# DOLORES HUERTA FOUNDATION

August 31, 2020

The Hon. Chief Justice Tani Cantil-Sakauye
and Hon. Associate Justices
In Care of Honorable Jorge E. Navarrete
Clerk, Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: ***Amicus Curiae* Letter in Support of Petition for Review**
*Pico Neighborhood Association, et al. v. City of Santa Monica,* No. S263972
Court of Appeal, Second Appellate District, Division Eight,
Case Number B295935

Dear Chief Justice and Associate Justices of the California Supreme Court:

The Dolores Huerta Foundation, a California 501(c)(3) non-profit community based grass roots organization founded by California civil rights and labor leader Dolores Huerta, respectfully submits this *amicus curiae* letter, pursuant to Rule 8.500(g) of the Rules of Court, in support of plaintiffs-respondents' Petition for Review in this matter.

## INTEREST OF DOLORES HUERTA FOUNDATION

The Dolores Huerta Foundation recruits, trains, organizes, and empowers local residents in low-income communities to attain social justice through systemic and structural transformation. Throughout California, at-large election methods have historically denied equality of influence to Latino, Asian, black, and Native American communities. Because these structural barriers persist, even in large cities and school districts with substantial minority populations, these communities do not have an equal opportunity to choose their leaders and to elect them to local office.



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Since the Legislature enacted A.B. 350 in 2016, the Dolores Huerta Foundation has supported petitions that have led school boards and city councils to implement district elections on a no-fault basis. These petitions detail how Latinos vote differently than non-Latinos, often citing ballot questions. Most elected officials (and their constituents) understand and accept that Latino electoral choices reflect different values and needs. The success of this process, which achieves compliance while avoiding litigation cost, is unlikely to continue if petitions must also prove that the very incumbents voting to comply have been elected only because their non-Latino constituents successfully blocked a Latino-preferred candidate.

The Dolores Huerta Foundation is committed to civic engagement. It conducts voter registration drives that seek to close the shocking gap in participation that separates Latinos and Asians from the rest of the electorate. As Congressional Representatives Barbara Jordan and Edward Roybal testified 45 years ago, at-large elections in Texas and California suppress Latino turnout because the chronic inability to elect candidates of choice has discouraged these communities. Even today, when Latinos are the majority of school-age children, only six percent of school board trustees are Latino. Such a dramatic absence of elected officials signals that Latinos have not yet been incorporated into the political life of our state.

Finally, the Dolores Huerta Foundation supports Latino (and Asian) parents in one of their most distinctive characteristics – the passion to ensure that their children receive the best possible education. Four years ago, most non-Latino voters opposed Proposition 51, which authorized $9 billion in bonds to improve K-12 schools and community colleges statewide. Proposition 51 became law solely because of Latino votes. Few jurisdictions can deny racially polarized voting on this measure, using the test for statistical significance established in *Kaku v. City of Santa Clara*.[1] In Santa Monica, Latinos voted for Prop 51 at almost

[1] The trial court applied a 95% confidence interval to midpoint estimates for minority and non-minority preferences and found racially polarized voting if there was no overlap. The city disputes the use of a 95% confidence interval in the appeal (H046105), pending in the Sixth Appellate District.

twice the rate of non-Latino voters.

**WHY REVIEW SHOULD BE GRANTED**

For over a century, at-large elections have impaired the ability of Latino communities to form coalitions with other minorities and to aggregate their votes with like-minded citizens of all races. As a result, many of our neighborhoods across the state are unrepresented on school boards and city councils. For this reason, the California Voting Rights Act prohibited at-large elections wherever Latinos (or another protected group) vote differently from the rest of the electorate. Prior to the reversal of the trial court judgment in Pico Neighborhood Ass'n v. City of Santa Monica, it was clear that this standard did not allow most jurisdictions to defend the use of at-large elections.

A century ago, California Progressives led a nationwide movement to elect city councils and school boards at-large. State legislatures in the South also adopted at-large voting in the 1960s in order to dilute the votes of newly enfranchised blacks. In recent decades, all but three of the nation's largest cities have recognized the anti-democratic effects of winner-take-all elections and restored district elections.[2] But until the CVRA, change in California was slow. Unless reviewed, the Court of Appeal's opinion in this case could stop voluntary compliance or even reverse the progress that has been made.

This Court should grant review to permit a more thorough briefing of two erroneous conclusions that were critical to the appellate opinion. First, the panel denied that racially polarized voting is sufficient to condemn at-large voting as a dilution of minority influence, criticizing the plaintiffs for devoting only one sentence to this argument. But The CVRA is not limited to promoting equal opportunity to elect candidates of choice; it also guarantees equality of influence, particularly the ability of voters to aggregate their votes with like-minded

[2] Columbus, Cincinnati, and Portland are still at-large. Significantly, NAACP LDF has threatened to force Columbus's majority-black city council to abandon at-large, because several black members were elected only after being appointed and are not the black community's authentic candidates of choice.

voters.[3] Therefore, at-large systems dilute Latino influence whenever Latinos vote differently than the rest of the electorate. This explains the Legislature's creation of the no-fault liability standard in Section 14028(a), and why no state or federal court has ever read it to permit any additional elements. Second, without reference to the record or any other source, the opinion stated that district elections were "swept away" as a response to "widespread graft and corruption." This contradicts most historic interpretations of the context and consequences of Progressive era election reforms, which excluded immigrants and entrenched incumbents, allowing the political composition of many local governments to resist demographic change for decades. The combined effect of these two erroneous assertions is to validate unfounded objections to district elections and to place at risk the progress made to date in eliminating an electoral system that is undemocratic. The remainder of this letter summarizes our argument on these two issues, which amicus expects to brief if this Court grants review.

(1) Racially polarized voting is sufficient to establish that an at-large system dilutes minority voters.

The CVRA focuses on using districts to increase minority influence. In contrast to the federal Voting Rights Act, it does not require that changing from the at-large system will immediately allow a single minority group to elect its candidate of choice. Therefore, it eliminated a critical restriction in the federal Voting Rights Act: "the need to prove a geographically compact majority-minority district." Sanchez v. City of Modesto (2006) 145 Cal. App. 4th 660, 669, citing Section 14028(c); Jauregui v. City of Palmdale (2014) 226 Cal. App. 4th 781, 789. Based on these unambiguous terms, even the plaintiff in Higginson v. Beccera (2019) 363 F. Supp. 3d 1118, 1122, agreed that CVRA liability "turned solely on racially polarized voting." Neither the district court nor any party

[3] Dean Heather Gerken's article, "Understanding the Right to an Undiluted Vote," 114 HARV. L. REV. 1663, 1680 (2001), explains dilution as impairing the right of minorities "to aggregate their votes effectively." "Single-member districts were historically chosen over at-large precisely to afford electoral minorities a chance to affect the political process." *id.*

disputed this assertion. The U.S. Supreme Court declined to review the district court's ruling that establishing liability based on racially polarized voting alone satisfies all constitutional requirements. No 19-1199 (May 20, 2020).

Without distinguishing these cases, the appellate panel claims that the plain meaning of the word "dilution" restores the very requirement of a majority-minority district that the Legislature so clearly eliminated. The opinion finds it insufficient that Santa Monica's at-large system deconcentrates Latinos voters in the Pico neighborhood from a 30% Latino district into an area seven times as large in which only 14% of voters are Latino.[4] The panel eviscerates the CVRA by denying liability unless plaintiffs show a majority Latino district, which they assume to be essential to electing a Latino official.

In California, Latinos can seldom be elected without support from other minorities and crossover voters. A Latino majority is not necessary for districting to increase Latino influence, nor is it sufficient (given the registration gap) to guarantee election of the Latino candidate of choice. In most California jurisdictions, Latino voting is cohesive and racially polarized, but it is not the case that Latinos vote only for Latinos, as the panel assumes.[5] Districting allows minorities to build the coalitions that give them procedural equality in the electoral process.

The Legislature created a strong presumption in favor of districting not only to improve minority influence during the campaign, but also to increase the quality and responsiveness of cities and school districts. The at-large system continues to entrench homogenous incumbents in local government, as it was designed to do more than a century ago. In many cases, all members live in the



[4] One court suggested that "Standard rules enhance consistency, manageability, predictability, and uniformity," and that 25% of voting age population (including non-citizens) is sufficient to qualify an influence district. Rural W. Tenn. African-American Affairs Council v. McWherter (1995) 877 F. Supp. 1096, 1104 (W.D. Tenn.), *aff'd* 516 U.S. 801.

[5] Congressman Maxine Waters enjoys overwhelming support from Latinos, who constitute the majority of eligible voters in her district.

"better parts of town," often remote from Latino constituents. Ontario and Santa Clarita elected white incumbents in the 20th century, when they were smaller and less diverse, but they are still there. Districting enables Latino neighborhoods to identify natural leaders who can attract funding sufficient to engage voters in much smaller constituents. More competitive elections benefit all neighborhoods and voters of all races.

If this Court grants review, briefing will demonstrate that districting increases the influence of Latinos and other minorities, even in cases where no single minority has a share of eligible voters as high as the 30% in the Santa Monica remedy. In almost every case, districting empowers a new class of neighborhood-based candidates, who can attract funding and endorsements. This allows Latinos to cast a meaningful and effective vote for the very first time.

(2) The Progressive Era elimination of district elections perpetuated corruption and entrenched a white, nativist elite. The at-large method of election continues to exclude racial and ethnic minorities.

The Court of Appeal's opinion turns California history on its head when it argues that the Progressive Era "swept away" district elections due to "wide-spread graft and corruption." By granting review, this Court can objectively examine the extensive evidence that winner-take-all elections marginalize minorities in Santa Monica and in many city councils and school districts across the state.

For more than two centuries, our nation used district elections to incorporate immigrant communities into local political life. New York City provided for single member constituencies in 1683. Two decades later, 3000 Germans settled Governors Island and could elect their own council member. In recent decades, blacks, Latinos and Asians who began political life as local elected officials have advanced to state and federal offices.

Large-scale corporate corruption has been endemic to local governments elected at-large, primarily because campaigning across a large city or school district requires substantial funding. This explains why the Southern Pacific could corrupt San Francisco's at-large board of supervisors in 1905 but was less successful among Los Angeles districted members. Oakland restored district elections after district attorney Earl Warren successfully prosecuted at-large Oakland city commissioners for graft in 1930.[6] More recently, a large school district abandoned at-large elections after decades of construction waste led to an SEC bond investigation that forced the retirement of a long-time trustee.[7]

Governor Hiram Johnson was a visionary political strategist who restructured local elections to entrench the results of his party's 1911 landslide.[8] Across the state, most victors were white, male Protestants from the cities' most established neighborhoods. The change to at-large would prevent leaders from emerging in ethnic neighborhoods and also increase the cost of challenging the new incumbents. Other reforms, some of which had independent merit, made it even more difficult to displace incumbents (and still do).[9] Two tactics were particularly effective. Instead of creating an open seat, retiring members resigned in advance of the election, so their colleagues could fill the vacancy. Completing the slate often deterred anyone from contesting the election.[10] Incumbents also used selective annexation to choose their voters, stranding minority neighborhoods in "unincorporated islands." The California Legislature outlawed this device in 1951, but Tuskegee, Alabama emulated it shortly

[6] The corrupt council members belonged to the Ku Klux Klan. Rhomberg, "The 1920s Ku Klux Klan in Oakland, California," 17 *Journal of American Ethnic History* 39, 49 (1988).
[7] *East Bay Times*, July 31, 2017.
[8] In 1911, the Progressive Party came to power after two Irish anarchists confessed to bombing the Los Angeles Times. This was particularly remarkable in Los Angeles, where European immigration had tripled the population in the prior decade.
[9] The "short ballot" reduced the number of elected positions (generally to five). Terms were lengthened and staggered. Non-partisanship reduced information about potential challengers.
[10] Blair and Flournoy, LEGISLATIVE BODIES IN CALIFORNIA at 7-4 (1967).

thereafter.[11]

The racial exclusivity of these reforms is undeniable.[12] Outside of Los Angeles, which restored competitive district elections in 1925, the dominance of the Progressive/ Republican victors of 1911 and their handpicked successors survived decades of demographic and political change. A 1955 study showed that 60% of mayor and council members were Republican, which was by then the reverse of the state's voter registration. The partisan bias was even more extreme in large cities, where 83% of officials were Republican. The study showed that council members were homogenous in other ways; a "substantial majority" were still white, male, Protestant Masons who had lived in "a better part of town" for ten years or more.[13] Even today, the legacy of at-large elections deprives California of the natural diversity of leadership that our democracy requires.

## CONCLUSION

This Court should review the appellate opinion because it fails to explain its conflict with state and federal precedents (Sanchez, Jauregui, Higginson, *supra*) that have found racially polarized voting to be the statutory predicate to require district elections. In California, minorities succeed only by building coalitions. Voting may be polarized by race, but minorities do not vote automatically or exclusively for candidates of their own ethnicity. Therefore, the panel errs in assuming that a majority Latino district is necessary to demonstrate

[11] Rafferty v. City of Covina (1955) 133 Cal. App. 2d 747, 753; Cal. Stat. 1951, Ch. 1702, p.3915; Gomillion v. Lightfoot (1960) 364 U.S. 339. West Pueblo inside the City of Napa is a surviving example of a Latino island who cannot vote in city elections and are forced to pay more for services.

[12] Latinos had served on Los Angeles city council for 60 years, but during the Progressives' at-large period (1909-1925), the council was 100% Anglo. Most Asians could not vote because Chinese and Japanese had been excluded from citizenship. The CALIFORNIA PROGRESSIVE CAMPAIGN BOOK FOR 1914 (at 24) called New York's assimilation of immigrants "a fearful social blunder California is determined to avoid." It denounced the "delinquency and criminality of the second-generation alien," even though census data showed these birthright citizens to be as literate as "native stock." It warned that the Panama Canal, which opened in August 1914, would begin an "alien flood."

[13] Lee, POLITICS OF NONPARTISANSHIP at 56-57 (1960).

that districting will increase Latino influence. It is enough to show that Latino precincts vote differently than the rest of the city when we have an electoral choice "that affects [our] rights and privileges." Section 14027(b).

The CVRA does not attempt to engineer electoral outcomes; it simply enhances equality of opportunity in the electoral process. In most at-large systems, the citywide majority, almost always white and non-Latino, chooses every elected official, so large parts of many cities are totally unrepresented. Many of the young people in Latino communities have never met an elected official who lives in their neighborhood. The cost and futility of challenging longtime Anglo incumbents in citywide elections often frustrates attempts by the Latino community to find and support candidates who are natural leaders. District elections often create opportunities for candidates from minority neighborhoods. However, whether or not there is a Latino candidate, districting increases the political influence of our neighborhoods during the campaign and after the election. The Legislature's desire to improve governance statewide explains its decision to enact the CVRA with such a strong presumption in favor of district elections. The panel erred in ignoring that legislative judgment.

This Court should grant review, reverse the appellate opinion, and restore the remedy directed by the superior court.

Sincerely,

Dolores C. Huerta
Founder & President

Emilio J. Huerta
General Counsel

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