

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 08/27/13

DEPT. 68

HONORABLE Mark V. Mooney

JUDGE

A. WILLIAMS

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

T. SCOTT, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

BC483039

Plaintiff  
Counsel

JUAN JAUREGUI

VS

Defendant NO APPEARANCES  
Counsel

CITY OF PALMDALE CALIFORNIA

**NATURE OF PROCEEDINGS:**

COURT'S FINAL STATEMENT OF DECISION

The Court issues its Final Statement Of Decision, signed and filed date.

A copy of the court's Final Statement of Decision - 6 pages is mailed to counsel this date addressed as indicated below.

Counsel are ordered to pick up their exhibits from this court within 5 days of receipt of this minute order pursuant to oral stipulation.

Order To Show Cause remains set 11-14-2013 at 8:30 a.m. in this department.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the FINAL STATEMENT OF DECISION and this minute order dated 8-27-2013 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered

<p align="center"><b>MINUTES ENTERED</b> 08/27/13 <b>COUNTY CLERK</b></p>
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herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 8-27-2013

John A. Clarke, Executive Officer/Clerk

By:



A. Williams, Judicial Assistant

R. Rex Parris  
R. REX PARRIS LAW FIRM  
43364 10th Street West  
Lancaster, California 93534

Kevin I. Shenkman  
SHENKMMAN & HUGHES  
28905 Wright Road  
Malibu, California 90265

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CITY OF PALMDALE CALIFORNIA

Counsel

NATURE OF PROCEEDINGS:

Mitchell E. Abbott  
Julie A. Hamill  
RICHARDS, WATSON & GERSHON  
355 South Grand Avenue, 40th Floor  
Los Angeles, California 90071

Milton C. Grimes  
LAW OFFICE OF MILTON C. GRIMES  
3774 West 54th Street  
Los Angeles, California 90043

MINUTES ENTERED  
08/27/13  
COUNTY CLERK

1  
2 **ORIGINAL FILED**

3 AUG 27 2013

4 **LOS ANGELES**  
5 **SUPERIOR COURT**

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

9  
10 JAUN JAUREGUI, EMMETT MURRELL, V.) Case No.: BC 483039  
11 JESSE SMITH, NIGEL HOLLY and )  
12 ANSAR "STAN" MUHAMMAD ) FINAL STATEMENT OF DECISION  
13 )  
14 Plaintiff, )  
15 vs. )  
16 CITY OF PALMDALE, )  
17 Defendants )  
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19 The action was tried before the Court on May 6, 2013 through May 15, 2013. Plaintiffs  
20 submitted their closing argument on May 22, 2013. Defendant submitted its closing augment on  
21 May 31, 2013. On June 6, 2013 plaintiffs submitted their rebuttal argument. The court issued its  
22 proposed and tentative Statement of Decision on July 23, 2013. After due consideration of the  
23 defendant's objections and plaintiffs' response thereto, the court now issues its Final Statement  
24 of Decision.

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## STATEMENT OF FACTS

Plaintiffs' First Amended Complaint sets forth a single cause of action for violation of the California Voting Rights Act of 2001 (CVRA). Plaintiffs bring this action as members of a class of voters protected by the CVRA. It is alleged that the City of Palmdale employs an at-large method of election where voters of the entire jurisdiction elect members of the city council. It is further alleged that this method of electing city council members has resulted in racially polarized voting, thereby impairing the ability of the protected classes to elect candidates or influence the outcome of elections. Defendant City of Palmdale generally denied the allegations of plaintiffs' complainant and set forth as a separate and independent affirmative defenses the allegation that there has been no occurrence of racially polarized voting within the City of Palmdale, that the at-large method has not impaired the ability of a protected class to influence the outcome of an election, as well as due process violations and state constitution violations.

## DISCUSSION

The City of Palmdale employs an at-large plurality method of electing its city council. The voters of the city elect every member of the city council. The candidates with a plurality of the votes are elected to the available seats. The California Voting Rights Act (Elections Code §§ 14025-14032) provides for a private right of action to members of a protected class who reside in a political subdivision where, because of dilution or abridgment of the rights of voters an at large election system impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election. (*See, Sanchez v. City of Modesto* (2006) 145 Cal. App.4<sup>th</sup> 660, 667.) Election Code § 14026(d) defines a "protected class" as a "class of voters who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act." Election Code § 14028 (a) sets forth that a violation "is established if it is shown that racially polarized voting occurs in elections" in the political



1 subdivision. “Racially polarized voting” means voting in which there is a difference...in the  
2 choice of candidates or other electoral choices that are preferred by voters in a protected class,  
3 and in the choice of candidates and electoral choices that are preferred by voters in the rest of the  
4 electorate. Election Code § 14026 (e).

5 The method by which courts identify the presence of racially polarized voting was  
6 recognized by the United States Supreme Court in a case decided under the Federal Voting  
7 Rights Act, *Thornburg v Giggles* 478 U.S. 30 (1986). In *Gingles*, the Supreme Court approved  
8 of the use of “ecological regression” if there are not a sufficient number of homogenous  
9 precincts to determine if there is racially polarized voting. The CVRA specifically permits  
10 courts to accept this methodology. “Methodologies for estimating group voting behavior as  
11 approved in applicable federal cases to enforce the federal Voting Rights Act... to establish  
12 racially polarized voting maybe used for purposes of this section to prove that elections are  
13 characterized by racially polarized voting.” Election Code § 14026(e).

14 Plaintiffs’ expert and defendant’s expert studied the counsel and mayoral election results  
15 for the City of Palmdale since 2000. During that period, only one Latino candidate was elected  
16 and no African-American candidates were elected. Indeed, the one Latino candidate was elected  
17 in 2001, and none since. The failure of minority candidates to be elected to office does not by  
18 itself establish the presence of racially polarized voting. However, the regression analysis  
19 undertaken by both experts nevertheless established a clear history of a difference between the  
20 choice of candidates preferred by the protected class and the choice of the non-protected class.

21 Plaintiff’s expert, Dr. Morgan Kousser, expressed the opinion that the city of Palmdale’s  
22 elections consistently and statistically exhibited racially polarized voting. The court finds the  
23 opinions expressed by Dr Kousser to be persuasive. Although the methodology was somewhat  
24 different, the statistics compiled by defendant’s expert, Douglas Johnson, likewise note the

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1 presence of racially polarized voting. While Mr. Johnson described some of the results as “not  
2 stark,” the existence of racially polarized voting in his statistics could not be denied.

3 Under the California Voting Rights Act, proof of intent to discriminate against a  
4 protected class is not required. Election Code § 14028(d). Moreover, the fact that members of a  
5 protected class are not geographically concentrated may not preclude a finding of a racially  
6 polarized voting. Election Code § 14028(c). When determining whether there is a violation of  
7 Section 14027, the court does not analyze the effectiveness of past campaigns for city council or  
8 the qualifications of individual candidates. *See, Ruiz v. Sanata Maria*, 160 F.3d 543 (9<sup>th</sup> Cir.  
9 1998). The court does not consider voter turnout, but rather should consider only actual voting  
10 patterns. *Gomes v. City of Watsonville*, 863 F.2d 1407, 1416 (9<sup>th</sup> Cir. 1988).

11 The court finds a violation of Election Code § 14027. Plaintiffs’ evidence established  
12 that racially polarized voting occurred in the city council elections for the City of Palmdale.

13 Defendant argues that the California Voting Rights Act is unconstitutional as applied to  
14 Palmdale, a charter city. It is contended by the city that Article XI, Section 5(b) of the California  
15 Constitution provides plenary authority for a charter city to determine the manner and method in  
16 which their voters elect municipal officers. As such, defendant contends that the City Palmdale  
17 is immune from any challenge based upon the California Voting Rights Act.

18 In *Sanchez v. City of Modesto* (2006) 145 Cal.App.4<sup>th</sup> 660, the Court of Appeal for the  
19 Fifth District, addressed the constitutionality of the CVRA. The court in *Sanchez* found that the  
20 CVRA was not unconstitutional on its face. It determined that the CVRA was race neutral  
21 because it did not favor any race over another or allocate burdens or benefits to any group on the  
22 basis of race. Therefore the *Sanchez* court determined that the CVRA was not subject to a strict  
23 scrutiny analysis and that under a rational basis review, the CVRA readily passed. The *Sanchez*  
24 court did not specifically address the question as to whether a charter city is immune from any  
25 application of the California Voting Rights Act.

1 Although a charter represents the supreme law of the charter city, it is nevertheless  
2 subject to preemption. A state law regulating a matter of statewide concern preempts a  
3 conflicting local ordinance if the state law is narrowly tailored to limit its incursion into local  
4 interest. *Johnson v. Bradley* (1992) 4 Cal.4<sup>th</sup> 389, 404. Where the matter at issue implicates a  
5 “municipal affair” and “poses a genuine conflict with state law, the question of statewide  
6 concern is the bedrock inquiry through which the conflict is adjusted.” *California Fed. Savings*  
7 *& Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 17.

8 There can be no question that the dilution of minority voting rights is a matter of  
9 statewide concern. Curing vote dilution is a legitimate government interest. *Sanchez v. City of*  
10 *Modesto* (2006) 145 Cal.App.4<sup>th</sup> 660, 680. In signing the act into law Governor Gray Davis  
11 announced: “Given the diverse make up of California voters, this legislation will help to ensure  
12 that California’s electoral system is fair, open to and representative of all California voters.”  
13 Election Code § 14025, Historical and Statutory Notes. The California Voting Rights Act was  
14 “enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of  
15 the California Constitution.” Election Code § 14031. A charter city’s plenary power can not  
16 exercised in a manner that would violate the fundamental constitutional rights of its citizens. To  
17 the extent a conflict exists between the City of Palmdale charter provisions as to the election of  
18 its council members and the California Voting Rights Act, the court finds that the city is not  
19 immune from state legislative enactments in this area of statewide concern.

20 The court finds that defendants have not met their burden in establishing the California  
21 Voting Rights Act to be unconstitutionally vague and ambiguous. Further, the court finds that  
22 defendants have not met their burden in establishing the California Voting Rights Act as applied  
23 represents an unconstitutional violation of equal protection and due process.

#### 24 INTERIM FINDING

25 The court finds in favor of Plaintiffs.

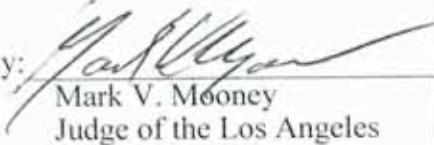


1 The court determines plaintiff to be the prevailing party and awards cost and fees in an  
2 amount to be determined on subsequent motion.

3 California Voting Rights Act § 14029 vest the court with broad discretion in  
4 implementing appropriate remedies that are tailored to remedy the violation. The court hereby  
5 sets the matter for further hearing re proposed remedies for September 20, 2013, 8:30 a.m.

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Date: *Aug. 27, 2013*

By:   
Mark V. Mooney  
Judge of the Los Angeles  
Superior Court

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS:	<b>111 N. Hill Street, Los Angeles, Ca 90012</b>	<b>ORIGINAL FILED</b>  AUG 27 2013  <b>LOS ANGELES SUPERIOR COURT</b>
PLAINTIFF/PETITIONER:	<b>Juan Jauregui et al</b>	
DEFENDANT/RESPONDENT:	<b>City of Palmdale</b>	
<b>CERTIFICATE OF MAILING OF COPY OF COURT'S TENTATIVE DECISION</b>		CASE NUMBER  <b>BC483039</b>

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served notice of the Court's tentative decision in the within action upon all parties who appeared at the trial by depositing in the United States mail at the courthouse located in Los Angeles California,

one copy of the minute order dated 8-27-2013 and entered herein, in Department 68 of the Superior Court of California, County of Los Angeles,

one copy of the Written Tentative Decision filed herein on 8-27-2013,

in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

**R. Rex Parris**  
**R. REX PARRIS LAW FIRM**  
**43364 10th Street West**  
**Lancaster, California 93534**

**Kevin I. Shenkman**  
**SHENDMAN & HUGHES**  
**28905 Wright Road**  
**Malibu, California 90265**

Dated: 8-27-2013

**SHERRI R. CARTER**, Executive Officer/Clerk

By:   
Deputy Clerk

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp
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**355 South Grand Avenue, 40th Floor**  
**Los Angeles, California 90071**

**Milton C. Grimes**  
**LAW OFFICE OF MILTON C. GRIMES**  
**3774 West 54th Street**



Dated: 8-27-2013

**SHERRI R. CARTER**, Executive Officer/Clerk

By:   
Deputy Clerk