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August 1, 2019

Via Electronic Case Filing

Molly C. Dwyer, Clerk of Court
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

RE: *Rodriguez, et al. v. Newsom, et al.*, Case No. 18-56281

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), Defendants submit this letter to bring recent and pertinent authority to the Court's attention. In *Rucho v. Common Cause*, the U.S. Supreme Court considered the application of one-person, one-vote principles of equal protection in the context of partisan gerrymandering claims, and held that those claims presented nonjusticiable political questions. 139 S. Ct. 2484, 2501-02, 2506-07 (June 27, 2019). Although that holding is not implicated here, and Defendants do not rely on it here, the Court's explication of one-person, one-vote principles nonetheless supports the district court's dismissal of Plaintiffs' challenge.

In comparing partisan gerrymandering claims with one-person, one-vote claims, the Court observed that one-person, one-vote principles do not require representation of political parties in proportion to the number of votes received: "It hardly follows from the principle that each person must have an equal say in the election of representatives that a person is entitled to have his political party achieve representation in some way commensurate to its share of statewide support." *Rucho*, 139 S.Ct. at 2501. The Court further observed that "'vote dilution' in the one-person, one-vote cases refers to the idea that each vote must carry equal weight. In other words, each representative must be accountable to (approximately) the same number of constituents. That requirement does not extend to political parties. It does not mean that each party must be influential in proportion to its number of supporters." *Id.*

As set forth in the Answering Brief, California's use of plurality voting (also known as "winner-take-all") in awarding its presidential electors is consistent with one-person, one-vote principles, which do not require proportional representation. *See* Answering Br. 27-28, 38-39 (citing *Whitcomb v. Chavis*, 403 U.S. 124, 153 (1971); *City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 75-76 (1980); *Vieth v. Jubelirer*, 541 U.S. 267, 290 (2004); *White v. Regester*, 412 U.S. 755, 765-66 (1973)). *Rucho* continues the line of precedent cited in the Answering Brief, and

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provides further support for the view that the Equal Protection Clause does not require that representation be awarded in proportion to the number of votes received.

Sincerely,

s/ P. Patty Li

P. PATTY LI
Deputy Attorney General

For XAVIER BECERRA
Attorney General

CERTIFICATE OF SERVICE

Case Name: **Paul Rodriguez, et al. v.** No. **18-56281**
Edmund G. Brown, et al.

I hereby certify that on August 1, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

28(j) LETTER

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 1, 2019, at San Francisco, California.

Susan Chiang
Declarant

s/ Susan Chiang
Signature

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