



SECRETARY OF STATE  
**KEVIN SHELLEY**  
STATE OF CALIFORNIA

August 21, 2003

**Via Electronic Mail and Overnight Delivery**

Joseph D. Rich  
Chief, Voting Section  
Civil Rights Division  
Room 7254 - NWB  
Department of Justice  
1800 G St., N.W.  
Washington, DC 20006

RE: Submission 2003-2714

Dear Mr. Rich:

I write to follow up on your letter dated August 19, 2003, and our conversation on August 20, 2003, about California's request for expedited preclearance of the October 7, 2003 Special Statewide Election.

In your August 19, 2003 letter, you precleared the gubernatorial recall that will be considered at the October 7 election. In connection with the two measures that will also be considered at that election – one of which is the subject of an action brought under Section 5 of the Voting Rights Act (*Salazar v. Monterey*) – you sought clarification about “whether the State of California intended to submit [changes regarding the ballot measures] in its submission of August 4 or whether it will make a subsequent submission.”

In our August 20 conversation, you explained that your request for clarification stemmed from the *Salazar* court's order granting a limited temporary restraining order, specifically the statement in the court's order that the “Defendants concede that the state's decision to place Proposition 54 on the same statewide ballot as the vote on the recall of the Governor is a change in voting procedures within the meaning of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.”

As we explained during our conversation, our August 4, 2003 letter to you specifically referred to the two ballot measures that will appear on the October 7 ballot. We included the text of the

**EXHIBIT A**

measures and related information as well as a copy of the *Salazar* complaint, which set forth the specific changes in the ballot measure procedures – including truncating statutorily-imposed deadlines – that the plaintiffs contended required your preclearance. As you note, it may now be the court's view that not only these ancillary changes – but also the nondiscretionary, constitutional placement of the two measures on the October 7, 2003 ballot – require preclearance. Based solely on this preliminary statement by the court, and out of an abundance of caution, we again seek preclearance, specifically, of the placement of the two ballot measures on the special statewide election, as well as the specific deadline changes of the type that the *Salazar* plaintiffs identify.

In accordance with your August 20 direction that we provide additional materials to supplement the documents we have already provided you, and in order to assist in ensuring that there is full compliance with both the letter and the spirit of the Voting Rights Act, we provide the additional following information to assist you in finalizing your expedited preclearance.

### **I. Background**

As indicated in materials provided earlier with respect to this submission, on July 24, 2003, California Lieutenant Governor Cruz Bustamante proclaimed a special statewide election to be held on October 7, 2003 for the purpose of determining whether Governor Gray Davis shall be recalled and to elect a successor should the Governor be recalled. (*See Exhibit 1 [hard copy only]-Proclamation.*) The proclamation was pursuant to Sections 15 and 17 of Article II of the Constitution of California. (*See Exhibit 2-Constitutional Provisions.*)

Pursuant to California Elections Code section 9040, Proposition 53 was placed on the October 7, 2003 ballot. (*See Exhibit 3 –Section 9040.*) Pursuant to Section 8(c) of Article II of the Constitution of California, Proposition 54 was placed on the October 7, 2003 ballot. (*See Exhibit 4-Constitutional Provision.*) The propriety of placing the two measures on the special election ballot was challenged in a Petition for Writ of Mandate filed with the California Supreme Court (*Eisenberg v. Shelley*, S117763). The Court denied the petition summarily on August 7, 2003, essentially affirming the correctness of the Secretary of State's non-discretionary placement of the measures on the October 7, 2003 ballot. In response to inquiries from your office, a copy of the opposition brief filed by the Secretary of State in that case has previously been provided.

It should be noted that Proposition 53 was adopted by the Legislature on September 18, 2002, triggering its placement on the "...first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature." (Elections Code section 9040 [Exhibit 3].)

The request for Title and Summary with respect to Proposition 54 was filed with the California Attorney General on September 28, 2001. Petition circulation began November 20, 2001. It was qualified on July 15, 2002, triggering its placement on the next "special statewide election." (Section 8(c) of Article II of the *California Constitution*. *See Exhibit 5 [hard copy only]-Media Release Announcing Qualification.*)

Proposition 54 has been the subject of intense media attention, in both English and Spanish-language media, since the early days of its efforts to qualify for the ballot.

The Secretary of State's primary constitutional role with respect to the October 7, 2003 election is the publication and distribution of the California Ballot Pamphlet. In order to comply with the California state constitutional provisions referenced above, the Secretary of State has been required to adjust certain dates that are designed to facilitate administration of the process for producing and distributing the Ballot Pamphlet. These dates are determined either administratively or statutorily. The dates adjusted are set forth in the attached table. (See Exhibit 6-Table of Dates.) The adjustments are specifically tailored to comply with the state constitutional provisions referenced above as well as with the spirit of the administrative and statutory deadlines utilized in regular elections.

## **II. Specific Date Adjustments**

### **(a) Election Proclamation**

Elections Code section 12000 provides for the Governor issuing a proclamation calling statewide elections at least 148 days prior to the election. However, Section 15(a) of Article II of the *California Constitution* provides for the calling of recall elections between 60 and 80 days from the date of certification of sufficient signatures on a recall petition. The *California Constitution* clearly preempts the statutory provision, as confirmed by the denial of the petition for writ in *Eisenberg v. Shelley*, referenced above.

### **(b) News Release Inviting Arguments Regarding Initiative Measures**

Elections Code section 9061 provides for issuing a press release inviting argument to be voted upon at least 120 days prior to the election. Since the placement of initiative measures on the ballot, however, is determined by the *California Constitution*, the *California Constitution* clearly preempts the procedural guideline set forth in the statute. Argument was solicited just one day after the issuance of the election proclamation by Lieutenant Governor Bustamante. (See Exhibit 7.)

### **(c) Procedural Deadlines for Submission of Materials for Ballot Pamphlet**

The deadlines for return of arguments and other submissions by the Attorney General, Legislative Analyst and Legislative Counsel are set by the Secretary of State based on administrative needs, rather than a specific statutory deadline. Materials were submitted in accordance with that schedule. (See Exhibit 6.)

### **(d) Public Examination/Challenge of Ballot Labels and Ballot Pamphlet Materials**

Elections Code section 13282 provides for a 20 day public examination/challenge period for "ballot labels," the actual questions that appear on some ballots. Based on the date of the Proclamation, the recommended period was reduced by 8 days but in actuality, there was no challenge during the 20 day period that began 71 days prior to and ended 51 days prior to the election. Electors who allege that the ballot labels are in error have the right to seek a writ of mandate challenging the labels pursuant to Elections Code section 13314.

Elections Code section 9092 and Government Code section 88006 require a 20 day public examination/challenge period prior to printing the state ballot pamphlet. That 20 day public examination/challenge period was not reduced and is ongoing. (It will end on August 31, 2003.) One lawsuit challenging the Title and Summary prepared by the Attorney General with respect to Proposition 54 has already resulted in a court order modifying the language.

**(e) Copy Sent to Office of State Printing**

Elections Code section 9082 provides that final copy of the ballot pamphlet be sent to the Office of State Printing at least 40 days prior to the date required for delivery to elections officials provided for in Section 9094. In actuality, there is currently no deadline for delivering ballot pamphlets to elections officials other than a practical one of delivering ballots pamphlets in time for elections officials to mail pamphlets to certain voters who register after 60 days prior to the election. This is because Elections Code section 9094(b), which provides for delivery of pamphlets to specified counties 45 days prior to the election, does not currently apply to any county. This subdivision applies only to counties that do not "utilize data processing equipment to store the information set forth in the affidavits of registration" and currently no county meets that definition. All counties currently "utilize data processing equipment to store the information."

**(f) Completion of Mailing of Ballot Pamphlets by State**

With respect to the ballot pamphlet concerning the October 7, 2003 statewide special election, the critical deadline is the completion of the mailing of the pamphlet. The Office of State Printing has assured the Secretary of State that as long as the final copy is delivered on or before the 35<sup>th</sup> day prior to the election, the printing and mailing of ballot pamphlets will be completed by the statutory deadline of 21 days prior to the election, including translated versions of the ballot pamphlet. (Elections Code section 9094(a).) Final copy will be delivered to the Office of State Printer 37 days prior to the election.

However, to ensure that voters receive their pamphlets as early as possible, the Secretary of State is providing for the sending of the pamphlets by first class mail rather than by bulk rate. Thus, many voters are likely to receive their pamphlets earlier than they would at regular elections.

**(g) Completion of Mailing of Ballot Pamphlets by Counties**

Elections Code section 9094(c) requires that counties mail ballot pamphlets to voters who register between 60 days and 15 days prior to the election. The deadline for completing that mailing is 10 days prior to the election. No changes are proposed with respect to this deadline.

The abbreviated timeframe for the October 7, 2003 election obviously poses considerable challenges. Although we intend to devote extraordinary efforts to ensuring a smooth election, the October 7, 2003 election is unprecedented and problems may arise. In an attempt to mitigate problems caused by the shortened timeframe, we are taking the following steps:

- (a) All materials proposed to be contained in the ballot pamphlet have been posted on the Secretary of State's website at [www.ss.ca.gov](http://www.ss.ca.gov) since August 11, 2003.
- (b) The 20 day public examination/challenge period for the ballot pamphlet materials has not been reduced. It began August 11, 2003, and will not conclude until August 31, 2003.
- (c) The ballot pamphlet material that is translated into Spanish (and other languages) will be posted on the website of the Secretary of State.
- (d) All ballot pamphlets will be mailed by the deadlines for completing the mailing. (Elections Code sections 9094(a) and 9094(c).) This will include ballot pamphlets translated into Spanish and other languages. The ballot pamphlets will be mailed first class, rather than by bulk rate, in order to help ensure their early arrival.
- (e) The Secretary of State is meeting with officials of the United States Postal Service to ensure expedited delivery of all election mail, including the state and local ballot pamphlets as well as absentee ballots.
- (f) The Secretary of State produces an audio version of the state ballot pamphlet for persons who are either visually impaired or who are not comfortable reading to obtain information. For the first time this audio version will be recorded and be made available in Spanish.

I trust that this additional information you required will enable you to quickly finalize your expedited preclearance. Thank you.

Sincerely,

**RANDY RIDDLE**  
Chief Counsel

**Enclosures:**

- Exhibit 1 Proclamation [hard copy only]
- Exhibit 2 Sections 15 and 17 of Article II of *State Constitution*
- Exhibit 3 California Elections Code section 9040
- Exhibit 4 Section 8(c) of Article II of *State Constitution*
- Exhibit 5 Media Release Announcing Qualification of Proposition 54 [hard copy only]
- Exhibit 6 Table of Dates
- Exhibit 7 Press Release Inviting Argument [hard copy only] (referenced in Exhibit 6)



STATE OF CALIFORNIA  
LIEUTENANT GOVERNOR CRUZ M. BUSTAMANTE

*Proclamation*

**Special Election Proclamation**

I, CRUZ M. BUSTAMANTE, Lieutenant Governor of the State of California, by the power and authority vested in me by Sections 15 and 17, Article II of the Constitution of the State of California, do hereby proclaim and order that a special statewide election shall be held on the 7<sup>th</sup> day of October, 2003, to determine whether Gray Davis, Governor of the State of California, shall be recalled, and if the majority vote on the question is to recall, to elect a successor.



*IN WITNESS WHEREOF*, I hereunto set my hand and have caused the Great Seal of the State of California to be affixed on this 24<sup>th</sup> day of July, of the Year Two Thousand and Three.

*Cruz M. Bustamante*  
CRUZ M. BUSTAMANTE  
Lieutenant Governor of California

ATTEST:

*Kevin Shelley*  
KEVIN SHELLEY  
Secretary of State

**EXHIBIT 1**

**CALIFORNIA CONSTITUTION**

**ARTICLE 2 VOTING, INITIATIVE AND REFERENDUM, AND  
RECALL**

**SEC. 15. (a) An election to determine whether to recall an officer and, if appropriate, to elect a successor shall be called by the Governor and held not less than 60 days nor more than 80 days from the date of certification of sufficient signatures.**

**(b) A recall election may be conducted within 180 days from the date of certification of sufficient signatures in order that the election may be consolidated with the next regularly scheduled election occurring wholly or partially within the same jurisdiction in which the recall election is held, if the number of voters eligible to vote at that next regularly scheduled election equal at least 50 percent of all the voters eligible to vote at the recall election.**

**(c) If the majority vote on the question is to recall, the officer is removed and, if there is a candidate, the candidate who receives a plurality is the successor. The officer may not be a candidate, nor shall there be any candidacy for an office filled pursuant to subdivision (d) of Section 16 of Article VI.**

**SEC. 17. If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively.**

**Exhibit 2**

## **CALIFORNIA ELECTIONS CODE**

**9040.** Every constitutional amendment, bond measure, or other legislative measure submitted to the people by the Legislature shall appear on the ballot of the first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature.

**CALIFORNIA CONSTITUTION  
ARTICLE 2 VOTING, INITIATIVE AND REFERENDUM,  
AND RECALL**

**SEC. 8.**

**(c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.**

# NEWS



# RELEASE

## *California Secretary of State Bill Jones*

BJ0:65

FOR IMMEDIATE RELEASE  
Monday, July 15, 2002

Contact: Shad Balch  
Alfie Charles  
916/653-6575

### **Jones Announces Qualification of First Initiative for the March 2, 2004 Primary Election Ballot**

*A Full Check of All Petition Signatures Determines that there are 694,586 Valid Signatures to Qualify "Classification by Race, Ethnicity, Color or National Origin" Initiative Constitutional Amendment" for the Ballot*

SACRAMENTO --- Secretary of State Bill Jones today announced that a proposed initiative constitutional amendment titled "*Classification by Race, Ethnicity, Color or National Origin*" has qualified to appear on the March 2, 2004 primary election ballot.

The official title and summary of the proposed initiative constitutional amendment prepared by the Attorney General is as follows:

**CLASSIFICATION BY RACE, ETHNICITY, COLOR OR NATIONAL ORIGIN. INITIATIVE CONSTITUTIONAL AMENDMENT.** Effective January 1, 2005, prohibits state, local governments from using race, ethnicity, color or national origin to classify current or prospective students, contractors, or employees in public education, contracting or employment operations. Does not prohibit classification by sex. Prohibition also covers persons subject to other operations of government unless Legislature finds compelling state interest, authorizes by two-thirds of each house, and Governor approves. "Classifying" defined as separating, sorting, or organizing persons or personal data. Exemptions include: law enforcement descriptions; prisoner and undercover assignments; action taken to maintain federal funding.

Because the measure failed to qualify for the ballot through the random sample verification process, Jones ordered a full check of all petition signatures on May 30, 2002. By law, county election officials had thirty working days, or until July 12, 2002, to complete the full check of signatures. The deadline for measures to qualify for the November 5, 2002 general election ballot was June 27, 2002.

The proponent, Mr. Kevin Nguyen, was required to collect 670,816 signatures of registered voters for his measure. He submitted 983,761 of which 694,586 were valid. Mr. Nguyen can be reached at (916) 444-2278.

-30-

**Exhibit 5**

**October 7, 2003, Special Election Timeline**

<b><u>Task</u></b>	<b><u>Regular Deadlines</u></b>	<b><u>Special Deadlines</u></b>
Election Proclamation	E-148 <sup>1</sup>	E-75 <sup>2</sup>
Argument News Release	E-120 <sup>3</sup>	E-74 <sup>4</sup>
Arguments Due	E-119 <sup>5</sup>	E-68 <sup>6</sup>
Selection/Exchange Arguments	E-116 <sup>7</sup>	E-67 <sup>8</sup>
Numbering of Measures	E-113 <sup>9</sup>	E-74 <sup>10</sup>
Attorney General, Legislative Analyst, Legislative Counsel Materials	E-109 <sup>11</sup>	E-61 <sup>12</sup>
Rebuttals, 50-word summary	E-109 <sup>13</sup>	E-61 <sup>14</sup>
Political Party Statements	E-109 <sup>15</sup>	E-61 <sup>16</sup>
Public Display	Ballot labels Whole BP	E-105 to E-85 <sup>17</sup> E-105 to E-85 <sup>19</sup>
		E-71 to E-59 <sup>18</sup> E-57 to E-37 <sup>20</sup>

<sup>1</sup> Elections Code section 12000.

<sup>2</sup> Section 15(a), Article II of California Constitution.

<sup>3</sup> Administratively determined for legislative measures. Elections Code section 9061 for initiatives.

<sup>4</sup> The press release soliciting argument was issued 1 day following the Proclamation. (See Exhibit 7.)

<sup>5</sup> Administratively determined.

<sup>6</sup> No change from 5 day period for submitting argument.

<sup>7</sup> Administratively determined.

<sup>8</sup> Administratively determined.

<sup>9</sup> Administratively determined.

<sup>10</sup> Administratively determined.

<sup>11</sup> Administratively determined.

<sup>12</sup> Administratively determined.

<sup>13</sup> Elections Code section 9069 requires exchange of arguments within 5 days. Deadlines for providing rebuttals are administratively determined.

<sup>14</sup> No change from procedure at regular election in terms of Elections Code section 9069.

<sup>15</sup> Administratively determined.

<sup>16</sup> Administratively determined.

<sup>17</sup> Elections Code section 13282.

<sup>18</sup> Administratively determined based on date of Proclamation.

<sup>19</sup> Elections Code section 9092 and Government Code section 88006 require a 20 day public examination/challenge period prior to printing of state ballot pamphlet.

<sup>20</sup> 20 day public examination/challenge maintained.

On Press	E-85 <sup>21</sup>	E-37 <sup>22</sup>
Ballot Pamphlets to Specified Counties	E-45 <sup>23</sup>	E-33 <sup>24</sup>
Begin Mailing	E-40 <sup>25</sup>	E-32
Complete SOS Mailing	E-21 <sup>26</sup>	E-21 <sup>27</sup>
Counties Complete Mailing	E-10 <sup>28</sup>	E-10 <sup>29</sup>

<sup>21</sup> Elections Code section 9082 provides for submitting copy of the state ballot pamphlet to the Office of State Printing 40 days prior to the date that ballot pamphlets must be delivered to specified elections officials (45 days) pursuant to Elections Code section 9094. The officials specified are those without data processing equipment to store voter registration affidavit information. In those counties, county officials rather than the Secretary of State is required to send out the ballot pamphlets and the delivery of ballot pamphlets makes that local mailing possible. However, every county today utilizes data processing equipment. The 45 day requirement, therefore, is not relevant since the Secretary of State provides the ballot pamphlets to all voters who register at least 60 days prior to the election. The Office of State Printing indicates that it can complete the printing and mailing as indicated below if it receives the copy by 35 days prior to the election.

<sup>22</sup> Office of State Printing has assured the Secretary of State that it can complete the printing and mailing of ballot pamphlets, including translated pamphlets, to voters who register at least 60 days prior to the election by the deadline set forth in Elections Code section 9094(a) (21 days prior to the election) if it receives the final text by 35 days prior to the election. The Secretary of State will provide the final text to the Office of State Printing 37 days prior to the election and will have the ballot pamphlets mailed First Class rather than bulk mail to expedite their receipt by voters.

<sup>23</sup> Elections Code section 9094(b) Currently this provision does not apply to any county in California.

<sup>24</sup> Based on date of submission to Office of State Printing. There is currently no requirement that ballot pamphlets be provided in any California county at least 45 days prior to the election. The Secretary of State does provide ballot pamphlets to counties for mailing to voters who register after the 60<sup>th</sup> day before the election. The counties must mail those to such voters no later than 10 days before the election.

<sup>25</sup> Elections Code section 9094(a). The provision provides for mailing to "begin." The critical date is when mailing must be completed, which is 21 days prior to the election.

<sup>26</sup> Elections Code section 9094(a).

<sup>27</sup> Elections Code section 9094(a). No change in completion of mailing date. However, since the ballot pamphlets will be mailed First Class rather than bulk rate, many voters are likely to receive pamphlets (including translated pamphlets) sooner than they would with respect to a regular election.

<sup>28</sup> Elections Code section 9094(c). Counties must mail ballot pamphlets to specified voters at least 10 days prior to the election.

<sup>29</sup> Elections Code section 9094(c). No change in mailing deadline.



# NEWS RELEASE

CALIFORNIA SECRETARY OF STATE KEVIN SHELLEY

KS03:054

FOR IMMEDIATE RELEASE  
Friday, July 25, 2003

Contact: Terri M. Carbaugh  
Doug Stone  
916/653-6575

## **Secretary of State Kevin Shelley Assigns Proposition Numbers to Two Ballot Measures Certified for the Statewide Special Election** *Invites Public to Submit Ballot Arguments, For or Against Measures, by July 31, 2003*

SAN FRANCISCO — Secretary of State Kevin Shelley assigned proposition numbers to the two measures that will appear on the October 7, 2003 Statewide Special Election ballot. Listed below are the measures and assigned numbers:

Proposition 53      Infrastructure: Finance.  
ACA 11 (2002)

Proposition 54      Classification By Race, Ethnicity, Color or National Origin.  
Initiative Constitutional Amendment.

Secretary Shelley also invites interested California voters to submit arguments for or against any of the ballot measures to the Secretary of State's office.

Argument submissions may not exceed 500 words and should be typed double-spaced. The deadline to submit ballot arguments is July 31, 2003 by 5:00 p.m. The arguments may be hand delivered or faxed to the Secretary of State's Elections Division at (916) 653-3214. However, original copies must be received within 72 hours of the deadline. Rebuttals to the arguments are due by August 7, 2003, at 5:00 p.m. A maximum of 250 words may be used for the rebuttal argument.

The two measures along with any arguments for or against will be published in the Voter Information Guide. The Voter Information Guide will be available for public examination during the ballot pamphlet public display period, August 11<sup>th</sup> through August 31, 2003.

-30-

## Exhibit 7