’s city council would be devoid of Latinos for another 18 years. (24AA10687-10688 [Trial Court Statement of Decision, pp. 19-20].) Amicus and his Change Slate colleagues understand that history; they understand their success may be fleeting; and they understand that only a permanent change to Defendant’s discriminatory at-large election system can ensure consistent fair representation in the future.

Courts have long recognized what Amicus and his Change Slate colleagues understand, and Defendant’s 1992 Charter Review Commission understood, about Santa Monica – that one election is not nearly as predictive as decades of elections, and therefore does not negate a consistent pattern of racially polarized voting. (*Gingles*, 478 U.S. at 57 [“[W]here elections are shown usually to be polarized, the fact that racially polarized voting is not present in one or a few individual elections does not

necessarily negate the conclusion that the district experiences legally significant bloc voting.”]; *Missouri State Conference of the NAACP*, 219 F. Supp. 3d at 974.) That is particularly true where, as here, that single election is held during the pendency of a voting rights lawsuit. (*Gingles*, 478 U.S. at 76).

### **III. DEMOCRACY IS NOT WORKING IN SANTA MONICA.**

In its opinion, the Court of Appeal described the situation where minority voters consistently lose elections, and thus lack representation in their local government, as “democracy working.” (Opinion p. 30.) Since Latino voters’ preferred candidates have consistently lost in elections for the Santa Monica City Council (see 24AA10680-10681, 24AA10684-10690 [Trial Court Statement of Decision, pp. 12-13, 16-22]), the Court of Appeal would presumably say that democracy is working in Santa Monica. The Court of Appeal is tragically wrong. Self-interested incumbents clinging to a discriminatory election system because it keeps them in power, despite popular opposition to that election system, is not “democracy working”; it is a dysfunctional government at odds with its constituents and in need of correction.

Though a majority of Defendant’s city council favor at-large elections, the residents overwhelmingly support replacing that antiquated system with district-based elections. As Plaintiffs point out in their Reply Brief, and Amicus and his Change Slate colleagues recognized in their

campaigns, when Santa Monica residents are asked to simply choose between the current at-large system and district-based elections, they prefer district-based elections by a wide margin. (Petitioners’ Reply Brief, p. 47). Unsurprisingly, Latino residents support a switch to district-based elections by a margin even greater than their non-Latino neighbors. (Id.). Across every ethnic group, and partisan affiliation, Santa Monica residents support adopting district-based elections. (RT2865:23-2868:20). The residents’ support for district elections was one reason, though not the dominant reason, that Amicus and his Change Slate colleagues each proclaimed their support for district elections in their campaigns. (See “City Council Candidate Pop Quiz” (Santa Monica Lookout, Oct. 2020))<sup>5</sup>

Defendant attempts to give this Court the opposite impression, claiming, on page 13 of its Answer Brief, that “in 1975 and 2002, voters overwhelmingly rejected returning to districts” and “in 2002 ... 82% of Latino voters rejected districts.” None of what Defendant says about voter sentiment in 1975 or 2002 is true. The 1975 ballot measure to which Defendant refers would have “reduced the percentage of names required on a recall petition,” “required another election ... within six months,” and brought “immediate and long-range upheaval in the city's politics.” (RT4719:16-4720:2.) It was “these additional provisions, rather than the

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<sup>5</sup> Available at [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2020/October-2020/City\\_Council\\_Candidates\\_Pop\\_Quiz.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2020/October-2020/City_Council_Candidates_Pop_Quiz.html)

proposed adoption of districts, [that] were the focus of opponents of [the 1975 ballot measure].” (RT4720:4-4720:8.) Likewise, the 2002 ballot measure was far from a simple choice between adopting district-based elections or maintaining the at-large system; it consisted of six separate provisions. (RT5416:5-5416:6.) The 2002 ballot measure sought to establish a strong mayor with veto power over the city council – in the words of the League of Women Voters: ““Measure HH would [] radically shift power by concentrating control into a single individual, a new dominant, boss-style mayor.” (RT5412:12-5413:14). And, the 2002 ballot measure further sought to bifurcate elections into primary elections followed by city-wide runoff elections for all councilmembers, making them all ultimately elected at-large, and the elections more expensive. (RT5413:15-5413:18.) It was these features of the 2002 ballot measure that were (rightly) criticized by opponents. (RT5412:12-5416:24.) Unlike the move to district-based elections ordered by the Superior Court, placing the bulk of the city’s government power in a single *at-large-elected* mayor, and subjecting every councilmember to *at-large* runoff elections, would have done nothing to empower the Latino community.

Not only does the expert polling of the Santa Monica electorate discussed above bely any notion that Santa Monicans favor maintaining at-large elections, so too does the report of Defendant’s 1992 Charter Review Commission. (25AA10913-10914; 25AA10930.) The Commission was

composed of a balanced cross-section of Santa Monica residents, and concluded “that Defendant’s at-large election system [should] be eliminated [because] the at-large system prevents minorities and the minority-concentrated Pico Neighborhood from having a seat at the table.” (24AA10722 [Trial Court Statement of Decision, p. 54].) Indeed, the Charter Review Commission was nearly unanimous in its recommendation to scrap the at-large election system like so many other racist relics of the past. (Id.). But, just like Defendant’s city council of 2018, its city council of 1992 rejected the Charter Review Commission’s recommendation and maintained the at-large election system that elected them. Though the Court of Appeal reversed, the Superior Court (correctly) found that decision by the 1992 city council was intended to deprive Latinos of voting power. (24AA10716-17, 24AA10721-27 [Trial Court Statement of Decision, pp. 48-49, 53-59])

So why would a majority of Amicus’ council colleagues insist on at-large elections when their constituents overwhelmingly favor district-based elections? The answer is simple – retaining political power.

Amicus understands the temptation of council members to cling to at-large elections once they have secured council seats under that election system. A move to district-based elections might mean those councilmembers must compete against one another in an electoral contest, and some are not re-elected. It also might mean that one or more of

Amicus and his Change Slate colleagues lose their seats on the city council. But Amicus and his Change Slate colleagues also recognize that losing one's elective office is a small price to pay for addressing systemic racism – a price they are willing to pay to ensure that the votes of Latino residents of Santa Monica are no longer diluted by the at-large system.

#### **IV. CONCLUSION**

Amicus' constituents deserve an election system that complies with the CVRA and does not dilute the vote of the historically unrepresented Latino community, as the Superior Court ordered. Therefore, Amicus asks this Court to reverse the Court of Appeal's decision, with direction to affirm the Superior Court's judgment.

Dated: June 11, 2021

Respectfully submitted,

By: */s/ Todd W. Bonder*  
Todd W. Bonder

Attorney for Amici Curiae

**CERTIFICATE OF WORD COUNT**

(Cal. Rules of Court, rules 8.2024(c)(1).)

I, the undersigned counsel, certify that this brief consists of 3,264 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: June 11, 2021

Respectfully submitted,

By: /s/ Todd W. Bonder  
Todd Bonder

Attorney for Amici Curiae

**RULE 8.520(f)(4) 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 8.520(f)(4)(A).) Nor do there exist any persons or entities whose identities must be disclosed under Rule 8.520(f)(4)(B) of the California Rules of Court.

Dated: June 11, 2021

Respectfully submitted,

By: /s/ Todd W. Bonder  
Todd W. Bonder

Attorney for Amici Curiae



**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 232 N Canon Dr, Beverly Hills, CA 90210.

On June 11, 2021, I served true copies of the following document(s) described as  
**APPLICATION FOR LEAVE TO FILE AMICUS BRIEF AND PROPOSED AMICUS BRIEF**  
on the interested parties in this action as follows:

|  |  |
|--|--|
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| Theodore Boutrous<br>Marcellus McRae<br>Kahn Scolnick<br>Tiaunia Henry<br>Daniel Adler<br>GIBSON DUNN & CRUTCHER LLP<br>333 S. Grand Ave.<br>Los Angeles, CA 90071 | IRA FEINBERG<br>HOGAN LOVELLS US LLP<br>390 Madison Ave.<br>New York, NY 10017   |
| John Haggerty<br>P.O. Box 2118<br>Santa Clara, CA 95055  | Kristin Liska<br>OFFICE OF THE ATTORNEY GENERAL<br>455 Golden Gate Ave., Suite 11000<br>San Francisco, CA 94102                  |
| Christopher Harding<br>1250 Sixth Street, Suite 200<br>Santa Monica, CA 90401  | Joseph Pertel<br>2801 Ocean Park Blvd., #276<br>Santa Monica, CA 90405   |
| Nathan Lowenstein<br>Kenneth Weatherwax<br>LOWENSTEIN & WEATHERWAX LLP<br>1880 Century Park East, Suite 815<br>Los Angeles, CA 90067                               |  |

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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 June 11, 2021 at Beverly Hills, California.

/s/Todd Bonder  
Todd Bonder

STATE OF CALIFORNIA  
Supreme Court of California**PROOF OF SERVICE**STATE OF CALIFORNIA  
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6/11/2021

Date

/s/Todd Bonder

Signature

Bonder, Todd (116482)

Last Name, First Name (PNum)

Rosenfeld, Meyer & Sussman LLP

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