

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ORIGINAL FILED

NOV 27 2013

LOS ANGELES
SUPERIOR COURT

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

JAUN JAUREGUI, EMMETT MURRELL, V.) Case No.: BC 483039
JESSE SMITH, NIGEL HOLLY and)
ANSAR "STAN" MUHAMMAD) [Tentative and Proposed]
) STATEMENT OF DECISION
) RE: REMEDIES AND ORDER THEREON
)
Plaintiff,)
)
vs.)
)
CITY OF PALMDALE,)
)
Defendants)
)
)
)

On July 23, 2012, the Court issued its Proposed and Tentative Statement of Decision finding that defendants had violated the California Voting Rights Act (California Election Code § 14025 – 14032). On August 27, 2013, the Court issued its Final Statement of Decision in favor of plaintiffs and directed the parties submit proposed remedies for violation for a hearing on September 20, 2013. Further evidence, testimony and arguments were taken at hearings on September 20, September 30, October 9, October 15 and October 16, 2013. The parties

1 submitted supplemental briefs on October 25, 2013 and replies on October 31, 2013. The Court
2 now issues its Proposed and Tentative Statement of Decision on the Issue of Remedies.

3 DISTRICT-BASED ELECTIONS

4 This Court has already determined that the City of Palmdale has violated Evidence Code
5 § 14027 and 14028. Elections Code § 14029 sets forth: "Upon a finding of a violation of Section
6 14027 and Section 14028, the court shall implement appropriate remedies, including the
7 imposition district-based elections, that are tailored to remedy the violation." The code does not
8 necessarily require the imposition of district-based elections, but the Court is required to impose
9 districts if it finds that that such a remedy is appropriate to remedy the violation. The Court
10 heard evidence and argument regarding a variety of potential remedies including cumulative
11 voting systems, weighted voting systems and even year elections. The parties presented these
12 alternatives for the Court's consideration; however both parties appear to agree that the most
13 appropriate remedy would indeed be a district-based remedy. The Court therefore finds that the
14 imposition of district-based elections is the appropriate remedy to address the effects of the
15 established history racially polarized voting.

16 FOUR OR FIVE DISTRICTS

17 Plaintiffs submitted four district-based plans for the Court's consideration. One of these
18 plans divided the City of Palmdale into five voting districts. Under the five district plan
19 submitted by plaintiffs, all five council members would be elected by districts and the office of
20 mayor would be held by each council member on a rotating basis. In the remaining three
21 district-based plans submitted by the plaintiffs, the office of mayor would be maintained as a city
22 wide elected official. The four council members would be elected by districts. Defendant City
23 of Palmdale submitted one four district plan for the Court's consideration.

1 The City of Palmdale currently has a city council made up of four council members
2 elected for a four year term by an at-large method of voting. The office of mayor is elected in
3 city wide election for a two year term. The mayor is also a voting member of the council.
4 Palmdale's mayor has additional duties, powers and obligations. The mayor appoints all city
5 boards, commission and committers, has the power to appoint the City Manager as an *ex officio*
6 member of any board, chairs the Palmdale Airport Authority, Chairs the Industrial Development
7 Authority, is paid a higher salary, and receives a monthly vehicle allowance. (Palmdale Mun.
8 Code §§ 2.08.030, 2.040.070, 2.52.010, 2.25.030, 2.08.060, 2.08.070.) The Court finds that the
9 mayor of Palmdale is a separately elected office. Government Code § 34900 expressly
10 authorizes this form of government. The elimination of this office is not an appropriate remedy
11 to address the Voting Rights Act violation. Thus, the Court finds that a four district plan
12 maintaining the current number of city council members is appropriately tailored to remedy the
13 California Voting Rights Act violation.

14 ESTABLISHING DISTRICT LINES

15 The California Voting Rights Act gives the court broad discretion in implementing
16 remedies. The only limitations to be found in Section 14029 are that the remedies be
17 "appropriate" and that they "are tailored to remedy the violation." However, this discretion is
18 not unfettered. Any remedy ordered by the Court must nevertheless be consistent with the
19 protections provided by the United States and California Constitutions. Indeed, the California
20 Voting Rights Act was enacted "to implement the guarantees of Section 7 of Article I and
21 Section 2 of Article II of the California Constitution."

22 The elections code does provide some guidance in establishing district lines. Elections
23 Code § 21620 sets forth that "the districts shall be nearly equal in population as may be..." The
24 code also sets forth the following criteria that may be considered in establishing district
25

1 boundaries: "(1) topography, (2) geography, (3) cohesiveness, contiguity and compactness of
2 territory, and (4) community of interest of the districts."

3 The city's plan was prepared by their retained expert Douglas Johnson. While Mr
4 Johnson plan provided for one majority Latino district, the Court finds that the plan suffered
5 from other infirmities rendering it unsuitable. In drafting his plan, Mr. Johnson testified that he
6 attempted to create districts that maximize the number of council districts that contained a
7 substantial population on both sides of Highway 14. State Highway 14 runs north/south and
8 bisects the City of Palmdale. Both experts recognized that the highway is not only a physical
9 divide, but also serves as a social and psychological divide. However laudable the goal may be
10 to diminish the perceived east/west division among the citizens of Palmdale, it is simply not an
11 appropriate factor to consider in establishing districts to remedy a Voting Rights Act violation.
12 The Court is charged with fashioning a remedy tailored to address the history of racially
13 polarized voting, not to foster future community solidarity.

14 More troubling to the Court is the defendant's creation of districts that are designed to
15 protect the current incumbents. Mr. Johnson admitted that the original draft of his district-based
16 plan took the residences of the current council members into consideration. Although he
17 explained that the final version of his plan was drawn without regard to incumbency, the residual
18 vestiges from his original plan were apparent in Mr. Johnson's final version. Plaintiff's retained
19 expert David Ely, described the plan "an egregious incumbent gerrymander." The Court notes
20 that incumbency protection is generally disfavored in California. "The place of residence of any
21 incumbent or political candidate shall not be considered in the creation of a map Districts shall
22 not be drawn for the purposes of favoring or discriminating against an incumbent, political
23 candidate, or political part." California Constitution Art. XXI §2(e). While defendant contends
24 that consideration of incumbency is not improper for re-districting purposes, the Court finds that
25

1 incumbent gerrymandering has no place in establishing districts lines to remedy the history of
2 racially polarized voting.

3 The Court has considered each of the submissions by plaintiff for a four council district
4 plan. Admittedly no plan is perfect. Each has aspects that recommend them or that can be a
5 basis for criticism. The nevertheless finds that the four-district plan prepared by Mr. Ely,
6 designated as Plaintiff's Exhibit 103, would best remedy the vote dilution demonstrated at trial.
7 Implementation of this plan would result in two majority-Latino districts. The districts are
8 appropriately compact, cohesive and of nearly equal population. Moreover, the Court finds that
9 the plan properly takes into consideration the factors of topography, geography, cohesiveness,
10 contiguity and compactness of territory, and community of interest of the districts. Therefore the
11 Court finds that district lines drawn in accordance with those submitted in Plaintiff's exhibit 103
12 (a copy attached hereto as Court's Exhibit A) to be the most appropriate remedy for the violation
13 of the California Voting Rights Act.

14 It should be emphasized that the district lines being ordered by the Court at this time are
15 only interim lines. The City of Palmdale is free to adjust those district boundaries for future
16 elections pursuant to Government Code § 21620 and §21620.1 and consistent with the Federal
17 and California Voting Rights Act.

18 ELECTION OF THE CITY COUNCIL

19 The citizens of the City of Palmdale deserve to have a lawfully elected city council as
20 soon as is practical. It will be necessary for those council members to be selected in a special
21 election. An election requires at least four months from the beginning of the nomination period
22 to the last day of voting. Trial testimony established that there is a correlation between off year
23 elections and low voter turnout. Testimony also established that a low turnout also adversely
24 affects the chances of electing those candidates that are the preferred by voters in a protected
25

1 class. The Court therefore finds that to remedy the established violation the special election is to
2 be held in conjunction with the next statewide primary election, June 3, 2014.

3 The current members of the Palmdale City Council were elected through an unlawful
4 election. The citizens of the City of Palmdale are entitled to have a council that truly represents
5 all members of the community. More importantly, the Latino and African American citizens of
6 Palmdale deserve to have their voices heard in the operation of their city. This can only be
7 accomplished if all members of the city council are lawfully elected. To permit some members
8 of the council to remain who obtained their office through an unlawful election will not remedy
9 the clear violation. Therefore the Court finds that in order to tailor an appropriate remedy to
10 address the violation, the special district-based election is to be held for all four districts. New
11 council members are to be certified at the next council meeting, which are regularly scheduled
12 for the first Wednesday of each month (July 9, 2014). Only lawfully elected council members
13 should be permitted to serve past July 9, 2014. The city is free to establish procedures for
14 staggered elections if it wishes to maintain its current practice of two council members being
15 elected every two years for a four year term. Those future elections are to be held in November
16 in even numbered years to coincide with general statewide and national elections. The Court
17 finds that it is necessary for those future elections to be held at a time that will maximize voter
18 turnout to further remedy the established violation.

19 ORDER

20 The Court hereby orders the following:

- 21 1) Henceforth, the city council of Palmdale is to be elected through a district-based
22 election system;
- 23 2) The interim districts are to be drawn in accordance with Court's exhibit A (attached);
- 24 3) The City of Palmdale is to hold a special election to elect city council members for
25 each district on June 3, 2014;

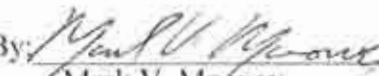
1 4) Any person not elected through an approved district-based election system may not
2 serve as a member of the Palmdale City Council after July 9, 2014;

3 5) Although a voting member of the council, the office of Mayor is a separately elected
4 official and not subject to the above prohibition;

5 6) All future regularly held elections for the Palmdale City Council shall coincide with
6 national elections or general statewide elections held in November of even numbered years.

7 If no objection is filed within the time proscribed by California Rule of Court 3.1590, the
8 proposed statement of decision will be become final. Plaintiff is determined to be the prevailing
9 party and is to prepare a proposed judgment consistent with the Court's Statement of Decision
10 and its Orders.

11
12
13 Date: *NOV 27, 2013*

14 By: 
15 Mark V. Mooney
16 Judge of the Los Angeles
17 Superior Court
18
19
20
21
22
23
24
25

