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,

RESPONDENTS' OPPOSITION TO AMICUS CURIAE LEAGUE OF WOMEN VOTERS OF SANTA MONICA, ET AL.'S, MOTION FOR JUDICIAL NOTICE

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

The documents of which Amici League of Women Voters of Santa Monica, et al. ("Amici") ask this Court to take judicial notice – two letters between attorneys regarding the City of Irvine – have absolutely no relevance to any of the issues in this case concerning the City of Santa Monica. Rather, the consideration of those documents would only result in the undue consumption of time, as it would invite argument about whether the City of Irvine's at-large election system may violate the California Voting Rights Act ("CVRA"), and the facts relating to the determination of that issue – an entirely different case than the one before this Court. Therefore, Amici's motion for judicial notice should be denied.

II. THE ATTORNEY CORRESPONDENCE REGARDING A CITY OTHER THAN SANTA MONICA IS NOT RELEVANT TO ANY ISSUE IN THIS CASE.

Where evidence is not relevant to the issue at hand, it is not subject to judicial notice. (*Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 578 ["the matter to be judicially noticed must be relevant"]; see also *Wasko v. Dept. of Corrections* (1989) 211 Cal.App.3d 996, 1001, n.1 ["The request to take judicial notice is denied because the matter requested to be noticed is irrelevant."]; Evid. Code § 350 [irrelevant evidence is not admissible]).

The attorney correspondence for which Amici seek judicial notice is wholly irrelevant to any issue in this case. Attorney correspondence sent in March and April 2021 could not possibly have any bearing on the

interpretation of the CVRA enacted nineteen years earlier in 2002. Nor could any facts about Irvine – the subject of the attorney correspondence – be relevant to whether the Latino vote is diluted, under the CVRA, in Santa Monica's at-large city council elections.

Mozetti, supra, is particularly instructive here. In *Mozetti*, the court refused to take judicial notice of a portion of the Federal Register by which the United States Small Business Administration declared San Mateo County a disaster loan area, "because it simply designated San Mateo County as a disaster loan area but did not have any specific reference to Brisbane," where the property at issue was located – even though Brisbane is a municipality within San Mateo County. (*Mozetti*, *supra,* 67 Cal.App.3d 577-578.) The appellate court affirmed, noting that the judicial notice statutes "are subject to the qualification that the matter to be judicially noticed must be relevant." (*Id.* at 578.) Here, the attorney correspondence for which Amici seek judicial notice is even more removed from this case than the Federal Register declaration in *Mozetti* – it concerns a different city in an entirely different county than the instant case.

The only explanation Amici can conjure up for how the attorney correspondence regarding the City of Irvine could be even remotely relevant to this case is that it "documents the frequency and extent of demands for district elections pursued by plaintiffs' counsel." (Motion, p. 4). But that correspondence does no such thing. All that correspondence

shows is that a single letter was sent to the City of Irvine, and the Irvine city attorney responded to that letter several weeks later. Moreover, even if a single letter to a single city could provide any indication of the frequency with which demand letters alleging violations of the CVRA are sent to other political subdivisions, that still would not be relevant to any issue in this case.

III. THE CONSIDERATION OF THE ATTORNEY CORRESPONCE REGARDING A CITY OTHER THAN SANTA MONICA WOULD MULTIPLY THE PROCEEDINGS, RESULTING IN AN UNDUE CONSUMPTION OF TIME.

Where the probative value of evidence is "outweighed by the probability that its admission will necessitate undue consumption of time," it is not admissible, and it is not subject to judicial notice. (Evid. Code § 352; *Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 578 ["The provisions relative to judicial notice are likewise qualified by Evidence Code, section 352."].)

If this Court were to take notice of the attorney correspondence for which Amici seek judicial notice, it would invite, and fairness might require, a significant analysis of the City of Irvine and its elections. Amici attempt to use statements from Irvine's city attorney's letter, the truth of which have not been established, to persuade this Court that Irvine's at-large election system does not violate the CVRA. Even if that were somehow relevant to this case concerning Santa Monica's at-large election

system (it's not), the admission of that evidence would necessitate giving Plaintiffs-Respondents an opportunity to demonstrate that Irvine's city council elections do violate the CVRA, including presenting evidence of racially polarized voting in Irvine's city council elections (Elec. Code §14028, subds. (a) and (b)), a history of discrimination (Elec. Code §14028, subd. (e)), the use of electoral devices that may enhance the dilutive effects of at-large elections (*id.*), and racial appeals in Irvine's city council campaigns (*id.*), among other things. This Court is no place for the presentation of disputed facts about irrelevant matters.

As much as Amici would like to deflect attention away from the Trial Court's well-supported findings that Defendant's at-large elections are plagued by racially polarized voting and violate the CVRA, by focusing on another city that has not even been sued, Irvine is simply not the subject of this case.

IV. THE TRUTH OF THE CONTENTS OF THE ATTORNEY CORRESPONDENCE IS NOT SUBJECT TO JUDICIAL NOTICE.

Through their motion, Amici apparently seek judicial notice of not just the existence of the attorney correspondence regarding the City of Irvine, but also the ethnicities of certain members of the Irvine city council, and the racial demographics of the City of Irvine. Putting aside the lack of relevance of any of that to this case, even if the attorney correspondence were properly subject to judicial notice (it's not), the truth of the matters

asserted in the attorney correspondence still would not be.

This Court summarized the relevant principle in *Mangini v. R.J. Reynolds Tobacco* (1994) 7 Cal.4th 1057:

> While courts may notice official acts and public records, "we do not take judicial notice of the truth of all matters stated therein." [Citations.] "[T]he taking of judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom, since in many instances what is being noticed, and thereby established, is no more than the existence of such acts and not, without supporting evidence, what might factually be associated with or flow therefrom" [quoting and citing cases].

(*Mangini, supra,* 7 Cal.4th at 1063-1064, overruled on other grounds in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276; see also *Searles Valley Minerals Operations, Inc. v. State Bd. of Equalization* (2008) 160 Cal.App.4th 514, 519.)

Amici seek to have this Court take judicial notice of not just the attorney correspondence, but also the truth of the statements made by one attorney regarding the proportion of Irvine residents who are members of ethnic minority groups compared to that of its city council – even though they offer no actual evidence of the truth or falsity of those statements. While the existence of the attorney correspondence might be "not reasonably subject to dispute" (Evid. Code §452(h)), the truth of the statements in that correspondence is another matter altogether.

V. CONCLUSION

For all the reasons set forth above, Amici's motion for judicial notice should be denied.

Dated: June 18, 2021

Respectfully submitted,

SHENKMAN & HUGHES

/s/ Kevin Shenkman
Kevin Shenkman, Of Counsel

Attorneys for Plaintiffs-Respondents
Pico Neighborhood Association and
Maria Loya

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PICO NEIGHBORHOOD ASSOCIATION v. CITY OF SANTA MONICA**
Case Number: **S263972**
Lower Court Case Number: **B295935**

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