No. S263972

In the

Supreme Court

of the

State of California

City of Santa Monica,
Defendant and Appellant,
v.
Pico Neighborhood Association, *et al.,*
Plaintiffs and Respondents,

PLAINTIFFS' RESPONSE TO AMICUS BRIEF OF JOHN K. HAGGERTY

After a Decision of the Court of Appeal
Second Appellate District, Division Eight
Case No. BC295935 (DEPUBLISHED)

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

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I. INTRODUCTION

Amicus John Haggerty, representing only himself,[1] fails to provide this Court with a single good reason to depart from the Second District Court of Appeal's well-reasoned decision in *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, or why this Court should entertain his arguments far afield from the question certified for review. *Jauregui* correctly held that voters subject to discriminatory at-large election systems in charter cities may invoke the protections of the California Voting Rights Act ("CVRA") to vindicate their constitutional equal protection and voting rights and gain a fair opportunity to be represented in the government of their cities. *Jauregui*'s holding, which was subsequently codified by the Legislature and followed by other courts, follows from well-established California Supreme Court precedent interpreting the California Constitution, the purpose and design of the CVRA, and the State's vital interest in ensuring that its citizens have an equal opportunity to participate in democratic self-government.

For the reasons set forth below, the Court should reject Haggerty's arguments if it finds it appropriate to address them at all.

[1] Haggerty's statement of interest identifies himself only as a resident of California (not of Santa Monica) and a lawyer.

II. HAGGERTY'S AMICUS BRIEF ADVANCES ONLY HIS PERSONAL OPINIONS ON ISSUES OUTSIDE THE SCOPE OF THIS COURT'S GRANT OF REVIEW AND WILL NOT ASSIST THE COURT IN RESOLVING THE ISSUES BEFORE IT

This Court granted review on a single question of statutory interpretation: "What must a plaintiff prove in order to establish vote dilution under the California Voting Rights Act?" Haggerty's amicus curiae brief says nothing about the meaning of the CVRA or its proper interpretation; it does not even contain the word "dilution."

Rather, Haggerty's brief argues that the CVRA is unconstitutional because it violates Article XI section 5 of the California Constitution, and that both the Second and Sixth District Courts of Appeal were wrong when they held the exact opposite in *Jauregui* and *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385. Haggerty apparently also believes that this Court's many decisions, on which the *Jauregui* court relied, were also wrongly decided. And his brief makes it clear that the principal reasons underlying his views are based on his political philosophy and disdain for any laws enacted by Democrats – his legal arguments are little more than window dressing for those personal beliefs. None of what is in Haggerty's brief is even arguably within the question certified by this Court.

The legitimate purpose of amicus curiae briefs is to provide the court with information that will assist it in resolving the issues before it. An amicus curiae should not be permitted to expand the scope of the issues

considered by the Court beyond those raised by the parties or specified in the Court's order granting review. The settled rule requires "that an amicus curiae must accept the case as it finds it and that a 'friend of the court' cannot launch out upon a juridical expedition of its own unrelated to the actual appellate record." (*Pratt v. Coast Trucking* (1964) 228 Cal.App.2d 139, 143 (following and quoting *Eggert v. Pacific States Savings & Loan* (1943) 57 Cal.App.2d 239, 251.) The *Eggert* court explained: "the rule is universally recognized that an appellate court will consider only those questions properly raised by the appealing parties. Amicus curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by an amicus curiae will not be considered." (*Eggert, supra,* 57 Cal.App.2d at 251; see also *Calif. Ass'n for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1274-1275; *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 710-711, aff'd on other grounds (1986) 475 U.S. 260 (Bird, C.J., concurring)). Although the cited authorities recognize three exceptions to that rule, none apply to Haggerty's arguments in this case.[2]

[2] Those three exceptions are: (1) where amicus curiae requests affirmance of the trial court's decision on alternative grounds; (2) where the amicus raises a question as to the court's jurisdiction; and (3) death penalty cases. Here, Haggerty supports reversal of the trial court's decision and does not raise any question as to the Court's jurisdiction, and this is, of course, not a death penalty case.

Haggerty's proposed brief provides no information of any type, only rhetoric, an erroneous history of Article XI section 5 of the California Constitution, and erroneous legal argument, on issues not before this Court. This Court need not consider the issues and arguments advanced by Haggerty in order to decide this case, and should not waste its time in doing so.

III. HAGGERTY'S ARGUMENTS INVITE THE COURT TO OVERTURN WELL-REASONED APPELLATE AUTHORITY BUT OFFER NO JUSTIFICATION FOR DOING SO, AND SHOULD BE REJECTED

A. The Two Well-Reasoned Appellate Decisions on the Points Raised by Haggerty Were Correctly Decided

Haggerty recognizes that only two appellate decisions have decided the precise issues he raises – the leading case of *Jauregui v. City of Palmdale* (2nd Dist. 2014) 226 Cal.App.4th 781 and the following case of *Yumori-Kaku v. City of Santa Clara* (6th Dist. 2020) 59 Cal.App.5th 385. As Haggerty further acknowledges, both decisions squarely rejected his arguments. (Haggerty Application and Brief, pp. 4, 12.) In fact, in *Yumori-Kaku*, Haggerty submitted a brief virtually identical to his amicus brief in this case, and the Sixth District Court of Appeal specifically considered and squarely rejected that defendant's and Haggerty's arguments. (See *Yumori-Kaku, supra,* 59 Cal.App.5th at 473-474.) Without citing any contrary authority – there is none – he asserts that *Jauregui* was wrongly decided and should be overturned by this Court. (Haggerty Brief, pp. 16-28). But

Jauregui's holding is not under review in this case. This Court already had occasion to review the holding of *Jauregui*, when the City of Palmdale petitioned for review in that case, and this Court denied review. (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 798-804, review denied (Aug. 20, 2014).)

Contrary to Haggerty's assertion, the reasoning and holding of *Jauregui* are sound, and were properly followed in *Yumori-Kaku.* Because the court's decision in *Jauregui* is detailed, cites to on-point and controlling authority of this Court, and is analytically indistinguishable from this case with respect to the issues raised by Haggerty, we need not repeat the arguments made by the plaintiffs and accepted by the courts in those two cases. Instead, we simply highlight their holdings and adopt the full reasoning of the Court in *Jauregui* as sufficient explanation for why the Court should reject Haggerty's arguments (if it reaches them at all).

B. *Jauregui* Correctly Applied the Analysis Required by This Court In Determining That the CVRA Applies to Charter Cities.

This Court has prescribed a four-part framework for determining whether a state law may override provisions of local law enacted by charter cities, notwithstanding the provisions of Article XI Section 5 of the Constitution. That framework is set out in *State Building & Construction Trades Council, AFL-CIO v. City of Vista* (2012) 54 Cal.3d 547, 556, and *California Federal Savings & Loan Assn. v. City of Los Angeles* (1991) 54

Cal.3d 1, 12. Those decisions built on earlier decisions of this Court which rejected the proposition that the "plenary authority" granted to charter cities under section 5(b) is supreme in every case and immune from limitation by state law – the exact proposition advanced by Haggerty here. *See People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 600.

In *Jauregui* the Second District Court of Appeal methodically applied this four-part test in determining that the CVRA may be applied, where its evidentiary requirements are met, to compel changes in a charter city's election system. (*Jauregui,* 226 Cal.App.4th at 795-802.) Carefully explaining and citing to authority from this Court on each of the four parts of the governing framework, the court reasoned that:

(1) Municipal elections are a municipal affair encompassed within Article XI section 5. (226 Cal.App.4th at 796);

(2) There is an actual conflict between Section 14027 of the CVRA, which prohibits the use of at-large election systems that dilute minority voting rights, and city charter provisions requiring the use of at-large elections. (*Id*. at 796-798)

(3) The CVRA addresses an issue of statewide concern, specifically the State's legitimate interest in the Constitution's voting rights and equal protection guarantees and to ensure the integrity of local election systems. (*Id*. at 799-801); and

(4) The CVRA's provisions are narrowly drawn and reasonably related to the statutory goal of preventing unlawful vote dilution. (*Id*. at 802)

The *Jauregui* court went on to consider and specifically reject the argument made by the defendant in that case – and Haggerty here – that the "plenary authority"[3] granted to charter cities by subsection 5(b)(4) – including the authority to control "the manner in which [and] the method by which municipal officers shall be elected " – are exempt from limitation by state law even when the four-part test is met. (*Id*). The court found that "contention ha[d] no merit." (*Id.* at 803.) In rejecting that argument, the *Jauregui* court followed and quoted this Court's decision in *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591 that had similarly rejected that argument:

> As can be noted, the plenary authority language in article XI, section 5, subdivision (b) extends to charter city employee related matters. Our Supreme Court quoted the foregoing "plenary authority" language in article XI, section 5, subdivision (b) in the immediately preceding paragraph and concluded: "What grant of power could sound more absolute? Yet in an unbroken series of

[3] Haggerty principally relies on a dictionary definition of the term "plenary," but the better definition of "plenary authority" in article XI, section 5, subdivision (b) is "[p]ower as broad as equity and justice require." (Ballentine's Law Dict. (2010) (definition of "plenary power").) After all, "[i]t is a truism that few legal rights are so 'absolute and untrammeled' that they can never be subjected to peaceful coexistence with other rules." (*Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 598.)

> public employee cases, starting with *Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 289–295 and ending for the time being with *Baggett v. Gates* (1982) 32 Cal.3d 128, 135, 140, it has been held that a 'general law prevails over local enactments of a chartered city, even in regard to matters which would otherwise be deemed to be strictly municipal affairs, where the subject matter of the general law is of statewide concern.' (*Professional Fire Fighters*, supra, 60 Cal.2d at p. 292.)"

(*Id.* at 803, quoting *Seal Beach*, 36 Cal.3d at 600). Accordingly, the *Jauregui* court concluded that the CVRA and its application to at-large election systems of charter cities is not unconstitutional under Article XI section 5.

In *Yumori-Kaku* the Sixth District Court of Appeal disposed of Haggerty's arguments more summarily, largely by confirming its agreement with the holding and reasoning of the *Jauregui* decision. In doing so, that court specifically rejected the arguments by Haggerty – the same ones he makes here – that *Jauregui* failed to give adequate weight to the statewide interest in protecting charter cities' ability to control municipal elections (59 Cal.App.5th at 473-474, *compare* Haggerty Brief pp. 16-17); that *Jauregui* erred in determining that dilution of minority voters' rights is a matter of statewide concern (*Id*., 59 Cal.App. 5th at 473-474, *compare* Haggerty Brief pp. 19-24); and that *Jauregui* failed to conduct a proper equal protection analysis based on the CVRA's potential to impose a state-mandated remedy on a charter city's locally-chosen

election system (*Id*., 59 Cal.App.5th at 473-474, *compare* Haggerty Brief pp.17-19.)

The Court need go no farther than *Jauregui* and *Yumori-Kaku* to dispose of all of Haggerty's contentions in this case, and reject his invitation to upend nearly sixty years of jurisprudence from this Court. [4]

C. LEGISLATIVE ACTION AND SUBSEQUENT CASELAW CONFIRM THAT *JAUREGUI* CORRECTLY REJECTED THE CHALLENGE TO THE CVRA BASED ON ARTICLE XI SECTION 5.

In 2015, the Legislature amended the CVRA to codify *Jauregui*'s holding by explicitly enumerating charter cities among the "political subdivision[s]" governed by the CVRA. (Stats. 215, ch. 724 section 2). The findings of the amending legislation declared:

(a) The dilution of votes of a protected class is a matter of statewide concern.

(b) The provisions of the California Voting Rights Act are

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[4] Though it's difficult to discern a cogent argument from his brief, Haggerty seems to argue that the Equal Protection Clause of the U.S. Constitution has some relevance to *Jauregui's* holding that the CVRA addresses a statewide concern, and that the *Jauregui* court did not address the Equal Protection Clause. But, in making that argument, Haggerty flagrantly misstates the holding of *Sanchez v. City of Modesto*, which correctly **rejected** the contention that strict scrutiny is required merely because the CVRA, or any other statute, refers to race. (145 Cal. App. 4th at 683, 687.) Additionally, while *Sanchez* noted that a district remedy "would be subject to analysis under the *Shaw-Vera* line of cases," strict scrutiny would be applied *only if* "race was the predominant factor used in drawing the district lines." (*Id.* at p. 688.) As set out at pages __ of Plaintiffs-Respondents' Reply Brief, race did not predominate in the development of the remedial map adopted by the trial court.

reasonably related to the issue of vote dilution and constitute a narrowly-drawn remedy that does not unnecessarily interfere with municipal governance.

(c) It is the intent of the Legislature that the California Voting Rights Act apply to charter cities, charter counties, and charter cities and counties.

(d) It is further the intent of the Legislature in enacting this act to codify the holding in *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781.

(*Id*. § 1.)

"While the views of the Legislature are not binding on this court, they are relevant and entitled to " 'great weight.' " (*Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 552, 572, quoting *State Building & Constr. Trades Council,* supra, 54 Cal.4th at 565; *see also City of Huntington Beach v. Becerra* (2020) 44 Cal.App. 5th 243, 273.) Haggerty bizarrely dismisses the significance of the Legislature's clearly stated intention and understanding on these matters by noting that it "passed the CVRA on a strict political party line basis with Democratic Party legislators voting for it and Republican Party legislators voting against it" and was "signed into law by a Democratic Governor." (Brief. pp. 20-21) But the Court owes deference to such strong expressions of legislative intent when incorporated in duly enacted laws, regardless of which political party favored them.

At least two other post-*Jauregui* decisions of the Courts of Appeal

have also adopted its reasoning and holding. In *Marquez v. City of Long Beach*, *supra*, the Second District Court of Appeal relied on *Jauregui*'s analysis regarding the limits of a charter city's "plenary authority" in upholding the application of a statewide minimum wage law to a charter city. (*See* 32 Cal.App.5th at 562-563, 567). In *City of Huntington Beach v. Becerra, supra*, the Fourth District Court of Appeal followed *Jauregui* and *Marquez*, citing them extensively, in applying this Court's four-part test to uphold the application of the California Values Act to charter cities, restricting their ability to direct their police departments to cooperate with federal immigration officials. (*See* 44 Cal.App.5th at 254-255, 261-262).[5] Although these decisions involved subsections of Article XI section 5(b) – specifically, subdivisions (1) and (4), addressing police powers and employee compensation – their holdings are equally applicable to the issues raised by Haggerty in the context of the conduct of elections in charter cities. (See *Jauregui, supra,* 226 Cal.App.4th at 803 [confirming the analysis is the same for municipal elections as it is for "charter city employee related matters."].)

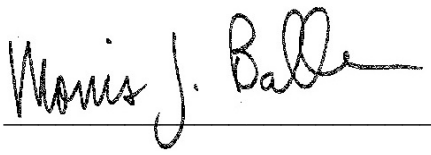
[5] *Huntington Beach* also closely examined, and rejected, the reading and application by Haggerty of *Johnson v. Bradley* (1992) 4 Cal.4th 389, that he relies on for his argument that a charter city's election system is not a matter of statewide concern. (*Huntington Beach*, *supra,* 44 Cal.App.5th at 262-263.)

IV. CONCLUSION

Haggerty's amicus brief is the legally unfounded rant of a political partisan whose views have no bearing on the issues before the Court. The Court should ignore them, or if it addresses them should reject them for the reasons stated above and in the soundly reasoned *Jauregui* decision.

Dated: June 16, 2021

Respectfully submitted,



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Supreme Court of California

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