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Supreme Court of California
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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,

RESPONSE OF PLAINTIFFS AND RESPONDENTS PICO NEIGHBORHOOD ASSOCIATION AND MARIA LOYA TO AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA SPECIAL DISTRICTS ASSOCIATION

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

Morris J. Baller, Of Counsel (SBN 048928)
mballer@gbdhlegal.com
Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
Anne P. Bellows (SBN 293722)
abellows@gbdhlegal.com
GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
Oakland, CA 94612
Tel: (510) 763-9800 | Fax: (510) 835-1417

Kevin I. Shenkman (SBN 223315)
kshenkman@shenkmanhughes.com
Mary R. Hughes (SBN 222662)
mrhughes@shenkmanhughes.com
Andrea A. Alarcon (SBN319536)
aalarcon@shenkmanhughes.com
SHENKMAN & HUGHES
28905 Wright Road
Malibu, CA 90265
Tel: (310) 457-0970

Robert Rubin (SBN 85084)
robertrubinsf@gmail.com
LAW OFFICE OF ROBERT RUBIN
237 Princeton Avenue
Mill Valley, CA 94941-4133
Tel: (415) 298-4857

R. Rex Parris (SBN 96567)
PARRIS LAW FIRM
43364 10th Street West
Lancaster, CA 93534
Tel: (661) 949-2595

Milton C. Grimes (SBN 59437)
LAW OFFICES OF MILTON C. GRIMES
3774 West 54th Street
Los Angeles, CA 90043
Tel: (323) 295-3023

Attorneys for Plaintiffs-Respondents Pico Neighborhood Association and Maria Loya

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Plaintiffs-Respondents Pico Neighborhood Association and Maria Loya ("Plaintiffs") submit this Response to the Amicus Curiae Brief of League of California Cities ("LCC") and California Special Districts Association ("CSDA"), together referred to herein as "Amici."

I. INTRODUCTION

While purporting to support the positions of Defendant-Appellant City of Santa Monica ("Defendant"), Amici's Brief offers no substantive argument on the question posed by this Court: "What must a plaintiff prove in order to establish dilution under the California Voting Rights Act?" Instead, Amici offer only an unadorned statement of support for Defendant's position together with their own largely speculative thoughts about matters extraneous to the determinations to be made by this Court in articulating legal standards and deciding this case. Neither the record nor the decisions under review in this case present any occasion to consider Amici's ruminations on extraneous matters, such as how other California political subdivisions may or may not have responded to the requirements of the California Voting Rights Act ("CVRA"). Since Plaintiffs have already fully briefed and refuted Defendant's arguments, it is unnecessary, and would be duplicative, to respond substantively to Amici's unsupported assertion that they agree with the standard proposed by Defendant.

Amici's brief does, however, underscore one important point – California's political subdivisions require clarity on the CVRA, clarity that

can only come from this Court deciding this case on the merits with finality. (See Petitioners' Opening Brief ("OB") OB-56-58; Petitioners' Reply Brief ("RB") RB-28-29). By applying the legal standards governing violations of the CVRA to the trial court's detailed factual findings, this Court can illustrate exactly how a plaintiff establishes dilution under the CVRA, just as the U.S. Supreme Court did in *Thornburg v. Gingles* (1986) 478 U.S. 30 when it explained how dilution is established under the federal Voting Rights Act ("FVRA"). In this respect, Amici's brief, while purportedly supportive of Defendant, actually supports Plaintiffs' position and undercuts the contrary arguments made by Defendant.

II. AMICI OFFER NO EXPLANATION OR AUTHORITY FOR THEIR SUPPORT OF DEFENDANT'S POSITION.

Unsurprisingly, the League of California Cities proclaims its support for the lone city in this case – Defendant – which is itself a member of the League of California Cities. But Amici provide absolutely no case law or other authority for their support of Defendant's position in this case. The single case citation in their brief is in a footnote which only addresses the CVRA's limitation on the authority of charter cities, as established by *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781 and subsequently codified by Assembly Bill 277 in 2015. (See Amici Brief, at p. 13 n.10.)[1]

[1] Even without citing any legal authority, and providing no explanation for their position, Amici nonetheless manage to misrepresent Plaintiffs' case. Specifically, at page 10 of their brief, Amici claim that "Plaintiffs' theory

Amici's reluctance to offer more than a passing comment in support of Defendant's position is understandable, particularly in light of their expression of the contrary view in the past. In an article published on the official website of Amicus League of California Cities – Marguerite Leoni and Christopher Skinnell, *The California Voting Rights Act* – two respected practitioners specializing in the representation of cities, special districts, and other governmental entities (including many of Amici's members) addressed some of the same questions at issue in this case, including the CVRA's protection of voting influence.[2] That article decisively supports Plaintiffs' interpretation of the CVRA, and is directly contrary to

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of the case was that [] cross-over voting did not exist." Plaintiffs have never contended there is *no* white crossover voting. Rather, Plaintiffs contend – as the evidence demonstrates, and the trial court found – that there is usually insufficient white crossover voting for the Latino community's preferred candidate to win in Defendant's at-large elections. (24AA10675-10700; See *Gingles, supra*, 478 U.S. at 56 ["a white bloc vote that normally will defeat the combined strength of minority support plus white crossover votes rises to the level of legally significant white bloc voting…The amount of white bloc voting that can generally minimize or cancel black voters' ability to elect representatives of their choice, however, will vary from district to district according to a number of factors …"] (internal quotations and citations omitted).) There is, of course, *some* white crossover voting – enough to enable the candidates most preferred by the Latino community, e.g. Maria Loya, to receive the most votes of any candidate in the remedial Pico Neighborhood district adopted by the trial court. (24AA10734; RT2132:26-2134:14; RT2320:14-2322:2; RT2318:7-2320:6; RT3076:9-3077:2; RA65-66; RA204)

[2] Available at *https://www.cacities.org/getattachment/f736ba74-086a-4f5d-beb7-853d898691d8/LR-Leoni-Skinnell-THE-CALIFORNIA-VOTING-RIGHTS-ACT.aspx.* The two authors' specialized experience and publications are summarized at p.1 fn. 1of the article.

Defendant's interpretation. In a section titled "Protection for Minority Electoral Influence," the article states, "The CVRA invalidates not only at-large elections that prevent minority voters from electing their chosen candidates, but also those that impair the ability of minority voters to *influence* elections" (*Id.* at p. 3 (emphasis in original)) The article further explains the effect of that legislative choice: "by opening the door to such claims the CVRA greatly expands protection for minority voting rights" over that provided by federal Law. (*Id.* at p. 4). Amici may not like the Legislature's choice to expand protections for California's minority voters, and thus dictate the election systems some of their members may not employ, but it is the Legislature's prerogative to make that choice.

Not only is Amici's agreement with Defendant's position contrary to the analysis of the CVRA it previously promulgated to the League's member cities, it also should not be regarded as the position of California's cities generally. Amici concede that some of their member cities "favor by-district elections" because with by-district elections "all constituencies … have a voice in city [] governance" (Amici Brief, p. 14), but what Amici don't say is that the cities that have switched from at-large to district-based elections, including to comply with the CVRA, overwhelmingly are pleased with that change. For example, the two California cities subject to the most notable voting rights cases in California over the past thirty-five years – *Gomez v. City of Watsonville* (1988) 863 F.2d 1407 and *Jauregui v. City of*

Palmdale, supra – have expressed their support for the broad application of the CVRA and support for Plaintiffs in this case. A majority of the Palmdale City Council joined the legislative sponsor of the CVRA (Sen. Richard Polanco) and a San Juan Capistrano city councilmember, in submitting an amicus curiae brief in support of Plaintiffs in the intermediate appellate court. Likewise, the City of Watsonville submitted an amicus curiae brief in support of the plaintiffs in *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660. (2006 WL 1546832, at *15 ["It is good for our communities, and indeed for our State, that all citizens, regardless of their race or color, have a fair opportunity to elect candidates of their choice. That fair opportunity is one that the CVRA mandates."].)

III. THIS COURT DECIDING THIS CASE ON THE MERITS WILL PROVIDE CLARITY AND CERTAINTY TO CALIFORNIA'S POLITICAL SUBDIVISIONS.

In their Conclusion, Amici state: "This case provides an opportunity for this Court to provide needed clarity regarding the CVRA's application." (Amici's Brief, p. 20.) On that point, Amici are correct. The California political subdivisions that Amici purport to represent, as well as the courts and the public, would benefit from this Court providing that clarity. Consistent with Amici's plea, this Court should take the occasion of this case both to articulate and to illustratively apply the standards for establishing the vote dilution that violates the CVRA, in order to provide the greatest possible amount of guidance for California's local government

jurisdictions. (See OB-56-58, RB-29-32). The trial court's detailed factual findings, based on a six-week trial, provide this Court the vehicle by which to demonstrate how an at-large election system should be evaluated when challenged under the CVRA.

As Amici insist it must, the trial court did not assume that the law either prefers or disfavors at-large election systems.[3] Rather, it scrupulously analyzed Defendant's elections, history and social, economic and political circumstances, to determine whether those elections exhibit racially polarized voting, and whether Defendant's at-large method of election dilutes the votes of the Latino minority. (24AA10680-10707.)

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[3] While the trial court did not favor or disfavor at-large or district-based elections generally, the California Legislature has repeatedly recognized the desirability of political subdivisions converting from at-large to district-based elections, because it is at-large elections that have the greatest capability to dilute minority votes. The CVRA itself demonstrates a preference for district-based elections, as only at-large elections can be challenged under the CVRA. (See Elec. Code, § 14027). Since enacting the CVRA, the Legislature has facilitated political subdivisions' conversion from at-large to district-based elections, but have not done the same for conversions in the opposite direction. (See, e.g., Sen. Bill 442 (2021) § 1(a)(4) [permitting county committees on school district organization to convert school districts to district-based elections regardless of a contrary city charter provision, because "At-large elections may operate to dilute minority votes."]; Assem. Bill 2220 (2016) permitting cities with a population over 100,000 to adopt adopt district-based elections without a vote of the electorate]; Sen. Bill 493 (2015) [permitting cities with a population under 100,000 to adopt adopt district-based elections without a vote of the electorate]; Assem. Bill 684 (2011) [permitting community college districts to adopt district-based elections without a vote of the electorate].)

The trial court recited the legal standards applicable to determining racially polarized voting (24AA10675-10684) and vote dilution (24AA10706-10707). The trial court then applied those standards to the statistical and qualitative evidence, finding both that Defendant's elections are consistently plagued by racially polarized voting (24AA10684-10694; 24AA10697-10700) and the at-large election system is responsible for vote dilution (24AA10706-10707; 24AA10733-10735).

Under similar circumstances, and faced with the analogous question of how vote dilution by at-large or multi-member districts is established under the federal Voting Rights Act, the U.S. Supreme Court in *Thornburg v. Gingles, supra,* not only articulated a legal standard but also illuminated that standard by applying the factual findings of the district court, ultimately concluding that those factual findings "satisfactorily address[] each facet of the proper legal standard." (*Gingles*, 478 U.S. at 61.) This Court should do likewise, giving Amici's members the clarity they say they desire, so they can intelligently decide, now 19 years after the enactment of the CVRA, whether that law requires that they scrap at-large election systems that have the effect of diluting minority votes. (See *id.* at 46-47 [The U.S. Supreme Court "has long recognized that multimember districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities.].)

IV. CONCLUSION

Amici's brief, based only on isolated and largely anecdotal bits of information, and unsupported by either evidence in the record or legal argument, provides no reasons for this Court to adopt the positions advanced by Defendant. However, Amici's ultimate concern – that its members require clarity on the CVRA – does underscore the reasons this Court should not only articulate a clear and objective legal standard on the question of vote dilution, but should also apply that standard to the trial court's factual findings, affirming the decision and result of the trial court.

Dated: August 11, 2021

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO

/s/ Morris J. Baller
Morris J. Baller, Of Counsel

Attorneys for Plaintiffs-Respondents
Pico Neighborhood Association and
Maria Loya

CERTIFICATE OF WORD COUNT

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

I, the undersigned appellate counsel, certify that this brief consists of 1,853 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 2016 computer program used to prepare the brief.

Dated: August 11, 2021

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO

/s/ Morris J. Baller
Morris J. Baller, Of Counsel

Attorneys for Petitioners, Pico Neighborhood Association, *et al.* (Respondents in the Court of Appeal)

PROOF OF SERVICE

I am a citizen of the United States, am over the age of 18 years, and not a party to the within entitled action. My business address is 155 Grand Avenue, Suite 900, Oakland, CA 94612. I declare that on the date hereof I served the following documents:

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Appellant's Counsel

CITY OF SANTA MONICA
GEORGE CARDONA (135439)
Interim City Attorney
George.Cardona@smgov.net
1685 Main Street, Room 310
Santa Monica, CA 90401
Telephone: (310) 458-8336

GIBSON, DUNN & CRUTCHER LLP
THEODORE J. BOUTROUS JR. (132099)
TBoutrous@gibsondunn.com
MARCELLUS A. MCRAE (140308)
MMcrae@gibsondunn.com
KAHN A. SCOLNICK (228686)
KScolnick@gibsondunn.com
TIAUNIA N. HENRY (254323)
THenry@gibsondunn.com
DANIEL R. ADLER (306924)
DAdler@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Facsimile: (213) 229-7520

Amici's Counsel

Derek P. Cole
dcole@colehuber.com
Cole Huber LLP
2281 Lava Ridge Court, Suite 300
Roseville, CA 95661

☒ BY U.S. MAIL: By placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Oakland, California addressed as set forth below.

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HON. YVETTE M. PALAZUELOS
Judge Presiding
Los Angeles County Superior Court
312 North Spring Street
Los Angeles, CA 90012
Telephone: (213) 310-7009

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Stuart Kirkpatrick

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Jorge E. Navarrete, Clerk and Executive Officer of the Court
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Kevin Shenkman Shenkman & Hughes 223315	Kishenkman@shenkmanhughes.com	e-Serve	8/11/2021 4:00:39 PM
Theodore Boutrous Gibson Dunn & Crutcher, LLP 132099	tboutrous@gibsondunn.com	e-Serve	8/11/2021 4:00:39 PM
Dale Galipo Law Offices of 144074	dalekgalipo@yahoo.com	e-Serve	8/11/2021 4:00:39 PM
Connie Sung Keker Van Nest and Peters LLP 304242	csung@keker.com	e-Serve	8/11/2021 4:00:39 PM
Kristin Liska Office of the Attorney General 315994	Kristin.Liska@doj.ca.gov	e-Serve	8/11/2021 4:00:39 PM
Kenneth Weatherwax Lowenstein & Weatherwax LLP 218612	weatherwax@lowensteinweatherwax.com	e-Serve	8/11/2021 4:00:39 PM
Derek Cole Cole Huber LLP 204250	dcole@colehuber.com	e-Serve	8/11/2021 4:00:39 PM
Steve Reyes California Secretary of State 212849	sreyes@sos.ca.gov	e-Serve	8/11/2021 4:00:39 PM
Ellery Gordon	egordon@parrislawyers.com	e-	8/11/2021

Parris Law Firm 316655		Serve	4:00:39 PM
Scott Grimes Goldstein,Borgen,Dardarian, Ho	sgrimes@gbdhlegal.com	e-Serve	8/11/2021 4:00:39 PM
Scott Rafferty Law Offices of Scott Rafferty 224389	rafferty@gmail.com	e-Serve	8/11/2021 4:00:39 PM
Douglas Mirell GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP	dmirell@ggfirm.com	e-Serve	8/11/2021 4:00:39 PM
R. Parris R. Rex Parris Law Firm	rrparris@rrexparris.com	e-Serve	8/11/2021 4:00:39 PM
Anne Bellows Goldstein, Borgen, Dardarian & Ho 293722	abellows@gbdhlegal.com	e-Serve	8/11/2021 4:00:39 PM
Todd Bonder Rosenfeld Meyer & Susman LLP 116482	tbonder@rmslaw.com	e-Serve	8/11/2021 4:00:39 PM
Ira Feinberg Hogan Lovells US LLP	imfeinberg@hhlaw.com	e-Serve	8/11/2021 4:00:39 PM
File Clerk Goldstein,Borgen,Dardarian, Ho	efile@gbdhlegal.com	e-Serve	8/11/2021 4:00:39 PM
Robert Rubin Law Offices of Robert Rubin 085084	robertrubinsf@gmail.com	e-Serve	8/11/2021 4:00:39 PM
Joseph Pertel The Law Office of Joseph Pertel	jpertel@yahoo.com	e-Serve	8/11/2021 4:00:39 PM
Office Office Of The State Attorney General Court Added	docketinglaawt@doj.ca.gov	e-Serve	8/11/2021 4:00:39 PM
John Haggerty Court Added	johnkhaggerty@yahoo.com	e-Serve	8/11/2021 4:00:39 PM
Julia Marks Asian Americans Advancing Justice - Asian Law Caucus 300544	juliam@advancingjustice-alc.org	e-Serve	8/11/2021 4:00:39 PM
Helen Dilg Office of the City Attorney	lane.dilg@smgov.net	e-Serve	8/11/2021 4:00:39 PM
R. Lauridsen Keker, Van Nest & Peters LLP 243780	alauridsen@keker.com	e-Serve	8/11/2021 4:00:39 PM
Laura Ho Goldstein,Borgen,Dardarian, Ho 173179	lho@gbdhlegal.com	e-Serve	8/11/2021 4:00:39 PM
Dan Stormer	dstormer@hadsellstormer.com	e-	8/11/2021

Hadsell Stormer Renick & Dai LLP 101967		Serve	4:00:39 PM
Sonni Waknin UCLA Voting Rights Project 335337	sonni@uclavrp.org	e-Serve	8/11/2021 4:00:39 PM
Ira Feinberg Hogan Lovells US LLP 64066	ira.feinberg@hoganlovells.com	e-Serve	8/11/2021 4:00:39 PM
Elisa DellaPIana Lawyers' Committee for Civil Rights of the SF Bay Area 226462	edellapiana@lccrsf.org	e-Serve	8/11/2021 4:00:39 PM
Morris Baller Goldstein, Borgen, Demchak & Ho 48928	mballer@gbdhlegal.com	e-Serve	8/11/2021 4:00:39 PM
Stuart Kirkpatrick Goldstein, Borgen, Dardarian & Ho	skirkpatrick@gbdhlegal.com	e-Serve	8/11/2021 4:00:39 PM
Michelle Mabugat Greenberg Glusker LLP 280292	mmabugat@ggfirm.com	e-Serve	8/11/2021 4:00:39 PM
Nathan Lowenstein Lowenstein & Weatherwax LLP	lowenstein@lowensteinweatherwax.com	e-Serve	8/11/2021 4:00:39 PM
Vanessa Jordan CA Department of Justice, Office of the Attorney General	Vanessa.Jordan@doj.ca.gov	e-Serve	8/11/2021 4:00:39 PM
Milton Grimes Law Offices of Milton C. Grimes 59437	miltgrim@aol.com	e-Serve	8/11/2021 4:00:39 PM
Belinda Helzer Mexican American Legal Defense and Educational Fund 214178	bescobosahelzer@gmail.com	e-Serve	8/11/2021 4:00:39 PM
Christian Contreras Guizar, Henderson & Carrazco, LLP 330269	christian@carrazcolawapc.com	e-Serve	8/11/2021 4:00:39 PM
Christopher Harding Attorney at Law 76681	harding@hlkklaw.com	e-Serve	8/11/2021 4:00:39 PM
Joanna Ghosh Lawyers for Justice 272479	joanna@lfjpc.com	e-Serve	8/11/2021 4:00:39 PM
Daniel Adler Gibson Dunn & Crutcher LLP 306924	dadler@gibsondunn.com	e-Serve	8/11/2021 4:00:39 PM
George Cardona	george.cardona@smgov.net	e-Serve	8/11/2021 4:00:39 PM
Marcellus A. McRae	mmcrae@gibsondunn.com	e-Serve	8/11/2021 4:00:39 PM
Kahn A. Scolnick	kscolnick@gibsondunn.com	e-	8/11/2021

228686		Serve	4:00:39 PM
Tiaunia N. Henry 254323	thenry@gibsondunn.com	e-Serve	8/11/2021 4:00:39 PM

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8/11/2021

Date

/s/Stuart Kirkpatrick

Signature

Baller, Morris (48928)

Last Name, First Name (PNum)

Goldstein, Borgen, Dardarian & Ho

Law Firm