

1 **Robert Rubin, SBN 85084**
2 **robertrubinsf@gmail.com**
3 **LAW OFFICE OF ROBERT RUBIN**
4 **315 Montgomery St., 10th Floor**
5 **San Francisco, CA 94104**
6 **Telephone: 415-434-5118**

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7 **Belinda Escobosa Helzer, SBN 214178**
8 **bescobosahelzer@acusocal.org**
9 **Brendan Hamme, SBN 285293**
10 **bhamme@acusocal.org**
11 **ACLU FOUNDATION OF SOUTHERN CALIFORNIA**
12 **1851 E. First Street, Suite 450**
13 **Santa Ana, CA 92705**
14 **Telephone: 714-450-3962**
15 **Facsimile: 714-543-5240**

16 **Laboni Hoq, SBN 224140**
17 **lhoq@advancingjustice-la.org**
18 **Deanna Kitamura, SBN 162039**
19 **dkitamura@advancingjustice-la.org**
20 **ASIAN AMERICANS ADVANCING JUSTICE**
21 **1145 Wilshire Blvd., 2nd Floor**
22 **Los Angeles, CA 90017**
23 **Telephone: 213-977-7500**
24 **Facsimile: 213-977-7595**

25 **Sean A. Commons, SBN 217603**
26 **scommons@sidley.com**
27 **David R. Carpenter, SBN 230299**
28 **drcarpenter@sidley.com**
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013

Attorneys for Plaintiff
JONATHAN PAIK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CENTRAL JUSTICE CENTER

JONATHAN PAIK,
Plaintiff,

v.

CITY OF FULLERTON,
Defendant.

) Case No.

30-2015-00777673-CU-MC-CJC

) Judge Craig Griffin

) **COMPLAINT FOR VIOLATION OF**
) **CALIFORNIA VOTING RIGHTS ACT**

) **Complaint Filed: March 18, 2015**

1 **NATURE OF ACTION**

2 1. This action is brought by Plaintiff for declaratory and injunctive relief against
3 the City of Fullerton (“Defendant,” “Fullerton” or “City”) for its violation of the California Voting
4 Rights Act of 2001 (“CVRA”), California Election Code §§ 14025-14032. Because of the
5 prevalence of racially polarized voting in City elections, Fullerton’s imposition of an at-large method
6 of electing its City Council has resulted in vote dilution or abridgment of the rights of Asian
7 American voters, impairing their ability to elect candidates of their choice or to influence the
8 outcome of City elections. This electoral method has long denied the significant Asian American
9 community within Fullerton the ability to effectively participate in the City’s electoral process. The
10 CVRA was enacted to remedy precisely this kind of dilution and abridgment of rights of racial
11 minority groups, like the Asian American community in Fullerton.

12 2. Here, although Asian Americans in the City of Fullerton make up 23% of the
13 population and 20.9% of the citizen voting age population, no Asian American serves on Fullerton’s
14 City Council. This overall absence of any Asian American representatives on the City Council,
15 despite the fact that they were the preferred candidate of Asian American voters, reveals the lack of
16 meaningful access for Asian Americans to the political process in Fullerton that the CVRA was
17 enacted to remedy.

18 3. Jonathan Paik (“Plaintiff”) is a member of the Fullerton Asian American
19 community and brings this action to enjoin Defendant’s continued dilution and abridgment of Asian
20 American voting rights. Plaintiff seeks a declaration from this Court that Defendant’s imposition of
21 an at-large method of election violates the CVRA. Plaintiff also seeks a preliminary and permanent
22 injunction: (1) to prevent Defendant from imposing or applying in any future elections an at-large
23 method of election; and (2) that requires Defendant to implement district-based elections (in which
24 candidates from that district are elected by voters of that district), or other alternative relief tailored
25 to remedy Defendant’s violation of the CVRA.

26 **JURISDICTION AND VENUE**

27 4. This Court has jurisdiction over Plaintiff’s claims for declaratory and
28 injunctive relief under the CVRA, California Election Code § 14032.

1 11. None of the current members of Fullerton’s City Council is Asian American.
2 From 1887 (when Fullerton was founded) to the present, despite the fact that many Asian American
3 candidates have run for Council seats, only two Asian Americans have ever won election to the City
4 Council.

5 12. The northwest area of Fullerton is home to a substantial Asian American
6 population, including Plaintiff Jonathan Paik, and contains a majority of the Asian American CVAP.
7 The majority of the Latino community lives in the southern part of Fullerton and constitutes a
8 majority of the Latino CVAP. Whites live throughout the City, but are most concentrated in the
9 northern part of Fullerton, particularly the northeast.

10 **Fullerton’s Election System and Its Effect on Asian Americans**

11 13. Fullerton imposes an at-large election system for its City Council elections.
12 Unlike district elections, this system allows all eligible voters in the City to vote for each of the
13 candidates running for City Council. Any eligible voter may vote for any candidate, regardless of
14 where the voter or candidate resides.

15 14. The Fullerton City Council is comprised of five council members that serve
16 four-year staggered terms. The five council members elect a chair who serves as mayor. City
17 Council elections are held every two years in November of even numbered years. The Council is
18 responsible for approving all municipal programs and services, as well as making all local decisions.
19 The next scheduled City Council election is November 2016.

20 15. Elections in Fullerton, and in particular those for City Council, are
21 characterized by a pattern of racially polarized voting. Racially polarized voting occurs when there
22 is a difference in the choice of candidates or other electoral choices that are preferred by the majority
23 of voters in a protected class, as compared to the choice of candidates and electoral choices that are
24 preferred by other voters in the electorate. Cal. Elec. Code § 14026(e). Racially polarized voting
25 exists in Fullerton as to Asian American voters.

26 16. Because of the prevalence of racially polarized voting in Fullerton,
27 Defendant’s at-large election system dilutes and abridges the vote of the Asian American community
28 in Fullerton and impairs their ability to elect candidates of their choice or to influence the outcome

1 of City elections. For example, because of Defendant’s at-large election system, the majority of
2 Fullerton Asian American voters’ choices are diluted because they are overwhelmed by the racial
3 polarization of the vote – the white majority essentially precludes most Asian American voters’
4 choices from having any bearing or meaning in the election. As a result, Asian American voters in
5 Fullerton are prevented from achieving equal access to the political process whereas white voters
6 have dictated the outcome of every City Council election in Fullerton. Thus, Asian American voters
7 have greatly reduced influence relative to their proportion in the electorate. This dilution exists, and
8 will continue to exist, as long as Defendant’s at-large election system exists.

9 **Vote Dilution and Additional Probative Factors**

10 17. The use of an at-large election system has had a particularly negative effect on
11 Asian American voting strength in Fullerton because it is coupled with the area’s history of racial
12 and ethnic discrimination against Asian Americans, disparities in socio-economic status and
13 language abilities, and the use of electoral devices or other voting practices or procedures, which
14 provide further evidence of a violation of the CVRA. *See* Cal. Elec. Code § 14028(e).

15 18. There is a long history of discrimination against Asian Americans throughout
16 Orange County. Some of the first known Asian Americans to come to Orange County were Chinese
17 farm workers hired by German settlers in the mid 1800’s and, by the time Orange County separated
18 from Los Angeles County in 1873, there was already a strong anti-Asian American sentiment. In
19 1906, the city of Santa Ana ordered the fire department to burn down Chinatown, home to 200
20 Chinese people, because one Chinese man was suspected of having leprosy. Writing about the
21 incident, in keeping with the prevailing racist sentiment, the Los Angeles Times reported that the
22 “burned out chinks” would be compensated (although they were never provided more than trivial
23 compensation). In the early 1900’s, nativist groups campaigned with the slogan “Keep California
24 White,” pushing school segregation laws in order to keep members of the Asian American
25 community separated from white children. In addition, until the 1950’s, developers would not sell
26 individual properties to people of color, nor were they allowed to purchase beachfront properties.

27 19. This discrimination continued as the century progressed. In 1986, a California
28 Court of Appeals judge reversed a murder conviction because of the Orange County Deputy District

1 Attorney's *Batson* violations, discriminating against two potential jurors — one Vietnamese and one
2 Latino — on account of their race. Then, in 1992, Asian American youth and activists brought to
3 light the Fountain Valley Police Department's alleged practice of taking photos of Asian American
4 youth who were not arrested but were suspected of having gang ties because of their clothing.

5 20. In Fullerton, in 1995, a U.S. Department of Justice ("DOJ") investigation
6 found consistent racial discrimination against minorities in the police and fire department's hiring
7 practices between 1986 and 1993. The DOJ instructed the City to triple its minority hires,
8 particularly of black, Latino and Asian American candidates, within five years or face a civil rights
9 enforcement suit. Because the City failed to do so voluntarily, in 1997, the DOJ filed suit, resulting
10 in a settlement with the DOJ.

11 21. The discrimination experienced by the Asian American community extends
12 into Fullerton's election politics. In 1996, Julie Sa, one of only two Asian American candidates
13 elected to the Fullerton City Council, was repeatedly questioned by Fullerton residents about her
14 citizenship status during Council meetings. This questioning had overt racial underpinnings, as
15 another foreign born, but white, council-member, Jan Flory, originally from New Zealand, was not
16 subject to similar questioning. Indeed, one of the residents mocked Sa's accent during his
17 comments, stating, "To put it in English that you will all understand, especially you Ms. Sa: You no
18 sleep here, you no be on council." Then, in the 2014 race for the 65th Assembly District, which
19 includes Fullerton, Young Kim, a Korean-American, faced a non-Asian American opponent who,
20 during her campaign, disseminated campaign literature with the phrase "Not One of Us" next to
21 Kim's photo. This was roundly decried as inappropriate and racist.

22 22. The history of discrimination experienced by Asian Americans has had lasting
23 ramifications for the socio-economic status of the Asian American community. Today, in Fullerton,
24 Asian American residents are more likely to be living in poverty than white residents. In 2013, the
25 American Community Survey reported that in Fullerton, 17.8 percent of Asian residents were in
26 poverty that year compared to 12.7 percent of the white community. Similarly, the average per
27 capita income of a white Fullerton resident was \$39,165— almost \$9,000 more than the average per
28 capita income of an Asian American Fullerton resident (\$30,321).

1 voting strength or otherwise discriminate against Asian Americans, or other alternative relief tailored
2 to remedy Defendant's violation of the CVRA;

3 4. Grant Plaintiff's attorneys' fees and costs of litigation under California
4 Elections Code § 14030, California Civil Procedure Code 1021.5, and/or other applicable law; and

5 5. Grant Plaintiff such further relief as the Court may deem just and proper.

6 Dated: March 18, 2015

ACLU FOUNDATION OF SOUTHERN CALIFORNIA

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9 By: 

10 Belinda Escobosa Helzer, CA Bar No. 214178
11 Attorneys for Plaintiff Jonathan Paik
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