

Case No.: F048277

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

ENRIQUE SANCHEZ, EMMA PINEDO, and SALVADOR VERA,

Plaintiffs-Appellants,

v.

CITY OF MODESTO, JEAN ZAHR, JIM RIDENOUR, BOB DUNBAR,
JANICE KEATING, GARRAD MARSH, WILL O'BRYANT, DENNY JACKMAN,
and BRAD HAWN,

Defendants-Respondents.

Appeal from the Superior Court of County of Stanislaus
The Honorable Roger M. Beauchesne, Presiding
Superior Court Case No. 347903

**APPLICATION OF CALIFORNIA COMMON CAUSE
AND FAIRVOTE FOR LEAVE TO FILE AN *AMICUS*
CURIAE BRIEF IN SUPPORT OF PLAINTIFFS-
APPELLANTS**

KATHAY FENG (Bar No. 187092)
CALIFORNIA COMMON CAUSE
3250 Wilshire Boulevard
Los Angeles, CA 90010
Telephone: (213) 252-4552
Facsimile: (213) 252-4550

Attorney for Amici Curiae California Common Cause and FairVote

TO THE PRESIDING JUSTICE OF THE ABOVE-ENTITLED COURT:

California Common Cause and FairVote respectfully request permission to file their *amicus curiae* brief in support of Plaintiffs-Appellants in the above-captioned appeal. California Common Cause and FairVote's brief is lodged concurrently herewith.

Common Cause is a non-partisan citizens' organization founded in 1970. It has 200,000 members nationwide and 25,000 in California. Through publication of studies on campaign finance, sustained lobbying campaigns, and grassroots activities, Common Cause seeks to ensure that government and the political process serve the general interest, rather than special interests; to curb the excessive influence of money on government decision-making and public elections; to promote fair and honest elections and high ethical standards for government officials; and to assure that government is truly representative of all the people it governs. California Common Cause has devoted considerable time and effort, through legislative work, civic education, and litigation, to assuring that California's voting systems foster fair and competitive elections, elicit robust public debate on a wide range of public concerns, and result in fair and complete representation of all of California's voters in the halls of government. California Common Cause's work in this area has included sponsoring symposia, taking positions on legislative redistricting and redistricting reform initiatives, and pursuing litigation (both as a party and as *amicus curiae*) concerning the voting systems used in California.

FairVote is a national non-partisan, non-profit organization incorporated in the District of Columbia for educational purposes. FairVote researches and distributes information on the impact of electoral structures on voter participation and representation and advocates for fairer electoral systems that would benefit the public interest. FairVote has been active in encouraging government officials, judges and the public to explore alternatives to current approaches to plurality elections and winner-take-all electoral systems, and has over the years done extensive work in attempting to implement electoral reforms in California, including instant runoff voting and modified, at-large voting

systems.

The above-captioned appeal is vitally important to California Common Cause and FairVote, and both organizations are familiar with the issues in this case. The City of Modesto and Respondents argue in this appeal that the California Voting Rights Act is unconstitutional. If this Court were to affirm that position, it would deprive small and dispersed minority communities of the benefit of this state legislation, which empowers courts to take cognizance of the vote dilution that palpably affects such voters and to implement time-tested remedies that have been used throughout the country to cure such vote dilution. Both California Common Cause and FairVote have worked tirelessly to assure that these voters are fairly represented and that voting systems that deny them the opportunity for fair representation are replaced by those that will do so.

Common Cause and FairVote believe that it would be helpful for this Court to consider additional arguments regarding the benefits of the California Voting Rights Act to small and dispersed minority groups that have long been denied adequate representation by the use of winner-take-all, at-large election systems in jurisdictions affected by racially polarized voting. Briefing by Common Cause and FairVote will demonstrate that the California Voting Rights Act expressly empowers the courts to address dilution of the voting strength of such voters, even when they cannot form majorities in single-member electoral districts. Our briefing will focus on the real and palpable harms that these communities suffer as a result of vote dilution and lack of political representation, as well as on a full description of the numerous alternative voting systems that jurisdictions throughout the country have used for years to remedy vote dilution affecting small and dispersed minority communities – including how they operate and how they cure vote dilution. The briefing will demonstrate that the California Voting Rights Act is an important piece of civil rights and good government legislation that should be upheld against the instant constitutional challenge. Granting leave to file the proposed *amicus* brief will not delay the instant case, as this application

is being submitted within the time permitted for submission of applications for leave to file *amicus* briefing.

Wherefore, California Common Cause and FairVote respectfully request that this Court permit them to file their concurrently lodged, proposed *amicus* brief.

DATED: March 1, 2006

Respectfully submitted,

By 
KATHAY FENG

Attorney for *Amici Curiae*
California Common Cause and FairVote

PROOF OF SERVICE

I, Leila A. Ferguson, declare as follows:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action.

My address is 501 East Foothill Boulevard, Apartment A, Monrovia, California 91016.

On March 1, 2006, I served the following document:

**APPLICATION OF CALIFORNIA COMMON CAUSE AND
FAIRVOTE FOR LEAVE TO FILE AMICI CURIAE BRIEF IN
SUPPORT OF PLAINTIFFS-APPELLANTS**

on the parties to this action by placing true and correct copies in a sealed envelope(s) addressed as follows:

Attorney/Addressee	Method of Service
John E, McDermott, Esq. Howrey Simon Arnold & White 550 South Hope Street Suite 1100 Los Angeles, CA 90071	Express Mail
Michael D. Milich, Esq. City Attorney of the City of Modesto 1010 Tenth Street Suite 6300 Modesto, CA 95353	Express Mail
George H. Brown, Esq. Heller Ehrman LLP 275 Middlefield Road Menlo Park, CA 94025-3506	Express Mail
Stephen A. Tuggy, Esq. Heller Ehrman LLP 333 South Hope Street 39 th Floor	Express Mail

Los Angeles, CA 90071-3043

Robert Rubin, Esq.
Nicholas Espiritu, Esq.
Lawyers' Committee for Civil Rights
131 Stewart Street
Suite 400
San Francisco, CA 94105

Express Mail

Joaquin G. Avila, Esq.
634 South Spring Street
11th Floor
Los Angeles, CA 90014

Express Mail

California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Express Mail

Stanislaus County Superior Court
Attn.: Honorable Roger M. Beauchesne, Presiding
800 11th Street
Room 100
Modesto, CA 95353

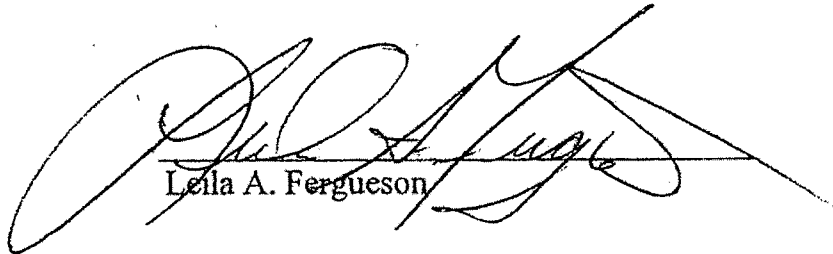
Express Mail

- (BY MAIL). I placed true copies thereof in sealed envelopes, addressed as shown, for collection and mailing pursuant to the ordinary business practice of this office which is that correspondence for mailing is collected and deposited with the United States Postal Service on the same day in the ordinary course of business.
- (BY EXPRESS COURIER). I placed true copies thereof in a sealed [Courier Company] envelope, air bill addressed as shown, for collection and delivery pursuant to the ordinary business practice of this office which is that correspondence for overnight delivery via courier service is collected and deposited with the courier service representative on the same day in the ordinary course of business.

- (BY PERSONAL SERVICE). I personally delivered the document(s) by hand to the addressee(s) noted above.

- (BY FACSIMILE). At approximately [Transmission Time], by use of facsimile machine, I served a copy of the above documents. The facsimile machine that I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2005, I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this proof of service was executed on March 1, 2006 at Los Angeles, California.



Leila A. Ferguson