

1 David A. Holtzman (SBN 211356)  
145 S. Glenoaks Blvd. #301  
2 Burbank, CA 91502  
dah@holtzman-law.com  
3

4 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
5 IN AND FOR THE COUNTY OF LOS ANGELES  
6

7 NICHOLAS GUTIERREZ,

8 *Plaintiff,*

9 vs.

10 CITY OF BURBANK, AND DOES 1 through 100,  
11 inclusive,

12 *Defendants.*

CASE NO.: 23 ST CV 25587

**BRIEF OF AMICUS DAVID A. HOLTZMAN  
REGARDING CASE MANAGEMENT AND  
SUPPORTING DEFENDANT'S ANSWER**

13 HEARING DATE: April 16, 2025  
14 TIME: 8:30 AM  
DEPT: 55  
JUDGE: Hon. Alison Mackenzie

15  
16 I write respectfully, as a friend of the court. I am a Burbank resident,  
17 taxpayer, and voter. I am an attorney and member in good standing of the California  
18 State Bar, but I have not been retained as such in this case.  
19

20  
21 **I. RELEVANT CASE HISTORY**

22 On August 26, 2024, in overruling part of a demurrer in this case, the now-  
23 retired Honorable Barbara M. Scheper said consideration of what might be a “better”  
24 election method for Burbank City Council “is left for another day.” Here I offer this  
25 court guidance for case management for that day (if it comes).

26 /

27 /

28 /

1           **II. BURBANK WAS RIGHT TO ASSERT HOME RULE IN ITS ANSWER**

2  
3           **A. If a Charter City’s Choice of Election Method is Specified in its City’s Charter,**  
4                   **the “Therein Clause” in Art. XI, § 5, of the California Constitution**  
5                   **shields that choice from the State Legislature.**

6           In its September 5, 2024, “Answer of Defendant City of Burbank To First  
7 Cause of Action Of Plaintiff’s Unverified Second Amended Complaint,” the City of  
8 Burbank cited “Home Rule Powers of a Charter City” as its first affirmative defense.

9           The California Constitution grants charter city electorates plenary authority  
10 to specify their cities’ election methods (and other matters) *in city charters*. As a clause  
11 of the Constitution (the “Therein Clause”) puts it, “plenary authority is hereby granted,  
12 subject only to the restrictions of this article, to provide **therein** or by amendment thereto,  
13 the manner in which, the method by which, the times at which, and the terms for which  
14 the several municipal officers and employees whose compensation is paid by the city  
15 shall be elected or appointed...” (Cal. Const. Art. XI, § 5, subd. (b), clause (4); emphasis  
16 added.)

17           That plenary (absolute, total, unlimited, complete, plenipotentiary)  
18 authority shields a charter city electorate’s in-charter choice of election method from  
19 nullification or alteration by an act of the California Legislature. The “California Voting  
20 Rights Act” (CVRA) is an act of the California Legislature. It has not dislodged the right  
21 of Burbank’s electorate to provide its city council election method in its city charter.

22           One ruling that purported to allow the Legislature via the CVRA to wound  
23 city voters’ plenary authority came in *Jauregui v. City of Palmdale*, 226 Cal.App.4th 781  
24 (2014) (“*Jauregui*,” or the “Palmdale case”). But **the Palmdale Case had nothing to do**  
25 **with a city council election method specified in a city charter**. Palmdale’s city council  
26 election method was not specified in its city charter. That case is inapposite here.

27 /

28 /

1           **B. The Burbank Charter Specifies Using At-Large Elections for City Council**

2           Burbank’s electorate has provided in Burbank’s City Charter that the city’s  
3 elections for seats on the city council be at large: “The members of the Council shall be  
4 elected from the City at large....” (Charter of the City of Burbank, California, Section  
5 300 [Officers and Employees].) And “The legislative body of the City shall consist of  
6 five (5) persons elected at large which body shall be known as the Council.” (*Id.*, Section  
7 305 [The City Council].)

8  
9           **C. District-Based Elections for Burbank City Council Would Be Unlawful**

10           District-based elections are not at large. District-based elections are  
11 essentially the opposite of at-large elections. Burbank’s electorate, employing plenary  
12 authority granted by the state constitution, has provided that Burbank’s elections for city  
13 council be at large. Therefore, in Burbank, having district-based elections for city  
14 council would be unlawful.

15  
16           **III. RULING OUT CONSIDERATION OF DISTRICT-BASED ELECTION**  
17           **METHODS WOULD SUPPORT EFFICIENT CASE MANAGEMENT**

18  
19           **A. At-Large Election Methods May Remedy CVRA Violations**

20           There are at-large election methods that courts may order cities to use to  
21 remedy CVRA violations. (*Pico Neighborhood Ass'n v. City of Santa Monica*, 15 Cal.5th  
22 292, 317; 312 Cal. Rptr. 3d 319, 333; 534 P.3d 54, 66 (Cal. 2023) (“*Pico*”).)  
23 Ranked choice voting is one. (*Id.*, at footnote 8.)

24  
25           **B. To Show That an Election Method Violates The CVRA, A Plaintiff Must Provide**  
26           **a Comparison to a Lawful Alternative.**

27           In a CVRA action challenging an election method, the plaintiff must  
28 provide “proof that, under some **lawful** alternative electoral system, the protected class

1 would have the potential, on its own or with the help of crossover voters, to elect its  
2 preferred candidate.” (Pico, supra, 15 Cal.5th 292, 307-8 (2023), emphasis added.)  
3

4 **C. An unlawful election method cannot be a valid remedy**

5 Because courts may not require parties to engage in unlawful behavior, a  
6 court may not order the use of an unlawful election method as a remedy in a CVRA case.  
7

8 **D. Considering District-Based Election Methods Here Would Waste Resources**

9 Judicial proceedings consume time, energy, and other resources. Here it  
10 would accomplish nothing to spend such resources to consider an unlawful election  
11 method either in comparison to the status quo or as a potential remedy. Since district-  
12 based city council elections are unlawful in Burbank, it would be inefficient and a waste  
13 of resources to consider a district-based election method either in determining whether a  
14 CVRA violation exists or in considering remedies if a CVRA violation is found.  
15

16 **CONCLUSION**

17 To promote efficient case management, as a friend of the court, I suggest  
18 the court rule swiftly rule out consideration of district-based election methods in this  
19 case. District-based election methods lack probative relevance here and may not serve to  
20 remedy any violation that may be found here. It would be inefficient and waste resources  
21 to consider or allow consideration of any district-based election methods in this case.  
22

23 Respectfully Submitted,

24 

25 David A. Holtzman, M.P.H., J.D.  
26 March 5, 2025  
27  
28