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CASE NO. D079013

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

CITY OF CORONADO, CITY OF IMPERIAL BEACH, CITY OF LEMON GROVE, AND CITY OF SOLANA BEACH

Plaintiffs and Appellants,

v.

SAN DIEGO ASSOCIATION OF GOVERNMENTS, AND BOARD OF DIRECTORS OF THE SAN DIEGO ASSOCIATION OF GOVERNMENTS

Defendants and Respondents.

APPLICATION OF YIMBY LAW FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENTS; AMICUS CURIAE BRIEF OF YIMBY LAW

On Appeal From the Superior Court for the State of California
County of San Diego, Case No. 37-2020-00033974-CU-MC-CTL
Hon. Richard E.L. Strauss

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APPLICATION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE JUDITH D. McCONNELL, ADMINISTRATIVE PRESIDING JUSTICE OF THE FOURTH DISTRICT COURT OF APPEAL, DIVISION ONE:

Pursuant to Rule 8.200(c) of the California Rules of Court, YIMBY Law respectfully applies for permission to file the accompanying brief amicus curiae in support of the San Diego Association of Governments, and Board Of Directors of the San Diego Association Of Governments, Respondents. The brief has been prepared and is submitted concurrently with this application.

INTEREST OF AMICUS CURIAE

This case involves cities' obligations to provide their fair share of the regional need for housing under the Regional Housing Needs Assessment ("RHNA" law). YIMBY Law is a 501(c)(3) charitable non-profit organization with a significant interest in ensuring that cities meet their RHNA obligations. YIMBY Law's mission is making housing more accessible and affordable by promoting and enforcing compliance with state housing law in California. The voice of the housing consumer has traditionally been absent and ignored in litigation involving housing and environmental issues, as developers, cities, and neighborhood groups litigate their respective concerns while no one speaks for the consumer. YIMBY Law's role is to provide that voice.

YIMBY Law ensures that state housing laws such as the RHNA law at issue in this case are followed by advising agencies

of their RHNA obligations, and filing lawsuits against those agencies when they fail to comply. For example, YIMBY Law recently filed suit against the state Department of Housing and Community Development for assigning a regional housing need determination for the San Francisco Bay Area that is too low. In addition to its litigation work, YIMBY Law organized the Campaign for Fair Housing Elements, a collaborative effort by housing advocates around the state to monitor and ensure cities' compliance with their RHNA obligations.

RULE 8.200(c) IDENTIFICATION OF AUTHORS AND CONTRIBUTORS

Pursuant to California Rules of Court 8.200(c)(3), no party or counsel for a party in the pending appeal authored the proposed amicus brief in whole or part. No party or counsel for a party in the pending appeal, or any other person, made a monetary contribution intended to fund the preparation or submission of the brief.

AMICUS CURIAE IS FAMILIAR WITH THE ISSUES IN THIS CASE

Amicus curiae and its counsel are familiar with the issues in this case, have reviewed the order of the Superior Court and the briefs filed with this Court, and believe they can provide an important perspective on the issue before the Court. Counsel in this case for amicus curiae has represented both developers and public agencies in land use and environmental litigation throughout California. Amicus curiae has been active in ensuring that cities throughout the state meet their RHNA obligations – the very obligations that the Appellant cities are

attempting to evade through this litigation. As such, amicus curiae can provide a unique perspective on the importance of the RHNA process and why cities should not be permitted to shirk their RHNA obligations through this kind of lawsuit.

Dated: February 11, 2022 MILLER STARR REGALIA

By: /s/ Kenneth A. Stahl
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Attorneys for Amicus Curiae
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I.

INTRODUCTION

Although California has long been experiencing a severe housing shortage, until recently small cities like the Appellants were not expected to do much about it. The Regional Housing Needs Assessment ("RHNA") process, which is designed to ensure that every city shoulders its fair share of the regional need for new housing, was criticized for failing to adequately meet this need. In San Diego specifically, the agency charged with administering RHNA, called the San Diego Association of Governments ("SANDAG"), was unable to equitably distribute housing to smaller cities because its board was structured so that "a group of cities representing less than 15 percent of the county's population [had] a veto over any actions" SANDAG proposed to take, including any RHNA allocations. (See CT 1 at 51, 61 (AB 805 Legislative Analysis).)

That has all changed thanks to recent state legislation, and small cities like the Appellants are now expected to do their share to address the state's housing crisis. The RHNA law has been amended to ensure that every city gets an equitable share, or "allocation," of the regional housing need, resulting in significantly higher allocations for smaller cities. And SANDAG has also been reformed by state law so that larger cities have a greater share of the voting power on the board, and the agency is now more accountable to the "growing population centers" of the County.

The four Appellant cities are clearly unhappy that they can no longer evade their responsibilities under state law, but rather

than challenging state policy directly they have disguised their political grievances against the state as legal claims against SANDAG. They allege it was unfair and biased for SANDAG to do exactly what state law intended it to do, which is to weight votes by population and equitably allocate RHNA shares throughout the region.

As SANDAG's brief points out, however, the RHNA allocation process is not subject to judicial review. See *City of Irvine v. Southern California Association of Governments* (2009) 175 Cal.App.4th 506. Even if these claims were justiciable, they would not state any viable cause of action against SANDAG. *See* Code of Civ. Proc. § 430.10(e). Whatever grievance the Appellants have about weighted voting or their RHNA allocations is properly part of the political process and should be directed at the State legislature that set forth both the weighted voting procedure and adjustments to the RHNA methodology that resulted in the higher allocations. This case is nothing more than an effort to indirectly litigate a political disagreement with the state.

More broadly speaking, the case is a brazen assault on the very idea of majority rule and the hallowed principle of "one person, one vote." Appellants claim that it is unfair for the SANDAG board to weight voting strength so that cities representing a majority of the region's population can actually cast a majority of the votes. The "fairer" procedure they ask this Court to mandate would empower cities constituting a minority of the County's population to rule the majority. Their request is directly contrary to state law and flies in the face of basic

principles of democratic self-government. It cannot be the law that merely applying a principle of majority rule – as provided by state law – constitutes an unfair hearing. Therefore, this Court should uphold the trial court's ruling granting SANDAG's demurrer without leave to amend and deny Appellants' appeal in full.

II.

STATEMENT OF FACTS

A. The RHNA Process.

The state of California is currently experiencing a "statewide housing crisis due to decades of underproduction of housing," according to the state Department of Housing and Community Development ("HCD"). (CT 1 at 238 (Letter Issued by HCD); Gov. Code. Section 65589.5(a)(1); (a)(2)).) As a result, both homeowners and renters face some of the highest housing costs in the country, and homelessness rates have soared. (See CT 1 at 238-39 (Letter Issued by HCD); Gov. Code. Section 65589.5(a)(2).) HCD and the California legislature have recognized that one of the key contributing factors to California's chronic underproduction of housing has been "the reticence of many local governments to increase housing supply." (See CT 1 at 239 (Letter Issued by HCD); Gov. Code. Section 65589.5(a)(1)(B)) ["The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing…."].)

The Regional Housing Needs Assessment and Allocation ("RHNA") process is the cornerstone of the state of California's effort to address this housing crisis. In short, the RHNA law

requires cities and counties throughout the state to make plans to accommodate their regional share of the housing need and reduce regulatory barriers to meeting their share. (See CT 1 at 239 (Letter Issued by HCD); Gov. Code. Section 65580 et seq.) Every eight years, each jurisdiction is required to update the "housing element" of its general plan, which is a sort of constitution that guides the municipality's land use planning, by including in the housing element detailed plans for meeting its share of the regional housing need over the next eight-year period, including any necessary revisions to existing land use regulations and removal of regulatory burdens. (Gov. Code §§ 65580, et. seq.). The current eight-year RHNA cycle just began in 2021.

As described more fully in Respondent SANDAG's brief, the process by which each jurisdiction is assigned its share, or its "regional housing needs allocation," is an exceedingly complex one that takes nearly two years from start to finish and involves numerous governmental bodies, dozens of hearings, lengthy, technical reports, and many opportunities for input and participation from the public and representatives of the jurisdictions involved. The state first determines the regional housing need for each region. Then, the council of government ("COG") for each region, which is a body comprised of representatives of all the cities and counties within the region, is required to "allocate" that total number among its member jurisdictions. (Gov't Code § 65584.04.) The COG allocates the RHNA shares after an intricate process prescribed by statute, which includes a pathway for individual jurisdictions to appeal

their allocations to the COG's regional council. (Gov't Code §§ 65584(d); 65584.04(h) and (i).) HCD reviews the final RHNA allocation to determine if it is consistent with the RHNA Statute and once HCD approves it, municipalities begin the process of incorporating their numbers into the housing element for the required updates to their general plans. (Gov't Code §§ 65584.05(g); 65300.)

RHNA has been criticized in the past for not meeting housing production goals overall and for assigning allocations inequitably, so wealthier cities get smaller allocations and poorer cities get larger ones. (See CT 1 at 239 (Letter Issued by HCD). In response to these criticisms, the legislature recently enacted new legislation for the upcoming RHNA cycle to ensure that the methodologies for determining both the overall regional housing need and the allocation of need within the region are more accurate and equitable. (See CT 1 at 239-40 (Letter Issued by HCD); Sen. Bill No. 828, 2018-2019; Assembly Bill No. 1771, 2018-2019 Reg. Sess.) Among many other changes, COGs are now required to consider proximity to transit and jobs-housing balance in their allocations, and are prohibited from considering whether existing land use regulations made sites unsuitable for housing. (Gov. Code §§ 65584.05(e)(2)(B); (e)(3).) A predictable and intended result of this legislative change, according to HCD, is that "many cities have seen a dramatic shift in their housing allocations, as compared to prior cycles." (See CT 1 at 240 (Letter Issued by HCD).) HCD, as the State agency charged with overseeing the RHNA, accordingly drafted a letter in support of

SANDAG's demurrer and motion to strike in this matter. (*See id.* at pp. 238-42.)

B. <u>AB 805 Reforms SANDAG's Governing Structure</u>.

The COG responsible for implementing the RHNA process for the San Diego region is called the San Diego Association of Governments ("SANDAG"). Until recently, SANDAG's decisions regarding housing allocations gave smaller cities outsize influence relative to their population because "a group of cities representing less than 15 percent of the county's population [had] a veto over any actions" SANDAG proposed to take, including any RHNA allocations. (CT 1 at 51, 61 (AB 805 Legislative Analysis).) This occurred because SANDAG could only take action on an item if the item was approved by separate majorities of two concurrent votes: a tally vote, in which each of the nineteen jurisdictions within the County has a single vote, and a weighted vote, in which each jurisdiction's voting strength was based on its population. The tally vote effectively gave a veto power to smaller cities because each jurisdiction held a single vote despite the fact that there are enormous population disparities among jurisdictions in the County. A near-majority of the County's population reside in just two cities (San Diego and Chula Vista), with the remaining population spread among sixteen other cities and unincorporated County territory.[1] Since every city's vote is weighted equally on the tally vote, a number of small cities

[1] *See* SANDAG INFO: DEMOGRAPHICS IN THE SAN DIEGO REGION (Jan. 2016), at 4, available at: https://www.sandag.org/uploads/publicationid/publicationid_2001_20213.pdf.

collectively representing only a very small share of the County's population could easily outvote cities representing a majority of the population. For that reason, the state legislature subsequently concluded that SANDAG's priorities "do not reflect the growing population centers of the area…." (CT 1 at 61 (AB 805 Legislative Analysis).)

In 2017, the legislature enacted and the Governor signed into law Assembly Bill 805, a bill sponsored by San Diego Assemblywoman Lorena Gonzalez Fletcher to reform SANDAG's governing structure. The new law provides that to act on an item, SANDAG's board must first take a tally vote, but then after the tally vote any two jurisdictions may call for a population-weighted vote. The weighted vote will supersede the tally vote if approved by at least four separate jurisdictions representing a majority of the weighted votes. (Pub. Util. Code § 132351.2(a) & (e).) According to Assemblywoman Gonzalez Fletcher, this change was designed to "reform the governance structure of SANDAG to better reflect and represent the San Diego region's population." (CT 1 at 52, 61 (AB 805 Legislative Analysis).)

C. SANDAG's RHNA Process.

In assigning the RHNA allocations to cities in the San Diego region, including the Petitioner cities, SANDAG followed the procedures mandated by state law. As required by the RHNA law, SANDAG proposed and voted on a draft methodology that conformed with all the statutory factors, engaged in a robust process of soliciting, receiving and absorbing public input, submitted the draft methodology to HCD, which approved it, and adopted draft allocations based on the methodology. (CT 1 at 10-

11.) In accordance with Public Utilities Code §§ 132351.2(a) and (e), the methodology as well as the draft allocations were approved by the SANDAG board by a vote of jurisdictions representing a majority of the County's population using the weighted-vote system prescribed by AB 805. (CT 1 at 11.)

As permitted by the RHNA law, the four Petitioner cities then appealed their draft allocations to the SANDAG board. (CT 1 at 11-12.) After a hearing with public comment, the board rejected the appeals with written findings setting forth the basis for the denials. (CT 1 at 18.) The appeals were denied on a variety of grounds. One basis was that several of the Petitioners requested a reduction in their allocation based on existing land use regulations, a consideration that is now prohibited by RHNA law. (CT 1 at 159-60; 182-83; 195-97; 218); Gov. Code § 65584.04(e)(2)(B).) Another basis on which several of the appeals were denied was that state law now requires consideration of balance between jobs, transportation and housing, and so access to jobs and transportation were factors in the Petitioners' allocations. (CT 1 at 164-65; 172-73; 176-82; 195-97; 210-11; 218-21); Gov. Code §§ 65584.04(e)(1); (e)(3).) Again, in accordance with Public Utilities Code §§ 132351.2(a) and (e), the appeals were denied by a weighted vote with cities representing a majority of the County's population casting a majority of the votes to deny the appeals. (CT 1 at 18; CT 1 at 223-26 (Voting Slide From Appeals Hearing).) After the appeals were denied, the RHNA allocation (with one modification based on Coronado's appeal) was adopted by the SANDAG Board as its final RHNA

allocation and submitted to HCD, which approved it. (CT at 18-19; CT at 228-29 (Letter from HCD Approving Final RHNA Plan).)

D. The Petition.

Petitioners challenge the RHNA allocations assigned them by SANDAG. They complain of increases, in some cases "dramatic" increases, in their RHNA allocations since the previous cycle. (CT 1 at 12-17). They also complain that the RHNA methodology assigns more housing to communities near transit and that existing land use regulations make it too difficult for them to accommodate their assigned RHNA shares. (*Id.*) Petitioners further contend that it was a "prejudicial abuse of discretion" and violated the Petitioners' right to a fair hearing for SANDAG to utilize the weighted-voting procedure set forth in AB 805 to vote on the appeals. They seek to have the final RHNA allocations rescinded and the matter remanded to SANDAG to consider the Petitioners' appeal by tally vote without the weighted vote.

III.

LEGAL ARGUMENT

A. The Process of Which Appellants Complain was *Mandated* by the State to Address Decades of Bad Land Use Planning.

Appellants' lawsuit is a policy disagreement with the state about how to address a dire housing shortage dressed up as a legal claim about an unfair hearing. Every aspect of the "unfair" process about which the Appellants complain was mandated by the state to ensure that small cities like them would finally have

to meet their fair share of the regional need for housing.

As an initial matter, it is indisputable that California is confronting a severe housing shortage. The Legislature has forcefully acknowledged that one of the principal causes of that shortage is the reluctance of local governments to approve housing projects. Gov. Code. Section 65589.5(a)(1)(B)) ["The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing…."].) It is widely known that an effective way to overcome local resistance to new housing is by empowering regional governmental entities like SANDAG to make some land use decisions of regional importance. *See, e.g.*, Richard Briffault, *Localism and Regionalism,* 48 Buff. L. Rev. 1, 25-26 (2000) (regionalism in forms such as fair-share housing is "necessary to assure the more equal treatment of people and localities within the metropolitan region" and to ensure sufficient attention to "to the education, public safety, housing and employment needs of residents throughout a metropolitan regions"). But regional government cannot serve this purpose if small jurisdictions can veto land use decisions that benefit a majority of residents in the area.

It is in this context that recent changes to SANDAG's governing structure and recent changes to the state's signature RHNA law must be considered. Under the RHNA law, regional governments such as SANDAG are tasked with ensuring that every city in the region shoulders its fair share of the regional need for new housing. But until recently, the RHNA process was

criticized as toothless because the process was politicized and it was far too easy for small jurisdictions like the Appellants to evade their fair share. SANDAG in particular was confronted with this problem because its board was structured so that "a group of cities representing less than 15 percent of the county's population [had] a veto over any actions" SANDAG proposed to take, including any RHNA allocations. (See CT 1 at 51, 61 (AB 805 Legislative Analysis).)

That has all changed thanks to the passage of AB 805, which transformed SANDAG's structure so that small cities would no longer have the veto power they long enjoyed. AB 805 amends California Public Utilities Code section 132351.2(a) to authorize the use of population-weighted voting in matters such as the present appeal, and prescribes in detail the manner in which the votes are to be weighted. SANDAG followed that procedure to the letter in voting on the challenged appeals.

AB 805's clear intent was to ensure that SANDAG did exactly what it did here in denying the Petitioners' appeals: make the agency more responsive to the will of the population of San Diego County by giving more populous jurisdictions a greater share of the voting power. Legislators sensibly concluded that SANDAG's pre-existing structure, in which a small group of cities representing a tiny percentage of the County's population could overrule the will of the majority, was inequitable. They desired to "reform the governance structure of SANDAG to better reflect and represent the San Diego region's population." (CT 1 at 52, 61.) The legislature authorized the weighted voting procedure at

issue in this case to do just that. Notably, the four Petitioner cities here represent, in total, approximately 2.7% of the population of San Diego County, yet they seek to overturn a vote that was ratified by cities representing a majority of the County's 3 million voters.[2] This is exactly the sort of problem that AB 805 was trying to correct.

By the same token, Appellants' complaints about their specific RHNA allocations that form the gravamen of the petition are simply policy disagreements with the state about how to accommodate the regional need for housing, and have nothing to do with a "fair" hearing**.** Petitioners devote six full pages of the petition to complaining about increases in their RHNA allocations from the fifth to the sixth RHNA cycle, detailing specific disagreements with SANDAG's consideration of the balance between housing and transportation and SANDAG's failure to consider constraints imposed by existing land use regulations. (See CT 1 at 11-17.) But everything of which the Petitioners complain was specifically mandated by state law. In response to criticisms that the previous RHNA cycles produced too little housing overall and specifically allocated too little housing to smaller, wealthier cities, the state legislature significantly revised RHNA law in the last two years to ensure that many cities would see much higher RHNA allocations for the upcoming cycle than they had in previous cycles. (Gov. Code § 65584.04; Sen. Bill No. 828, 2018-2019 Reg. Sess.; Assembly Bill No. 1771, 2018-2019 Reg. Sess.) Indeed, in its letter

[2] *See id.*

supporting this demurrer, HCD explains that the increases in RHNA allocation of which the Petitioners complain was a predictable and intended result of the new legislation. (See CT 1 at 238-242 (Letter Issued by HCD).) Furthermore, the state legislature specifically mandated changes to the RHNA methodology to ensure consideration of the balance among jobs, housing and transportation, and prohibit consideration of existing land use regulations. (Gov. Code § 65584.04; See CT 1 at 238-242 (Letter Issued by HCD).)

Therefore, SANDAG simply followed state law in performing all of the actions challenged in the petition. The fact that these four cities received larger RHNA allocations than they did in the past and that SANDAG used weighted voting to deny the appeals cannot possibly be considered evidence of any unfairness or bias in SANDAG's decisionmaking process because both policies were authorized by state law. The crux of Appellants' complaint here is simply that state law has changed so that small cities can no longer evade their fair share of regional housing obligations the way they used to do. If these cities think that having to do their part to address the state's housing crisis is "unfair," their remedy is to appeal to the legislature, not to sue SANDAG.

B. <u>Majority Rule is Not Unfair to the Minority</u>.

Appellants make the extraordinary claim that they were deprived of their right to a "neutral and unbiased" decisionmaker based on nothing more than the fact that SANDAG accounted for population when assigning voting power in the appeal process, as required by AB 805 – a system that is commonly known as

"majority rule." (*See* Opening Br. at 17: "Adopting and utilizing appeal procedures that include weighted voting favors the interests of larger jurisdictions at the expense of smaller jurisdictions, when the decisionmakers should have instead remained neutral to determine the merits of the Appeals.") Even assuming the RHNA appeal process is a context in which Appellants were entitled to a neutral and unbiased decisionmaker, it is absurd to suggest that majority rule – a fairly typical practice in democratic societies – is an inherently biased process. The absurdity of this claim is made evident by Appellants' insistence that the Court replace the population-weighted voting with a tally voting process that is much *more* unfair because it allows the minority to make rules that bind the majority.

At the end of the day, Appellants are not arguing for a process that is neutral and unbiased, but for a process that favors themselves at the expense of the majority of the residents of San Diego County. That Appellants do not truly desire a "neutral" process is abundantly clear from the fact that *they voted on their own appeals*, rather than recusing themselves. (CT 1 at 139).

Setting to one side that Petitioners' challenge to population-weighted voting would require the invalidation of AB 805, which authorized weighted voting precisely to ensure that the SANDAG board is more responsive to the growing population centers of the County, the complaint that population-weighted voting is "unfair" runs directly contrary to the principle of "one person, one vote," which has been the hallmark of state

and local democracy in this country for over a generation. *See Reynolds v. Sims* (1964) 377 U.S. 533, 568 (diluting the votes of citizens in one part of a state by giving them less weight than the votes of citizens in another part of the state is impermissible); *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660 (malapportioned districts may violate the one-person, one-vote rule by having unequal populations). *Reynolds* specifically turned aside the sort of claim made here, which is that governmental bodies should represent municipalities rather than people: "Legislators are elected by voters, not farms or cities or economic interests." *Reynolds*, 377 U.S. at 562. Indeed, Appellants' claim here is even more extraordinary than the claim rejected in *Reynolds*, for they argue not that SANDAG should be permitted to deviate from the "one person, one vote" principle but that it must be required to do so because majority rule is inherently unfair to the losing minority.

Appellants attempt to disguise the extraordinary nature of their claim in a number of unpersuasive ways. First, they attempt to create confusion around the meaning of the term "majority" and, relatedly, the meaning of "weighted voting." Appellants characterize the outcome of the appeal process as follows: "A small minority of 5 out of 18 jurisdictions voted to overcome the will of the large majority of Board Members to deny the appeals with the weighted vote." (Opening Br. at 8.) This formulation completely obfuscates the fact that the jurisdictions casting the winning votes represent a *majority* of the actual *population* of San Diego County. The tally vote process that

Appellants advocated for, by contrast, would allow jurisdictions representing only a minority of the County's population to make decisions that bind a majority. **(**Opening Br. at 18 describing "fair hearing" as one with a "tally vote"); 27 ("tally vote would allow each jurisdiction to fairly judge the Appeals on their merit….").

Similarly, Appellants attempt to create confusion by conflating two different meanings of "weighted" voting. In the current context, votes on the SANDAG appeal process are weighted to account for the different populations of different jurisdictions, so more populous jurisdictions have greater voting strength and less populous jurisdictions have less voting strength. This structure is designed to get as close as possible to majority rule while giving each jurisdiction in the County independent voting power. But Appellants deceptively conflate this type of weighted voting with the *direct opposite* type of weighted voting, in which votes are weighted to deviate from population equality. To support their claim that weighted voting is impermissible here, Appellants quote the following passage from the *Reynolds*-era case of *Gray v. Sanders*: "[t]he only weighting of votes sanctioned by the Constitution concerns matters of representation, such as the allocation of Senators irrespective of population and the use of the electoral college in the choice of a President."
(*Gray v. Sanders* (1963) 372 U.S. 368, 380 [83 S.Ct. 801])
(Opening Br. at 28.)

As is evident from the context of this quotation, *Gray* was specifically addressing situations where votes are weighted to

depart from population equality, not where, as here, votes are weighted to get *closer to* population equality. Given the "one person, one vote" principle, the first type of weighted voting is usually prohibited; the latter is most certainly not. Ironically, the tally vote system Appellants prefer is exactly the sort of "weighted vote" system that *Gray* generally prohibits.

Nor can Appellants' assault on the principle of majority rule be saved by attempting to characterize the SANDAG appeal process as "quasi-judicial." (Opening Br. at 25-30.) A quasi-judicial process would be one in which an agency is adjudicating the rights of just one or a small number of individuals rather than making broad, generally applicable policy. The RHNA allocation appeal process is a policymaking exercise that affects every jurisdiction in the region because, as SANDAG's brief discusses in detail, a change to one city's allocation would necessarily require reopening all the allocations for the entire region. (See *Stubblefield Constr. Co. v. City of San Bernardino* (1995) 32 Cal. App. 4th 687, 711 [municipal actions with general applicability properly considered legislative rather than quasi-judicial].) Appellants themselves clearly understood the appeal process to be a legislative rather than a quasi-judicial one because they participated in judging their own appeals rather than recusing themselves, which would have been appropriate in a quasi-judicial proceeding. (See *Woody's Group Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1027 ["A person cannot be a judge in his or her own cause"].)

Even assuming that the RHNA appeal process requires the

heightened procedural protections of a quasi-judicial proceeding to ensure fairness to the participants, it would be bizarre to say that the appeal process was "unfair" to smaller cities merely because it gave greater weight to the votes of more populous cities than to smaller ones. There is nothing inherently unfair about the principle of majority rule. In fact, Appellants propose to replace this purported "unfair" weighted vote procedure with a procedure that is far less fair. They argue that the "quasi-judicial" nature of the appeal process requires a tally vote in which cities representing a minority of the population can impose their preferred RHNA allocations for the entire region on the majority of San Diego County residents. This is surely not the sort of fair treatment that due process and section 1094.5 require.

IV.

CONCLUSION

For all the foregoing reasons and the reasons set forth in Respondents' Brief , YIMBY Law respectfully requests that the Court uphold the trial court's ruling granting SANDAG's demurrer without leave to amend and deny Appellants' appeal in full.

Dated: February 11, 2022 MILLER STARR REGALIA

By: /s/ Kenneth A. Stahl
KENNETH A. STAHL
Attorneys for YIMBY LAW

CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA RULES OF COURT RULE 8.204(c)(1)

Pursuant to California Rules of Court Rule 8.204(c)(1), I certify that according to Microsoft Word the attached brief is proportionally spaced, has a typeface of 13 points and contains 4,495 words, including footnotes, and excluding matters outside of the body of the brief such as title page, table of contents and authorities, and this word certification count.

Dated: February 11, 2022 MILLER STARR REGALIA

By: /s/ Kenneth A. Stahl
KENNETH A. STAHL
Attorneys for YIMBY LAW

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Contra Costa, State of California. My business address is 1331 N. California Blvd., Fifth Floor, Walnut Creek, CA 94596.

On February 11, 2022, I served true copies of the following document(s) described as **APPLICATION OF YIMBY LAW FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENTS; AMICUS CURIAE BRIEF OF YIMBY LAW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered users will be served by the TrueFiling system. Participants in the case who are not registered users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 11, 2022, at Martinez, California.

/s/ Karen L. Irias
Karen L. Irias

SERVICE LIST
City of Coronado, et al. v. San Diego Assoc of Govt's, et cl.
In The Court Of Appeal Of The State Of California Fourth Appellate District, Division One
Case No. D079013

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