

ATTACHMENT 1

ORIGINAL FILED

JUL 23 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

Plaintiff,

vs.

CITY OF PALMDALE,

Defendants

The action was tried before the Court on May 6, 2013 through May 15, 2013. Plaintiffs submitted their closing argument on May 22, 2013. Defendant submitted its closing argument on May 31, 2013. On June 6, 2013 plaintiffs submitted their rebuttal argument. After due consideration of those arguments, the evidence presented at trial and the pleadings on file, the court hereby issues its tentative and proposed statement of decision.

1 STATEMENT OF FACTS

2 Plaintiffs' First Amended Complaint sets forth a single cause of action for violation of the
3 California Voting Rights Act of 2001 (CVRA). Plaintiffs bring this action as members of a class
4 of voters protected by the CVRA. It is alleged that the City of Palmdale employs an at-large
5 method of election where voters of the entire jurisdiction elect members of the city council. It is
6 further alleged that this method of electing city council members has resulted in racially
7 polarized voting, thereby impairing the ability of the protected classes to elect candidates or
8 influence the outcome of elections. Defendant City of Palmdale generally denied the allegations
9 of plaintiffs' complainant and set forth as a separate and independent affirmative defense the
10 allegation that there has been no occurrence of racially polarized voting within the City of
11 Palmdale.

12 DISCUSSION

13 The City of Palmdale employs an at-large plurality method of electing its city council.
14 The voters of the city elect every member of the city council. The candidates with a plurality of
15 the votes are elected to the available seats. The California Voting Rights Act (Elections Code §§
16 14025-14032) provides for a private right of action to members of a protected class who reside in
17 a political subdivision where, because of dilution or abridgment of the rights of voters an at large
18 election system impairs the ability of a protected class to elect candidates of its choice or its
19 ability to influence the outcome of an election. (*See, Sanchez v. City of Modesto* (2006) 145 Cal.
20 App.4th 660, 667.) Election Code § 14026(d) defines a "protected class" as a "class of voters who
21 are members of a race, color or language minority group, as this class is referenced and defined
22 in the federal Voting Rights Act." Election Code § 14028 (a) sets forth that a violation "is
23 established if it is shown that racially polarized voting occurs in elections" in the political
24 subdivision. "Racially polarized voting" means voting in which there is a difference...in the
25 choice of candidates or other electoral choices that are preferred by voters in a protected class,

1 and in the choice of candidates and electoral choices that are preferred by voters in the rest of the
2 electorate. Election Code § 14026 (e).

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

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

19 Plaintiff’s expert, Dr. Morgan Kousser, expressed the opinion that the city of Palmdale’s
20 elections consistently and statistically exhibited racially polarized voting. The court finds the
21 opinions expressed by Dr Kousser to be persuasive. Although the methodology was somewhat
22 different, the statistics compiled by defendant’s expert, Douglas Johnson, likewise note the
23 presence of racially polarized voting. While Mr. Johnson described some of the results as “not
24 stark,” the existence of racially polarized voting in his statistics could not be denied.
25

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

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

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

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

24 Although a charter represents the supreme law of the charter city, it is nevertheless
25 subject to preemption. A state law regulating a matter of statewide concern preempts a

1 conflicting local ordinance if the state law is narrowly tailored to limit its incursion into local
2 interest. *Johnson v. Bradley* (1992) 4 Cal.4th 389, 404. Where the matter at issue implicates a
3 “municipal affair” and “poses a genuine conflict with state law, the question of statewide
4 concern is the bedrock inquiry through which the conflict is adjusted.” *California Fed. Savings
5 & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 17.

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

18 INTERIM FINDING

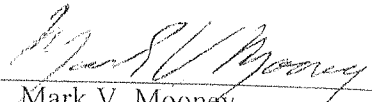
19 The court finds in favor of Plaintiffs.

20 The court determines plaintiff to be the prevailing party and awards cost and fees in an
21 amount to be determined on subsequent motion. If no objection is filed within the time
22 proscribed by California Rule of Court 3.1590, the proposed statement of decision will be
23 become final.

24 California Voting Rights Act § 14029 vest the court with broad discretion in
25 implementing appropriate remedies that are tailored to remedy the violation. Upon the filing of

1 the Final Statement of Decision, the court will set this matter for further hearing on the issue of
2 proposed remedies.

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6 Date: *July 23, 2013*

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8 By: 
9 Mark V. Mooney
10 Judge of the Los Angeles
11 Superior Court
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