

**B251793**

IN THE  
***Court of Appeal***  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FIVE

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JUAN JAUREGUI, et al.  
*Plaintiffs and Respondents,*

vs.

CITY OF PALMDALE,  
*Defendant and Appellant.*

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HONORABLE MARK V. MOONEY, DEPT. 68  
SUPERIOR COURT OF LOS ANGELES COUNTY  
L.A.S.C. No. BC483039

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**APPELLANT'S PRELIMINARY OPPOSITION  
TO FILING OF AMICUS BRIEF BY FAIRVOTE**

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TO BE FILED IN THE COURT OF APPEAL

APP-008

<p>COURT OF APPEAL, Second APPELLATE DISTRICT, DIVISION Five</p>	<p>Court of Appeal Case Number: B251793</p>
<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):                  Mitchell E. Abbott (SBN: 64990)                  Kyle H. Brochard (SBN: 293369)                  Richards, Watson &amp; Gershon                  355 S. Grand Avenue, 40th Floor, Los Angeles, CA 90071                  TELEPHONE NO.: (213) 626-8484 FAX NO. (Optional): (213) 626-0078                  E-MAIL ADDRESS (Optional): mabbott@rwglaw.com; kbrochard@rwglaw.com-                  ATTORNEY FOR (Name): Defendant, City of Palmdale</p>	<p>Superior Court Case Number: BC 483039</p>
<p>APPELLANT/PETITIONER: City of Palmdale                   RESPONDENT/REAL PARTY IN INTEREST: Juan Jauregui, et. al.</p>	<p>FOR COURT USE ONLY</p>
<p><b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b>                  (Check one): <input type="checkbox"/> INITIAL CERTIFICATE <input checked="" type="checkbox"/> SUPPLEMENTAL CERTIFICATE</p>	
<p><b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b></p>	

1. This form is being submitted on behalf of the following party (name): City of Palmdale

2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.  
 b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
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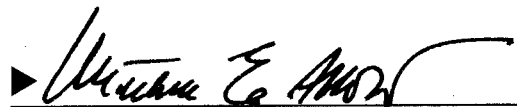
- (1)  
(2)  
(3)  
(4)  
(5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: January 21, 2014

Mitchell E. Abbott  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF PARTY OR ATTORNEY)

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CITY OF PALMDALE

**CITY OF PALMDALE'S PRELIMINARY OPPOSITION**  
**TO FILING OF AMICUS BRIEF BY FAIRVOTE**

The City of Palmdale opposes the application of FairVote to file an amicus brief in the pending appeal. Permitting the filing of the amicus brief, and the delay that would entail, threatens significant prejudice to the City under the circumstances of this case.

At issue in this appeal is the propriety of the trial court's injunction blocking the certification of the City's November 2013 election. That injunction has already precluded the successful two successful candidates from being sworn in, and has precluded one (non-incumbent African-American Fred Thompson) from taking office, which should have occurred more than a month ago. It has also forced another candidate, incumbent Laura Bettencourt, to remain in office when she did not seek re-election and no longer wishes to serve on the City Council.

Moreover, the City must declare and certify the election results, and swear in the new Council Members so that it can make appropriate committee assignments, name a mayor pro-tem, and take other steps to organize the administration of the Council. And, of course, the People of Palmdale are entitled to know who are their properly elected representatives, avail themselves of the right to a recount of the ballots cast, and potentially an election contest, if they are dissatisfied with the election results. The time for exercising these right runs from the certification of the election. (Elec. Code §§ 15620 & 16401.)

In recognition of the urgency that the issues presented herein, and the need to have prompt resolution of the status of the City's November 2013 election, the parties have agreed—and this Court has ordered—that the appeal warrants treatment as a preference matter. Pursuant to the Court's expedited briefing schedule, the appeal is fully briefed and merely awaits oral argument. This is consistent with Code of Civil Procedure § 44, which provides that "Appeals ... in contested election cases ... shall be given preference in hearing in the courts of appeal, and in the Supreme Court when transferred thereto. All these cases shall be placed on the calendar in the order of their date of issue, next after cases in which the people of the state are parties."

If the permission is granted to file the amicus brief, the City would wish to respond to the arguments therein. (Cal. R. Ct. 8.200(c)(6).) However, that would be a second-best alternative (and a distant second at that). The City is aware that the next scheduled oral argument dates for this panel are February 4 and 5—only two weeks away, and an unreasonably short amount of time for the City to have adequate time to brief in response to the proposed amicus, and the Court to have adequate time to consider the additional arguments raised. Thus, the result of allowing the amicus brief to be filed would likely be to further delay resolution of the issues presented by the appeal. That would only serve to further prejudice the City, the elected candidates, and the voters by delaying a decision on the legitimacy of the City's election. It is this type of harm to the public interest that has led so many

courts to refuse to enjoin an imminent, pending election in the first place—or the certification thereof—even when a given electoral practice is held to be unconstitutional. *See* Appellant’s Opening Brief at 19-29 (citing cases); Appellant’s Reply Brief at 18-28 (same). And it is harm that is not justified by any desire by FairVote, which has no more than an academic interest in this case, to present its views.

In light of the foregoing, the Court should exercise its discretion to deny FairVote’s request to file an amicus brief in this appeal.

Dated: January 21, 2014

Respectfully submitted,

Wm. Matthew Ditzhazy  
City Attorney, City of Palmdale  
Noel Doran  
Assistant City Attorney, City of Palmdale

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Marguerite Mary Leoni  
Christopher E. Skinnell

By:  \_\_\_\_\_

Mitchell E. Abbott

*Attorneys for Defendant and Appellant, City of Palmdale*

## CERTIFICATE OF CONFORMITY

In accordance with California Rules of Court, Rule 8.204 (c)(1), I certify under penalty of perjury that the City of Palmdale's Preliminary Opposition to Filing of Amicus Brief by Fairvote in the case of *Jauregui v. City of Palmdale*, does not exceed 14,000 words, including footnotes. According to the word count function on the word processing program I used, this brief contains 625 words.

Executed on January 21, 2014.

A handwritten signature in black ink, appearing to read "Mitchell E. Abbott", is written over a horizontal line.

Mitchell E. Abbott



**PROOF OF SERVICE**

In Re: APPELLANT'S REPLY BRIEF  
Case No.: B251793  
Caption: JUAN JAUREGUI, et al. v. L.A.S.C./ CITY OF PALMDALE  
Filed: IN THE COURT OF APPEAL, Second Appellate District, Division 5

I, Karen A. Eisenberg, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand, 40th Floor, Los Angeles, California. On January 21, 2014, I served the within document(s):

**APPELLANT'S PRELIMINARY OPPOSITION TO FILING OF AMICUS BRIEF BY  
FAIRVOTE**

- (BY MAIL) by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in this affidavit.
- (BY E-MAIL) By transmitting a true copy of the foregoing document(s) to the e-mail addresses set forth on the attached mailing list.

**SEE ATTACHED SERVICE LIST**

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

Executed on January 21, 2014

  
\_\_\_\_\_  
KAREN A. EISENBERG

**SERVICE LIST**

In Re: APPELLANT'S REPLY BRIEF  
Case No.: B251793  
Caption: JUAN JAUREGUI, et al. v. L.A.S.C./ CITY OF PALMDALE  
Filed: IN THE COURT OF APPEAL, Second Appellate District, Division 5

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