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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 AURELIO SALAZAR, JUAN
15 MARTINEZ, and BILL MELENDEZ,

16 Plaintiffs,

17 v.

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19 MONTEREY COUNTY, CALIFORNIA;
20 STATE OF CALIFORNIA; KEVIN
21 SHELLEY, CALIFORNIA
22 SECRETARY OF STATE,

23 Defendants.

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AND RELATED ACTION.

Case No. 03-03584-JF (HRL)
[Related to Case No. 03-3658-JF)

**OPPOSITION TO APPLICATION
FOR TEMPORARY
RESTRAINING ORDER**

DATE: AUGUST 15, 2003
TIME: 9:00 A.M.
COURTROOM: 3

THE HONORABLE JEREMY FOGEL,
PRESIDING

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1 **INTRODUCTION**

2 Plaintiffs seek to postpone the October 7, 2003, special statewide recall
3 election on the ground that it has not receive “preclearance” under the Voting Rights Act.
4 Plaintiffs’ contention is not well taken and fails at the outset. Defendant Secretary of
5 State sought the required preclearance on behalf of Monterey, Merced, Yuba and Kings
6 counties within days of the Lieutenant Governor’s selection of October 7, 2003, as the
7 date for the special statewide election. The exigencies of the situation – in which it was
8 not known whether the state would be required to hold the election until hours before the
9 date was set – did not allow for an earlier clearance request. The matter is now in the
10 hands of the U.S. Attorney General, who anticipates deciding the request “well before”
11 the October election. On this basis alone, the temporary restraining order should be
12 denied.

13 Moreover, the requested temporary restraining order should not issue for a
14 second reason. The purpose of a temporary restraining order is to maintain the status
15 quo, not to grant plaintiffs relief on the merits. Yet the temporary restraining order
16 plaintiffs seek would do just that. Under the abbreviated elections schedule sanctioned
17 by state law, a delay in preparations will irrevocably cause the postponement of the
18 election, even if the U.S. Attorney General ultimately grants preclearance in the coming
19 weeks. Consequently, the Court should deny the temporary restraining order.

20 **STATEMENT OF THE CASE**

21 On August 1, 2003, the *Salazar* plaintiffs filed a Complaint for Declaratory
22 and Injunctive Relief alleging the Secretary failed to obtain preclearance, under Section
23 5 of the Voting Rights Act, 42 U.S.C. § 1973c, for changes in the coming special
24 statewide election at which a proposed initiative, the “Classification by Race, Ethnicity,
25 Color or National Origin,” Initiative Constitutional Amendment (Proposition 54), will be
26 presented to California’s electors. The *Salazar* plaintiffs allege that Section 5 is violated
27 by the California Elections Code provisions requiring that Proposition 54 be placed on
28 the October 7, 2003, ballot. Specifically, plaintiffs claim Section 5 is violated because

1 Proclamation calling for the election to be held on October 7, 2003, the last Tuesday
2 available for the election to be held under Article II, section 15 of the California
3 Constitution. *Id.*

4 Calling the special election triggered the nomination process for candidates
5 who wished to succeed the Governor, in the event he is recalled. Candidates had an
6 extremely abbreviated time to obtain nomination signatures and pay a filing fee under the
7 compressed time frames required by this special recall election. All candidate documents
8 were filed between July 24 and August 9, 2003. The candidate nomination process is
9 now complete. Mott-Smith Decl., ¶ 3.

10 Time is of the essence. Every day that election processes are delayed is a
11 day lost that cannot be recovered. Elections Code section 11381 requires the Secretary of
12 State, not less than 55 days before the recall election, to deliver to county election
13 officials a certified list of candidates qualified to appear on the ballot at the recall
14 election. The 55th day prior to the October 7, 2003, special statewide election is August
15 13, 2003. County election officials are already typesetting their ballots and will make
16 their final changes once the certified list of candidates is distributed on August 13, 2003.
17 At that point the ballots will go to print.

18 In order for the counties to ensure they have ballots ready for the October
19 7th election, county election officials must begin the process of printing their ballots
20 immediately upon receipt of the certified list of candidates, particularly because there are
21 only a small number of approved printers for printing ballots for all of the counties in
22 California. Dozens of ballot styles must be prepared to comply with the candidate
23 rotation requirements of the Elections Code. Any delay at this point threatens the
24 holding of the special recall election. Mott-Smith Decl., ¶ 4.

25 Overseas ballots must be mailed immediately in order to allow for
26 sufficient time for the ballots to be returned before election day and in order to
27 substantially comply with Elections Code section 3103's requirement that they be mailed
28 beginning on the 60th day before the election. Mott-Smith Decl., ¶ 5.

1 Absentee ballots may be cast beginning September 8, 2003 (29 days before
2 the election). Counties have already had to reduce their ballot printing time by 13 days
3 and face extraordinary challenges to provide the numerous required ballot types in a
4 timely manner so that all eligible voters can participate in the special recall election. Any
5 delay in the process at this point would threaten to make it impossible to have ballots
6 available for the election. Mott-Smith Decl., ¶ 6.

7 The 20-day public display period required by Elections Code section 9092
8 for the state ballot pamphlet runs from August 11 through August 31, 2003. Any
9 challenges to the contents of the ballot pamphlet must be made during this 20-day period.
10 The contents of the ballot pamphlet include Propositions 53 and 54, candidate statements
11 for replacement candidates for Governor, and information on the recall. Mott-Smith
12 Decl., ¶ 8.

13 The ballot pamphlet must go to print at 5:00 p.m. on Sunday, August 31,
14 2003, in order that ballot pamphlets can be mailed to the household of every registered
15 voter not later than September 16, 2003, in order for it to be received prior to the October
16 7th election date, as required by Elections Code section 9094. Mott-Smith Decl., ¶ 9.

17 On August 4, 2003, the Secretary sent a request on behalf of Monterey (as
18 well as Merced, Yuba and Kings counties^{3/} who are not parties to this action) to the U.S.
19 Attorney General for expedited preclearance under Section 5 of the Voting Rights Act.
20 In this Request the Secretary of State advised the U.S. Attorney General of the pendency
21 of this lawsuit. Mott-Smith Decl., ¶ 7, and Ex. A. On August 11, 2003, the Secretary
22 advised the U.S. Attorney General of *Oliverrez*. Mott-Smith Decl., ¶ 7, and Ex. B. On
23
24

25 3. The “applicable date”—that is, “the date used to determine coverage”—for
26 Monterey and Yuba Counties is November 1, 1968. 28 C.F.R., Part 51, subpart H,
27 Appendix to Part 51. The applicable date for Kings, Merced, and Yuba Counties is
28 November 1, 1972. Yuba County has two applicable dates because it has “been
determined on more than one occasion to be covered under Section 4(b)” of the Voting
Rights Act. *Id.*

1 August 13th and 14th, the Secretary submitted additional information regarding the
2 Request. Mott-Smith Decl., ¶ 7.

3 The U.S. Department of Justice is expediting the request and anticipates
4 issuing a decision on the request “well before” the October 7th election. Lopez Decl., ¶
5 2. In the event the U.S. Attorney General denies the preclearance, the recall election will
6 be moved to March 2004. Mott-Smith Decl., ¶ 11. And if the U.S. Attorney General
7 takes no action on the preclearance request, it will be deemed approved on October 3,
8 2003, (28 C.F.R. § 51.1(a)(2)), i.e., prior to the recall election.

9 NOTICE OF PENDENCY

10 As identified in defendant’s Notices of Pendency, there are several cases
11 pertaining to the October 7th election that raise issues related or similar to those
12 presented here. See, *Eisenberg v. Shelley* [Cal. Supreme Court Case No. 117763];^{4/}
13 *Davis, et al. v. Shelley, et al.* [Cal. Supreme Court Case No. S117921];^{5/} and *Takash, et*
14 *al. v. Shelley*, [Sacramento Superior Court Case No. 03CS01147].^{6/} On August 7, 2003,
15 the California Supreme Court summarily denied the Eisenberg and Davis petitions. The
16 *Takash* petition is pending and a TRO hearing has been set for August 14, 2003.

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20 4. In *Eisenberg* the petitioner asked the California Supreme Court to prohibit the
21 Secretary from submitting Proposition 54 to the voters at the October special statewide
22 election.

23 5. The *Davis* petitioners asked the California Supreme Court to postpone the
24 recall election until the next general election scheduled for March 2, 2004.

25 6. The Secretary is the sole respondent in *Takash*, which was filed on August 3,
26 2003. Like the *Salazar* Plaintiffs, the *Takash* Petitioners allege the California Elections
27 Code establishes “mandatory time lines” having “the effect of setting up a minimum
28 period of focused voter debate for those propositions being presented.” Both the *Salazar*
and *Takash* plaintiff seek declaratory, preliminary and permanent relief to place
Proposition 54 on the March 2, 2004, ballot. And both sets of plaintiffs are represented
by the Mexican American Legal Defense and Educational Fund.

1 **ARGUMENT**

2 **A. GRANTING A TEMPORARY RESTRAINING ORDER WOULD BE**
3 **IMPROVIDENT BECAUSE A PRECLEARANCE REQUEST IS**
4 **PENDING BEFORE THE UNITED STATES DEPARTMENT OF**
5 **JUSTICE**

6 Section 5 of the Voting Rights Act provides that “no person shall be denied
7 the right to vote for failure to comply” with “any voting qualification or prerequisite to
8 voting, or standard, practice, or procedure with respect to voting different from that in
9 force or effect” on the applicable date for that jurisdiction. Defendant Monterey County^{7/}
10 is one of only four California counties that are covered jurisdictions under Section 5.

11 The U.S. Attorney General is currently considering the Secretary of State’s
12 preclearance request. Because of that pending request, it would be improvident for the
13 Court to issue a temporary restraining order (TRO) at this time. Temporarily restraining
14 pre-election actions such as ballot preparation will, for all practical purposes, render the
15 counties unable to conduct the recall election on October 7, 2003, even if the Attorney
16 General grants preclearance in the coming weeks. In other words, the TRO plaintiffs
17 seek would operate to grant them full relief on the merits. This is not the function of a
18 TRO.^{8/}

19 Deferring the question of preliminary relief until the Attorney General has
20 issued his decision – particularly since the decision will issue on an expedited basis – is
21 consistent with the Supreme Court’s Section 5 jurisprudence affording deference to the
22 Attorney General’s interpretation of the requirements of Section 5. “Subject to certain

23 7. The “applicable date” for Monterey is November 1, 1968. 28 C.F.R., Part 51,
24 subpart H, Appendix to Part 51.

25 8. It is well settled Ninth Circuit law that where, as here, “a party seeks
26 mandatory preliminary relief that goes well beyond maintaining the status quo *pendente*
27 *lite*, courts should be extremely cautious about issuing a preliminary injunction.” *Stanley*
28 *v. University of Southern California*, 13 F.3d 1313, 1319 (9th Cir. 1994) quoting *Chalk v.*
United States Dist. Court, 840 F.2d 701, 704 (9th Cir. 1988).

1 limitations,” the Supreme Court “traditionally afford[s] substantial deference to the
2 Attorney General’s interpretation of § 5 in light of [his] ‘central role . . . in formulating
3 and implementing’ that section.” *Lopez v. Monterey County*, 525 U.S. 266, 281 (1999)
4 [*Lopez II*], quoting *Dougherty County Board of Education v. White*, 39 U.S. 32 (1978)
5 and citing illustratively, *NAACP v. Hampton County Election Commission*, 470 U.S. 166,
6 178-179 (1985). Premature issuance of preliminary relief in this case will render the
7 Attorney General’s ultimate decision meaningless.

8 For these reasons, the Court should defer plaintiff’s Ex Parte Application
9 while the Request is pending.^{9/} *Accord*, Local Rule 3-13 (requiring parties to notify the
10 Court of the pendency of other actions or proceedings in order to “avoid conflicts,
11 conserve resources and promote an efficient determination of the action.”).

12 **B. PLAINTIFFS INAPPROPRIATELY SEEK A TRO THAT WOULD**
13 **POSTPONE THE ENTIRE STATEWIDE ELECTION**

14 It is undisputed that California is not a covered jurisdiction under the
15 Voting Rights Act. See, *Lopez II*, 525 U.S. at 268-69. That fact is crucial and must (in
16 addition to the pending Request) be taken into account when deciding if the type of
17 extraordinary relief plaintiffs’ seek as to Monterey County – but that, realistically, would
18 affect all of California’s 58 counties – is warranted in this case.

19 Plaintiffs improperly ask the Court to look at Monterey County in a
20 vacuum and to ignore the true effect the issuance of the requested TRO would have in
21 this case – thoroughly disrupting the entire October recall election throughout all of
22 California. On the other hand, allowing pre-election activities (e.g., printing and mailing
23 ballots) to go forward could not possibly pose any harm (let alone irreparable harm) to
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27 9. On these unique facts, an appropriate order would be for defendants’ counsel to
28 periodically report to the Court on the status of the preclearance request.

1 plaintiffs. Since the purpose of a TRO is to maintain the status quo (not to disrupt it)^{10/} a
2 TRO cannot issue in this case because that relief will irreparably harm the electorate by
3 denying a constitutional entitlement to vote on a recall election within “80 days from the
4 date of certification” of the recall petition. Cal. Const., art. II, § 17.

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6 **C. PLAINTIFFS ARE NOT ENTITLED TO ISSUANCE OF A**
7 **TEMPORARY RESTRAINING ORDER UNDER SECTION 5 OF**
8 **THE VOTING RIGHTS ACT BECAUSE THE TIME**
9 **CONSTRAINTS OF THE OCTOBER 7, 2003, STATEWIDE**
10 **SPECIAL ELECTION ARE WITHIN THE “EXIGENCY”**
11 **EXCEPTION OF *CLARK v. ROEMER***

12 The Supreme Court has ruled that plaintiffs are entitled to injunction where
13 a voting change subject to Section 5 has not been precleared. *Lopez v. California*, 519
14 U.S. 9, 20 (1996) [*Lopez I*], citing in support, *Clark v. Roemer*, 500 U.S. 646, 652-653
15 (1991). In *Clark*, however, the Supreme Court left open the question of what type of
16 exigency would justify denial of a Section 5 plaintiff’s motion for an injunction:

17 We need not decide today whether there are cases in which a
18 district court may deny a § 5 plaintiff’s motion for injunction
19 and allow an election for an unprecleared seat to go forward.
20 An extreme circumstance might be present if a seat’s
21 unprecleared status is not drawn to the attention of the State
22 until the eve of the election and there are equitable principles
23 that justify allowing the election to proceed. No such
24 exigency exists here.

25 *Clark v. Roemer*, 500 U.S., at 654-655.

26 The question of the “exigency” exception, expressly reserved by *Clark*, is
27 one of first impression. The Secretary of State submits that the special statewide recall
28

25 10. “Ex parte temporary restraining orders are no doubt necessary in certain
26 circumstances, but under federal law they should be restricted to serving their underlying
27 purpose of preserving the status quo and preventing irreparable harm just so long as is
28 necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Brotherhood*
of Teamsters and Auto Truck Drivers Local No. 70 of Alameda County, 415 U.S. 423,
439 (1974) emphasis added, footnote and internal citation omitted.

1 election at issue here falls within the *Clark v. Roemer* exigency exception. The present
2 exigent circumstances are set out in the Secretary's Request:

3 The recall of Governor Gray Davis has followed the
4 constitutional and statutory scheme laid out in Article II of
5 the California Constitution, and Elections Code sections
6 11000 et seq. The recall process began on February 5, 2003
7 when the proponents served a Notice of Intention to recall on
8 the Governor and filed a copy of that Notice with the
9 Secretary of State. The Governor then submitted his answer
10 and a recall petition was drafted. The Secretary of State
11 approved the recall petition for circulation on March 25,
12 2003. On July 23, 2003 the Secretary of State certified that
13 petition sections containing sufficient signatures had been
14 submitted concerning the recall of Governor Gray Davis so
15 that a recall election must be held. On July 24, 2003, the
16 Lieutenant Governor issued a Proclamation calling the
17 election to be held on October 7, 2003.

11 Mott-Smith Decl., Exh. A, p.2. See, Appendix II: Elections Calendar, Statewide Special
12 Election, October 7, 2003.

13 Certification of the recall of the Governor is an exigency for California
14 election authorities.^{11/} The timing of the recall election is determined by the California
15 Constitution and, consistent with the Constitution, the Lieutenant Governor called for the
16 election to be held on October 7th. And all events and time lines required to produce and
17 mail ballot pamphlets follow from the proclamation of the election.

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

21 Cal. Const., art. II, § 15(a) (emphasis supplied). The Lieutenant Governor's discretion
22 with respect to consolidating the recall election with "the next regularly scheduled
23 election" is itself subject to a very narrow time constraint:

24 A recall election may be conducted within 180 days from the
25 date of certification of sufficient signatures in order that the
26 election may be consolidated with the next regularly
scheduled election occurring wholly or partially within the

27 11. Even under these exigent circumstances, however, the Secretary has strictly
28 complied with the 20-day public comment period. Mott-Smith Decl., ¶ 8.

1 same jurisdiction in which the recall election is held, if the
2 number of voters eligible to vote at that next regularly
3 scheduled election equal at least 50 percent of all the voters
4 eligible to vote at the recall election.

4 Cal. Const., art. II, § 15(b). In this case, the next regularly scheduled election that would
5 occur within the same jurisdiction, that is, the March 2, 2004 election falls outside this
6 180-day window. Thus, the Lieutenant Governor lacked discretion to consolidate the
7 recall election with the March 2, 2004 election. Instead, the Lieutenant Governor
8 properly scheduled the election for October 7th, at the latest possible date allowed under
9 the California Constitution and Elections Code.

10 The California Constitution also strictly limits the Secretary’s discretion
11 with respect to the timing of submission of initiative ballot measures to the electors:

12 The Secretary of State shall . . . submit the measure at the
13 next general election held at least 131 days after it qualifies *or*
14 *at any special statewide election held prior to that general*
election.

15 Cal. Const., art. II, § 8(b) (emphasis supplied). March 2, 2004, is the next statewide
16 general election. But because the next special statewide election held “prior to” that
17 election is October 7, 2003, the California Constitution requires the Secretary to submit
18 Proposition 54 to the electors at that election. *Id.*^{12/}

19 Defendants submit that the circumstances that flow from complying with
20 California’s Constitution and Elections Code constitute an exigency within the meaning
21 of *Clark* such that plaintiffs’ request for a TRO may be denied, even if the challenged
22 changes are not yet precleared.

27 12. The Secretary is also required to produce a statewide ballot pamphlet pursuant
28 to California Elections Code, section 9081, et seq.

1 **D. PLAINTIFFS WILL NOT BE IRREPARABLY HARMED BY THE**
2 **SECRETARY’S CONTINUED SUBSTANTIAL COMPLIANCE**
3 **WITH CALIFORNIA ELECTIONS CODE §§ 9094(a), 9082 and 9092**
4 **PENDING THE ATTORNEY GENERAL’S DETERMINATION OF**
5 **THE REQUEST FOR PRECLEARANCE**

6 The Salazar plaintiffs err in characterizing the time lines established by the
7 California Elections Code as “mandatory.” *Salazar* Memo, p. 8, 1, 23. The California
8 Supreme Court has ruled that substantial compliance with the California Elections Code
9 is the applicable standard where special elections are involved. *Hart v. Jordan*, 14 Cal.2d
10 288, 292 (1939).^{13/} And when Elections Code time lines conflict with those set by the
11 California Constitution, the Constitution prevails. *Id.*

12 The Secretary of State’s substantial compliance with the requirements of
13 the California Elections Code is resoundingly reflected by the California Supreme
14 Court’s five orders (including three speaking orders) issued on August 7, 2003, where the
15 Court summarily denied numerous challenges to the October 7th election.^{14/}

16 13. Under Section 5, covered jurisdictions must obtain preclearance for voting
17 standard changes that occur after a specified “applicable date” for that jurisdiction, and
18 changes imposed before the applicable date are not subject to preclearance. Monterey
19 County’s applicable date is November 1, 1968. Since plaintiffs argue the Secretary’s use
20 of a substantial compliance standard for administering the October 7th election is a
21 change for Voting Rights Act purposes, the relevant question is whether the substantial
22 compliance standard was a change imposed after Monterey’s applicable date. The
23 answer to that question is “no,” because the “substantial compliance” standard has been
24 applicable standard since *Hart v. Jordan* was decided in 1939. *Hart v. Jordan*, 14 Cal.
25 288. Consequently, the voting standard challenged here antedated the relevant applicable
26 date by 29 years, and the challenged voting changes do not require preclearance.

27 14. These five cases are *Eisenberg v. Shelley*, No S117763 (Aug. 7, 2003) (*en*
28 *banc*) (petition for writ of mandate denied); *Frankel v. Shelley*, No. 211770 (Aug. 7,
2003); *Byrnes v. Bustamante*, No. S117832 (Aug. 7, 2003) (*en banc*) (petition for writ of
mandate denied); *Burton v. Shelley*, No. S117834 (Aug. 7. 2003) (*en banc*); and, *Davis v.*
Shelley, No. S117921 (Aug. 7, 2003) (*en banc*). These five orders are attached to
Defendants State of California and Kevin Shelley, Secretary of State’s Request to Take
Judicial Notice as Exhibits A through E.

1 Plaintiffs will not be irreparably harmed by the Secretary’s continued
2 substantial compliance with these code provisions pending the Attorney General’s
3 determination of the Secretary’s Request for preclearance. Allowing the Secretary to
4 continue preparations for Proposition 54’s placement on the October 7, 2003 special
5 statewide election, while the Attorney General reviews the preclearance request, does not
6 deny Plaintiffs’ the right to vote. This is so because if it the U.S. Attorney General
7 ultimately denies preclearance and determines the election cannot proceed on October 7,
8 2003, the plaintiffs can then obtain all of the relief they seek in this action: postponing
9 the recall election until the March 2, 2004, election. Cal. Elec. Code § 9006; *Salazar*
10 Memo, p. 6, ll. 9-13.

11 “Traditional standards for granting a preliminary injunction impose a duty
12 on the court to balance the interests of all parties and weigh the damage to each, mindful
13 of the moving party's burden to show the possibility of irreparable injury to itself and the
14 probability of success on the merits.” *Los Angeles Memorial Coliseum Commission v.*
15 *National Football League*, 634 F.2d 1197, 1201-1204 (1980), citing *Doran v. Salem Inn,*
16 *Inc.*, 422 U.S. 922, 931, 95 S.Ct. 2561, 2567, 45 L.Ed.2d 648 (1975); *Constructors*
17 *Association of Western Pennsylvania v. Kreps*, 573 F.2d 811, 815 (3rd Cir. 1978);
18 *Friends of the Earth, Inc. v. Coleman*, 518 F.2d 323, 330 (9th Cir. 1975); and, *Sierra*
19 *Club v. Hickel*, 433 F.2d 24, 33 (9th Cir. 1970) *aff’d*, 405 U.S. 727, 92 S.Ct. 1361, 31
20 L.Ed.2d 636 (1972). Here, the balance of the hardships tips sharply in favor of the
21 Secretary, since time is of the essence with respect to the pre-election preparation of
22 ballots. Granting Plaintiffs’ request for preliminary relief will effectively prevent the
23 voters from considering the recall and ballot measures at the October 7th election, even if
24 the Attorney General ultimately preclears the challenged changes. Plaintiffs’ request for
25 a TRO should be denied.

1 **E. BECAUSE OF THE DISRUPTIVE EFFECTS UPON THE NON-**
2 **COVERED COUNTIES IN CALIFORNIA, THE COURT SHOULD**
3 **NOT TAKE ANY ACTION THAT WOULD AFFECT OR IMPEDE**
4 **THE PRE-ELECTION ACTIONS FOR THE OCTOBER 7TH**
5 **RECALL ELECTION**

6 As Justice Powell counseled, courts should “bring a measure of common
7 sense to [the] application” of the Voting Rights Act. *Berry v. Doles*, 438 U.S. 190, 200-
8 01 (1978) (Powell, J., concurring).^{15/} Both common sense and case law preclude the
9 issuance of a TRO because of the effects such relief would have upon the 54 counties
10 within California that are not covered by the Voting Rights Act.

11 The Voting Rights Act focuses on whether one’s right to vote has been
12 affected by changes in election processes. Although plaintiffs focus their arguments on
13 the covered county of Monterey, an injunction limited to Monterey would obviously
14 disrupt the entire special statewide election, because a statewide election cannot be
15 conducted where the voters of some counties are precluded from participating. Mott-
16 Smith Decl., ¶ 10. Given the pending preclearance request and in keeping with Justice
17 Powell’s admonition in *Berry*, a TRO cannot issue in this case.

18 Because “federal court intervention that would create . . . a disruption in the
19 state electoral process is not to be taken lightly,” *Page v. Bartels*, 248 F.3d 175 (3rd Cir.
20 2001), the utmost judicial restraint must be exercised, particularly where, as here, the
21 electoral process is underway.^{16/} *Nader 2000 Primary Committee, Inc. v. Hazeltine*, 226

22 15. Even though this case arises in the elections context, the court should be
23 reluctant to issue a TRO because the requested injunction would alter the status quo or
24 provide the plaintiffs with “substantially all relief sought, and that relief cannot be
25 undone even if the defendant prevails at trial on the merits. . . .” *Koppell v. New York*
26 *State Bd. of Elections*, 153 F.3d 95-96 (2nd Cir. 1998) (emphasis added).

27 16. Sitting as a Circuit Judge, Justice Douglas expressed the same concern
28 regarding the potential of disrupting an election cycle that has begun, even though the
election challenge may have merit. Justice Douglas suggests the court’s decision should
weigh in favor of the “orderly election processes” going forward and should not take
action that “would likely be disrupt[ive] by so late an [injunction]. . . .” *Westermann v.*
Nelson, 409 U.S. 1236-37 (1972)(mem.).

1 F.3d 979 (8th Cir. 2000), is a recent example of where injunctive relief was denied
2 because it would interfere with a state election. There, Ralph Nader sued South Dakota's
3 Secretary of State, claiming a state statute that created an earlier filing deadline for
4 independent candidates was unconstitutional. While the statute was in fact held
5 unconstitutional, both the district court and the Eighth Circuit found that an injunction
6 requiring Nader to be placed on South Dakota's ballot was inappropriate in light of all
7 the circumstances. *Id.* at 980-81.

8 [T]he day after that hearing, official ballots were certified to
9 the sixty-six county auditors in South Dakota. We . . . decline
10 to enter an injunction permitting the Nader campaign to meet
11 the one-percent requirement at this late date because such an
12 order would thoroughly disrupt the South Dakota election
13 process, jeopardizing the First Amendment rights of South
14 Dakota voters.

15 *Id.* at 981.

16 *Page v. Bartels*, 248 F.3d 175, also reflects that restraint should be
17 exercised when a state election could be disrupted. In *Page*, plaintiffs challenged New
18 Jersey's legislative reapportionment law on the grounds that it violated Section 2 of the
19 Voting Rights Act, and the Fourteenth and Fifteenth Amendments. *Id.* at 180. New
20 Jersey's reapportionment law was enacted in April 2001, and its primary election was
21 scheduled for June 2001. *Id.* After initially issuing a TRO, a single district court judge
22 heard and denied plaintiffs' Voting Rights Act and other claims. *Id.* at 181. After
23 plaintiffs obtained temporary stays enjoining the printing of ballots, the Third Circuit
24 eventually vacated and remanded because plaintiffs' claims should have been heard by a
25 three-judge panel. *Id.* at 194.^{17/} In doing so, it denied plaintiffs' request for further and
26 broader interim relief because of the potential disruption to the upcoming New Jersey
27 election.

28 17. Ultimately, plaintiffs failed to establish that New Jersey's legislative
reapportionment plan violated the Voting Rights Act. *Page v. Bartels*, 144 F.Supp.2d
346 (D.N.J. 2001).

1 [W]e . . . note our own keen awareness of the significant
2 disruption that action on our part (or on the part of any federal
3 court issuing interim relief) will have on the upcoming New
4 Jersey legislative elections. [] Any interim injunctive or
5 restraining action on our part, particularly action that broadly
6 proscribes the implementation of the redistricting plan
7 adopted by the Apportionment Commission, would likely
8 delay or suspend the legislative elections. [] Federal court
9 intervention that would create such a disruption in the state
10 electoral process is not to be taken lightly.

11 In reaching this conclusion, the *Page* court relied on the Supreme Court’s
12 reasoning in *Reynolds v. Sims*, 377 U.S. 533 (1964):

13 [U]nder certain circumstances, such as where an impending
14 election is imminent and a State’s election machinery is
15 already in progress, equitable considerations might justify a
16 court in withholding the granting of immediately effective
17 relief in a legislative apportionment case, even though the
18 existing apportionment scheme was found invalid. In
19 awarding or withholding immediate relief, a court is entitled
20 to and should consider the proximity of a forthcoming
21 election and the mechanics and complexities of state election
22 laws, and should act and rely upon general equitable
23 principles.

24 *Id.* at 195-96, footnotes omitted, emphasis in original. See also, *Simpson v. City of*
25 *Hampton, Virginia*, 919 F.Supp. 212, 215 (E.D.Va. 1996), [“public interest [would] not
26 be served” by issuing a mandatory injunction under Section 2 of the Voting Rights Act
27 that because it would “alter[] the electoral system six days before the candidate filing
28 deadline.”]^{18/}

21 18. The Secretary of State recognizes that, under appropriate circumstances,
22 courts in other Circuits have enjoined pre-election activities while a request for
23 preclearance was pending. Those cases are is distinguishable based on the particular
24 situation the court was faced with. For example, in *State of South Carolina v. United*
25 *States*, 585 F.Supp. 418 (D.D.C. 1984)(3-judge court), South Carolina, a covered state,
26 was enjoined from implementing its new State Senate reapportionment plan. Likewise,
27 in *Herron v. Koch*, 523 F.Supp. 167 (E.D.N.Y. 1981) New York City was enjoined from
28 engaging in pre-election activities that were being carried out in three of its boroughs that
are covered jurisdictions. There, city-wide relief would not be disruptive to any elections
outside of New York City and, was designed to last only until the Attorney General acted
upon the preclearance request.

APPENDIX I

**ELECTIONS CALENDAR
STATEWIDE SPECIAL ELECTION
OCTOBER 7, 2003**

**ELECTIONS CALENDAR
STATEWIDE SPECIAL ELECTION
October 7, 2003**

July 24, 2003	E-75	<u>Lieutenant Governor's Proclamation</u> On this date, the Lieutenant Governor issued his proclamation calling the statewide special election.	Ca. Const. Art. II, secs. 15(a) and 17
Jul 24 to Aug 9	E-75 to E-59	<u>In-Lieu Petitions</u> During this period, candidates may obtain forms from the county elections official for securing signatures in lieu of all or part of the filing fee. Signatures may also be applied to the signature requirement for office on the nomination paper.	§§8061, 8106
Jul 24 to Aug 9	E-75 to E-59	<u>Declaration of Candidacy, Nomination Papers</u> During this period, candidates obtain and deliver nomination papers to the county elections officials for filing with the Secretary of State. Candidates must also file a Declaration of Candidacy during this period. <u>Filing fees</u> shall be paid at the time the candidate files the declaration of candidacy with the county elections official. <u>Candidate statements</u> to be included in the state ballot pamphlet must also be submitted during this period.	§11381(a) §§8105, 8106(b)(3)
Aug 1	E-67	<u>Randomized Alphabet Drawing - Notice</u> The last day for the Secretary of State to notify the news media and other interested parties of the place the randomized alphabet drawing will be held at 11 a.m. on August 11, 2003 (E-57).	§13112(c)
Aug 8	E-60	<u>Notice To Each Candidate</u> Not less than five days before transmission of the certified list of candidates, the Secretary of State will notify each candidate of the names, addresses, occupations, and party affiliations of all other persons who have filed for the office.	§8121
Aug 8	E-60	<u>Registration Files Update</u> Counties using data processing equipment to store registered voter information set forth in the affidavits of registration shall begin their computer updates in order to send a copy of their registered voter files to the Secretary of State by August 18, 2003 (E-50).	§2187

ELECTIONS CALENDAR
STATEWIDE SPECIAL ELECTION
October 7, 2003

Aug 8 to Aug 18	E-60 to E-50	<u>Report of Registration – 60-Day County Report</u> During this period, the county elections official shall send to the Secretary of State a summary of the number of persons registered by party in their counties and in each political subdivision thereof as of August 8, 2003.	§§2187
Aug 9	E-59	<u>In-Lieu Petitions</u> The last day to submit in-lieu filing fee petitions to the county elections officials. The county elections officials shall notify the candidate of any deficiencies prior to the close of the nomination period.	§8106(b)(3)
Aug 9	E-59	<u>Declaration of Candidacy and Nomination Papers</u> Last day for the county elections official to certify and file the Declaration of Candidacy and Nomination Papers with the Secretary of State.	
Aug 9	E-59	<u>Candidate Statements Due</u>	
Aug 11	E-57	<u>Randomized Alphabet Drawing</u> On this date (the first weekday after the close of filing of nomination papers for the office) at 11:00 a.m., the Secretary of State draws the randomized alphabet to determine the order for placing candidates' names on the ballot.	§13112(d)
Aug 11 to Sep 23	E-57 to E-14	<u>Statement of Write-In Candidacy and Nomination Papers</u> During this period, all write-in candidates must file their Statement of Write-in Candidacy and nomination papers with the county elections officials.	§8601
Aug 13	E-55	<u>Certified List of Candidates</u> The last day for the Secretary of State to prepare and send to each county elections official a certified list of candidates showing the name of every person eligible to receive votes within the county at the statewide special election, their addresses, and the party each person represents.	§§11381
Aug 18	E-50	<u>Voter Registration Files to the Secretary of State</u> The last day for county elections official to send the Secretary of State a copy of their voter registration files	§2187(c)&(d)(2)

**ELECTIONS CALENDAR
STATEWIDE SPECIAL ELECTION
October 7, 2003**

of all voters registered prior to August 8, 2003 (E-60).

Sep 8	E-29	<u>Precinct Board Members and Polling Places</u> The last day for the county elections official to appoint the members of the several precinct boards and designate the polling places.	§12286
Sep 8	E-29	<u>Canvass Procedures Available</u> Elections officials shall adopt semifinal official and official canvass procedures to conform to the applicable voting system procedures that have been approved by the Secretary of State. These procedures shall be available for public inspection no later than 29 days before each election.	§15003
Sep 8 to Sep 30	E-29 to E-7	<u>Absent Voter Ballot Application</u> Between these dates, any registered voter may apply to the county elections official for an absent voter's ballot. Applications received before September 8, 2003 (E-29) shall be kept and processed during this application period.	§§3001, 3003, 10704(a)
Sep 22	E-15	<u>Registration Closes</u> The last day for any person to register to vote in the statewide special election.	§§2102, 2107

Note: No person shall be registered as a voter except by affidavit of registration. The affidavit shall be mailed or delivered to the county elections official and shall set forth all of the facts required to be shown by this chapter. A properly executed registration shall be deemed effective upon receipt of the affidavit by the county elections official if any of the following apply:

- (1) The affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.
- (2) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) on or before the 15th day prior to the election.

The affidavit is delivered to the county elections official by means other than those described in paragraphs (1) or

**ELECTIONS CALENDAR
STATEWIDE SPECIAL ELECTION
October 7, 2003**

(2) on or before the 15th day prior to the election.

Sep 23	E-14	<u>Write-In Candidacy</u> The last day to file as a write-in candidate.	§8601
Sep 23	E-14	<u>Bilingual Precinct Board Members</u> The last day to prepare a list of precincts to which bilingual officers were appointed. A copy of this list shall be made available to the public.	§12303(d)
Sep 27	E-10	<u>Publication Of Tally Center Location</u> Once, on or before this date, the county elections officials shall publish a notice in a newspaper of general circulation within the county specifying the public place to be used as the central tally center for counting the ballots.	§12107
Sep 30	E-7	<u>Absent Voters</u> The last day to file applications for absent voter ballots.	§§3001, 10704
Sep 30	E-7	<u>Computer Program to Secretary of State</u> The last day to verify computer vote count programs and deposit copies thereof with the Secretary of State. The last day to send logic and accuracy test certifications to the Secretary of State.	§§15001
Sep 30	E-7	<u>Computer Processing of Absentee Ballots</u> Counties having the necessary computer capability may begin to process their absent voter ballots on this date. This process may be completed to the point of placing the ballot information on computer tape, but under NO circumstance shall a vote count be made before the polls close at 8 p.m. on October 7, 2003 (E). All other county elections official shall start to process absent voter ballots at 5 p.m. on the day before the election.	§15101(b)
Oct 1-Oct 6	E-6 to E-1	<u>Special Absent Voter - Recalled to Military Service</u> A registered voter recalled to service after October 1, 2003 but before 5 p.m. on October 6, 2003 may appear before the county elections official and obtain from the county elections official an absent voter's ballot which may be voted in the county elections official's office or outside the county elections official's office, on or before the close of the polls and returned as are other	§3110

**ELECTIONS CALENDAR
STATEWIDE SPECIAL ELECTION
October 7, 2003**

voted absent voter ballots.

Oct 1-Oct 6	E-6 to E-1	<u>Absentee Ballots - Late Conditions</u> On or between these dates, any voter may apply in writing for an absent voter's ballot if he or she will unexpectedly be unable to go to the polls on election day. The voter may designate any authorized representative to return the voted absent voter's ballot.	§3021
Oct 7	E	<u>Election Day</u> On this date, the polls shall be open throughout the state from 7 a.m. to 8 p.m. Voters who have moved from one address to another within the same county and not reregistered may vote a provisional ballot at the polling place for their current (new) address or at a central location. The voter should be able to provide an ID Card or Driver's License with the new address, but if not available, then two other documents must be shown to establish new residence address. The last day county election officials may receive ballots cast by absent voters by mail or in person. Absent voter ballots must be received by 8 p.m. at any polling place in the county or at the office of the elections official.	Ca. Const. Art. II, Sec. 15 (a) §§1000, 14212 §14311 §§3017, 3020
Nov 4	E+28	<u>Official Canvass</u> The last day for the county elections officials to complete the official canvass.	
Nov 11	E+35	<u>Statement of Results to Secretary of State</u> By this date, the county elections officials shall send to the Secretary of State by registered mail one complete copy of the returns for the statewide special election.	§15375
Nov 15	E+39	<u>Statement of the Vote</u> The last day for the Secretary of State to prepare, certify, and file a statement of the Vote from the compiled returns.	§15501

**ELECTIONS CALENDAR
STATEWIDE SPECIAL ELECTION
October 7, 2003**

Mar 14, 2004

E+159

Supplement to the Statement of Vote

§15502

Last day for the Secretary of State to compile a supplement to the statement of the vote showing the number of votes cast in each county, city, Assembly district, State Senatorial district, Congressional district, and supervisorial district

APPENDIX II

CALIFORNIA STATE LAW

	Page Nos.
California Constitution, article 2, section 9	1-2
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California Constitution, article 2, section 15	4
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California Elections Code, section 9082	6
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<i>Hart v. Jordan</i> , 14 Cal.2d 288 (1939)	15-18

CA CONST Art. 2, S 9

West's Ann.Cal.Const. Art. 2, § 9

<KeyCite Citations>

WEST'S ANNOTATED CALIFORNIA CODES

CONSTITUTION OF THE STATE OF CALIFORNIA 1879

ARTICLE II. VOTING, INITIATIVE AND REFERENDUM, AND RECALL

§ 9. Referendum

Sec. 9. (a) The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.

(b) A referendum measure may be proposed by presenting to the Secretary of State, within 90 days after the enactment date of the statute, a petition certified to have been signed by electors equal in number to 5 percent of the votes for all candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors. In the case of a statute enacted by a bill passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, the petition may not be presented on or after January 1 next following the enactment date unless a copy of the petition is submitted to the Attorney General pursuant to subdivision (d) of Section 10 of Article II before January 1.

(c) The Secretary of State shall then submit the measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

CREDIT(S)

(Formerly Art. 4, § 23, added Nov. 8, 1966. Amended Nov. 7, 1972. Renumbered Art. 2, § 9, June 8, 1976. Amended by A.C.A. 54 (Prop. 109), approved June 5, 1990.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

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The 1972 amendment substituted, in subd. (b), following "Secretary of State", the words "within 90 days after the enactment date of the statute," for "within 60 days after adjournment of the special session at which the statute was passed,".

The 1976 amendment renumbered the section without changing the text.

Amendment of subd. (b) of this section, proposed by Assembly Const. Amend. No. 75, 1975-76, was

rejected by the voters at the general election held Nov. 2, 1976.

Proposed amendment of this section by ACA No. 54 (1988) was not submitted to the voters in 1988.

The 1990 amendment by Prop. 109, in subd. (b), inserted the second sentence relating to a bill passed by the legislature on or before the date the legislature adjourns.

Derivation: Art. 4, former § 1, amended Oct. 10, 1911; Nov. 8, 1932; Nov. 8, 1966.

Const.1849. Art. 4, § 1.

CA CONST Art. 2, S 14

West's Ann.Cal.Const. Art. 2, § 14

<KeyCite Citations>

WEST'S ANNOTATED CALIFORNIA CODES

CONSTITUTION OF THE STATE OF CALIFORNIA 1879

ARTICLE II. VOTING, INITIATIVE AND REFERENDUM, AND RECALL

§ 14. Petition; reasons for recall; time; percentages of signatures required

Sec. 14. (a) Recall of a State officer is initiated by delivering to the Secretary of State a petition alleging reason for recall. Sufficiency of reason is not reviewable. Proponents have 160 days to file signed petitions.

(b) A petition to recall a statewide officer must be signed by electors equal in number to 12 percent of the last vote for the office, with signatures from each of 5 counties equal in number to 1 percent of the last vote for the office in the county. Signatures to recall Senators, members of the assembly, members of the Board of Equalization, and judges of courts of appeal and trial courts must equal in number 20 percent of the last vote for the office.

(c) The Secretary of State shall maintain a continuous count of the signatures certified to that office.

CREDIT(S)

(Added June 8, 1976.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

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Derivation: Former Art. 23, § 2, added Nov. 5, 1974.

Former Art. 23, § 1, added Oct. 10, 1911.

CA CONST Art. 2, S 15

West's Ann.Cal.Const. Art. 2, § 15

<KeyCite Citations>

WEST'S ANNOTATED CALIFORNIA CODES

CONSTITUTION OF THE STATE OF CALIFORNIA 1879

ARTICLE II. VOTING, INITIATIVE AND REFERENDUM, AND RECALL

§ 15. Election; call by governor; majority vote; successor

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.

CREDIT(S)

(Added June 8, 1976. Amended by Stats.1994, Res. ch. 59 (S.C.A.38) (Prop. 183), approved Nov. 8, 1994.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

2002 Main Volume

The 1994 amendment by Prop. 183 inserted subd. (b), relating to a 180-day period to allow consolidation of the recall election with a regularly scheduled election; and made nonsubstantive changes, including subdivision designation.

Derivation: Former Art. 23, § 3, added Nov. 5, 1974.

Former Art. 23, § 1, added Oct. 10, 1911.

CA CONST Art. 2, S 17

West's Ann.Cal.Const. Art. 2, § 17

<KeyCite Citations>

WEST'S ANNOTATED CALIFORNIA CODES

CONSTITUTION OF THE STATE OF CALIFORNIA 1879

ARTICLE II. VOTING, INITIATIVE AND REFERENDUM, AND RECALL

§ 17. Governor or secretary of state; recall; transfer of duties

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.

CREDIT(S)

(Added June 8, 1976.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

2002 Main Volume

Derivation: Former Art. 23, § 5, added Nov. 5, 1974.

Former Art. 23, § 1, added Oct. 10, 1911.

CA ELEC S 9082

West's Ann.Cal.Elec.Code § 9082

<KeyCite Citations>

WEST'S ANNOTATED CALIFORNIA CODES

ELECTIONS CODE

DIVISION 9. MEASURES SUBMITTED TO THE VOTERS

CHAPTER 1. STATE ELECTIONS

ARTICLE 7. BALLOT PAMPHLET

§ 9082. Printing of ballot pamphlets

The Secretary of State shall cause to be printed as many ballot pamphlets as needed to comply with this code.

The ballot pamphlets shall be printed in the Office of State Printing unless the Director of General Services determines that the printing of the pamphlets in the Office of State Printing cannot be done adequately, competently, or satisfactorily, in which case the Secretary of State, subject to the approval of the Director of General Services, shall contract with a private printing concern for the printing of all or a part of the pamphlets.

Copy for preparation of the ballot pamphlets shall be furnished to the Office of State Printing at least 40 days prior to the date for required delivery to the elections officials as provided in Section 9094.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Derivation: Former § 3567, enacted by Stats.1961, c. 23, p. 627, § 3567, amended by Stats.1962, 1st Ex.Sess., c. 35, p. 264, § 1; Stats.1965, c. 371, p. 1511, § 76; Stats.1971, c. 994, p. 1910, § 1.

Former § 3569, added by Stats.1976, c. 248, § 3.

Elec.C.1939, § 1510 (Stats.1939, c. 26, p. 87).

Pol.C. § 1195a, added by Stats.1909, c. 142, p. 245, § 1, amended by Stats.1913, c. 630, p. 1156, § 1; Stats.1915, c. 540, p. 912, § 2; Stats.1923, c. 264, p. 515, § 1.

CA ELEC S 9092

West's Ann.Cal.Elec.Code § 9092

<KeyCite Citations>

WEST'S ANNOTATED CALIFORNIA CODES

ELECTIONS CODE

DIVISION 9. MEASURES SUBMITTED TO THE VOTERS

CHAPTER 1. STATE ELECTIONS

ARTICLE 7. BALLOT PAMPHLET

§ 9092. Public examination of pamphlet; writ of mandate; venue; parties

Not less than 20 days before he or she submits the copy for the ballot pamphlet to the State Printer, the Secretary of State shall make the copy available for public examination. Any elector may seek a writ of mandate requiring any copy to be amended or deleted from the ballot pamphlet. A peremptory writ of mandate shall issue only upon clear and convincing proof that the copy in question is false, misleading, or inconsistent with the requirements of this code or Chapter 8 (commencing with Section 88000) of Title 9 of the Government Code, and that issuance of the writ will not substantially interfere with the printing and distribution of the ballot pamphlet as required by law. Venue for a proceeding under this section shall be exclusively in Sacramento County. The Secretary of State shall be named as the respondent and the State Printer and the person or official who authored the copy in question shall be named as real parties in interest. If the proceeding is initiated by the Secretary of State, the State Printer shall be named as the respondent.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.1996, c. 724 (A.B.1700), § 11.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Derivation: Former § 3576, added by Stats.1988, c. 211, § 2.

Former § 3576, added by Stats.1976, c. 248, § 3.

CA ELEC S 9094

West's Ann.Cal.Elec.Code § 9094

<KeyCite Citations>

WEST'S ANNOTATED CALIFORNIA CODES

ELECTIONS CODE

DIVISION 9. MEASURES SUBMITTED TO THE VOTERS

CHAPTER 1. STATE ELECTIONS

ARTICLE 7. BALLOT PAMPHLET

§ 9094. Ballot pamphlet; mailing; duties of Secretary of State

(a) The Secretary of State shall mail ballot pamphlets to voters, in those instances in which the county elections official uses data processing equipment to store the information set forth in the affidavits of registration, before the election at which measures contained in the ballot pamphlet are to be voted on unless a voter has registered fewer than 29 days before the election. The mailing shall commence not less than 40 days before the election and shall be completed no later than 21 days before the election for those voters who registered on or before the 60th day before the election. The Secretary of State shall mail one copy of the ballot pamphlet to each registered voter at the postal address stated on the voter's affidavit of registration, or the Secretary of State may mail only one ballot pamphlet to two or more registered voters having the same surname and the same postal address.

(b) In those instances in which the county elections official does not utilize data processing equipment to store the information set forth in the affidavits of registration, the Secretary of State shall furnish ballot pamphlets to the county elections official not less than 45 days before the election at which measures contained in the ballot pamphlet are to be voted on and the county elections official shall mail ballot pamphlets to voters, on the same dates and in the same manner provided by subdivision (a).

(c) The Secretary of State shall provide for the mailing of ballot pamphlets to voters registering after the 60th day before the election and before the 28th day before the election, by either: (1) mailing in the manner as provided in subdivision (a), or (2) requiring the county elections official to mail ballot pamphlets to those voters registering in the county after the 60th day before the election and before the 28th day before the election pursuant to the provisions of this section. The second mailing of ballot pamphlets shall be completed no later than 10 days before the election. The county elections official shall mail a ballot pamphlet to any person requesting a ballot pamphlet. Three copies, to be supplied by the Secretary of State, shall be kept at every polling place, while an election is in progress, so that they may be freely consulted by the voters.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2; Stats.1994, c. 1189 (S.B.1545), §2. Amended by Stats.2000, c. 899 (A.B.1094), § 8; Stats.2002, c. 221 (S.B.1019), § 18.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Subordination of legislation by Stats.1994, c. 920 (S.B.1547), see Historical and Statutory Notes under Elections Code § 1.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Section 17 of Stats.1994, c. 1189 (S.B.1545), provides:

"Sections 2 and 8 of this bill shall become operative only if both this bill and SB 1547 [Stats.1994, c. 920] are chaptered, in which case Sections 1 and 7 of this bill shall not become operative."

Amendment of this section by Initiative Measure (Prop. 52, Art. 5, § 15) was rejected at the Nov. 5, 2002 election.

Derivation: Former § 3573, enacted by Stats.1961, c. 23, p. 628, § 3573, amended by Stats.1971, c. 994, p. 1910, § 2; Stats. 1975, c. 64, § 1.

Former § 3578, added by Stats.1978, c. 1396, § 2, amended by Stats.1982, c. 1166, § 10.

Former § 3578, added by Stats.1976, c. 248, § 3, amended by Stats.1977, c. 520, § 2.

Elec.C.1939, § 1515 (Stats.1939, c. 26, p. 88, amended by Stats.1955, c. 215, p. 681, § 1).

Pol.C. § 1195b, added by Stats.1915, c. 540, p. 913, § 3; amended by Stats.1919, c. 243, p. 388, § 1; Stats.1929, c. 749, p. 1422, § 7; Stats.1931, c. 250, p. 429, § 1.

CA ELEC S 11000

West's Ann.Cal.Elec.Code § 11000

<KeyCite Citations>

WEST'S ANNOTATED CALIFORNIA CODES

ELECTIONS CODE

DIVISION 11. RECALL ELECTIONS

CHAPTER 1. GENERAL PROCEDURES: GENERAL PROVISIONS AND INITIAL STEPS
IN THE RECALL

ARTICLE 1. GENERAL PROVISIONS

§ 11000. Application of division

This division governs the recall of elective officers of the State of California and of all counties, cities, school districts, county boards of education, community college districts, special districts, and judges of courts of appeal and trial courts. It does not supersede the provisions of a city charter or county charter, or of ordinances adopted pursuant to a city charter or county charter, relating to recall.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Derivation: Former § 5202, added by Stats.1976, c. 248, § 3.

Former § 23600 added by Stats.1967, c. 28, p. 883, § 3.

Former § 27000, added by Stats.1976, c. 1437, § 4; amended by Stats.1977, c. 1137, § 2.

Former §§ 27000, 27201, 27500, 27520, enacted by Stats.1961, c. 23, pp. 862, 865, 868, §§ 27000, 27201, 27500, 27520, amended by Stats.1967, c. 28, p. 887, § 3.3; Stats.1975, c. 920, §§ 1, 2.

Educ.C. former § 1131, added by Stats.1963, c. 629, p. 1535, § 2.

Elec.C.1939, §§ 11000, 11100, 11122 (Stats.1939, c. 26, pp. 299, 302, 306) amended by Stats.1959, c. 378, p. 2303, § 1; Stats.1931, c. 274, pp. 563, 567, § 1.

Elec.C.1939, § 11051 (Stats.1939, c. 26, p. 299, amended by Stats.1953, c. 821, p. 2135, § 29).

Pol.C. § 1197b, added by Stats.1915, c. 42, p. 50, § 2, amended by Stats.1937, c. 562, p. 1604, § 1.

Pol.C. § 4021a, added by Stats.1911, c. 342, p. 580, § 2, amended by Stats.1911, Ex.Sess., c. 30, p. 122, § 1.

CA ELEC S 11381

West's Ann.Cal.Elec.Code § 11381

<KeyCite Citations>

WEST'S ANNOTATED CALIFORNIA CODES

ELECTIONS CODE

DIVISION 11. RECALL ELECTIONS

CHAPTER 4. GENERAL PROCEDURES: FINAL STEPS IN THE RECALL

ARTICLE 4. RECALL ELECTIONS

§ 11381. Nominations of candidates to succeed recalled officer; procedures; exceptions

Nominations of candidates to succeed the recalled officer shall be made in the manner prescribed for nominating a candidate to that office in a regular election insofar as that procedure is consistent with this article. The following exceptions shall be made to that procedure:

(a) For recalls of state officers, the nomination papers and the declaration of candidacy shall, in each case, be filed no less than 59 days prior to the date of the election and not before the day the order of the election is issued. The Secretary of State shall certify the names of the candidates to be placed on the ballot by the 55th day prior to the election.

(b) For recalls of local officers, the nomination papers and the declaration of candidacy shall, in each case, be filed not less than 75 days prior to the date of the election and not before the day the order of the election is issued. If the elections official is required to certify to the governing board the names of the candidates to be placed on the ballot, that shall be done by the 71st day prior to the election.

(c) No person whose recall is being sought may be a candidate to succeed himself or herself at a recall election nor to succeed any other member of the same governing board whose recall is being sought at the same election.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.1996, c. 714 (S.B.1853), § 25.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Derivation: Former § 23631, added by Stats.1967, c. 28, p. 883, § 3.

Former § 27008, added by Stats.1974, c. 233, p. 439, § 6.

Former § 27221, enacted by Stats.1961, c. 23, p. 864, § 27211, amended by Stats.1968, c. 462, p. 1095, § 1.

Former § 27341, added by Stats.1976, c. 1437, § 4, amended by Stats.1983, c. 142, § 19; Stats.1984, c. 1023, § 9; Stats.1989, c. 204, § 2.

Educ.C. former § 1146, added by Stats.1963, c. 629, p. 1537, § 2 amended by Stats.1963, c. 973, p. 2234, § 2; Stats.1963, c. 1751, p. 3500, § 4.

Elec.C.1939, §§ 11061, 11064 (Stats.1939, c. 26, p. 301).

Pol.C. § 4021a, added by Stats.1911, c. 342, p. 580, § 2, amended by Stats.1911, Ex.Sess., c. 30, p. 122, § 1.

Water C. former § 21830, added by Stats.1943, c. 372, p. 1897, amended by Stats.1955, c. 1237, p. 2266, § 2; Stats.1959, c. 1845, p. 4390, § 14; Stats.1965, c. 2019, p. 4567, § 31.

Stats.1897, c. 189, p. 254, § 28 1/2 , added by Stats.1911, Ex.Sess., c. 34, p. 135, § 1.

CA ELEC S 12000

West's Ann.Cal.Elec.Code § 12000

<KeyCite Citations>

WEST'S ANNOTATED CALIFORNIA CODES

ELECTIONS CODE

DIVISION 12. PREELECTION PROCEDURES

CHAPTER 1. PROCLAMATIONS AND ELECTION ORDERS

§ 12000. Proclamation

For each statewide election, the Governor shall issue a proclamation calling the election. The proclamation shall be issued by the Governor under his or her hand and the Great Seal of the state no later than the 148th day prior to the election and shall state the time of the election and the offices, if any, to be filled. Copies of the proclamation shall be transmitted by the Governor to the boards of supervisors of the counties.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 12000, enacted by Stats.1961, c. 23, § 12000, related to penalties for elections violations, and was repealed by Stats.1976, c. 224, § 5. See Elections Code § 18521.

Derivation: Former § 2553, added by Stats.1976, c. 1155, § 2, amended by Stats.1982, c. 198, § 1.

Former §§ 2601, 2602 enacted by Stats.1961, c. 23, p. 623, §§ 2601, 2602, amended by Stats.1961, c. 835, p. 2113, § 2.5; Stats.1963, c. 2003, p. 4082, § 1; Stats.1970, c. 615, p. 1205, § 1.5; Stats.1973, c. 271, p. 666, § 1; Stats.1974, c. 1165, p. 2494, § 2; Stats.1975, c. 142, § 1; Stats.1976, c. 193, § 1.

Elec.C.1939, §§ 1001, 1002 (Stats.1939, c. 26, p. 83, amended by Stats.1955, c. 217, p. 682, § 1).

Pol.C. §§ 1053, 1054, amended by Code Am.1877-78, c. 13, p. 25, § 1; Code Am.1880, c. 102, p. 77, § 3.

14 Cal.2d 288

94 P.2d 808

(Cite as: 14 Cal.2d 288)

<KeyCite Citations>

BLAIR HART, Jr., Petitioner,
v.
FRANK C. JORDAN, as Secretary of State,
etc., et al., Respondents.

S. F. No. 16296.

Supreme Court of California

September 14, 1939.

HEADNOTES

(1) Initiative and Referendum--Constitutional Law--Statutory Construction.

Article IV, section 1, of the State Constitution relates not only to referendum but also to initiative petitions; and an act proposed by an initiative petition for submission directly to the electors must be presented "at the next succeeding general election occurring subsequent to 130 days after the presentation aforesaid of said petition, or at any special election called by the Governor in his discretion prior to such general election", which differs from the provision concerning initiative measures to be first submitted to the legislature, in that the general election must occur 90 days after the presentation of the petition and the special election need not be one "called for such purpose".

See 7 Cal. Jur. Ten-year Supp. 1.

(2) Initiative and Referendum--Referendums--General and Special Elections.

Issues raised by a referendum petition must be submitted to the People at the next

succeeding general election occurring at any time subsequent to thirty days after the filing of the petition or at any special election called by the Governor in his discretion.

(3) Initiative and Referendum--Submission of Initiative and Referendum Petitions--Special Elections--Discretion--Statutory Construction.

The provision of the Constitution that "no law or amendment to the Constitution, proposed by the Legislature, shall be submitted at any election unless at the same election there shall be submitted all measures proposed by petition of the electors, if any be so proposed", does not apply when initiatives to be submitted directly to the People and referendums are the only measures which have qualified for submission to the People; and the legislature in providing that a special election may be called by the Governor, left it within his power as a matter of discretion whether to call such *289 an election, but when he has acted in the exercise of such discretion, all measures which are qualified to go before the People by the constitutional provision must be placed upon the ballot.

(4) Initiative and Referendum--Failure to Submit Referendum--Time.

The provision in the Constitution that failure to submit any referendum measure "at the election specified in this section" shall not prevent its submission at the succeeding general election can only mean that if for any reason such failure occurs, the measure shall not fail, but shall be submitted at the succeeding general election.

(5) Initiative and Referendum--Statutory

Provisions--Time--Statutory Construction.

The statutory provisions fixing the time for the doing of acts in connection with the election on a referendum measure greater than the constitutional period of thirty days do not appear in this case to be incapable either of full or substantial compliance, but wherever they conflict with constitutional provisions, the latter must prevail.

SUMMARY

PROCEEDING in Mandamus to compel the Secretary of State and State Printer to desist from preparing for the ballot and submitting to the voters a referendum measure. Writ denied.

The facts are stated in the opinion of the court.

COUNSEL

Gregory, Hunt & Melvin, Darwin Bryan and Hanna & Morton for Petitioner.

Earl Warren, Attorney-General, Robert W. Harrison, Chief Deputy Attorney- General, and Grant B. Cooper for Respondents.

THE COURT.

By this proceeding in *mandamus* the petitioner seeks to compel the respondents, as Secretary of State and State Printer, respectively, to desist from taking any further steps in the matter of preparing for the ballot and submitting to the voters at the special election to be held on November 7, 1939, a proposed referendum on "The California Oil and Gas Control Act" enacted at the last session of the legislature (Stats. 1939, ch. 811). The question presented for determination is whether a referendum which has qualified for submission to the

voters must be presented at a special election called for the purpose of presenting a particular initiative measure. *290

On July 1st the Governor of California by proclamation fixed November 7th as the date of a special election at which there shall be submitted to the voters for adoption or rejection an initiative constitutional amendment entitled "Retirement Warrants". It appears that on July 27th the attorney-general prepared a title and summary of the chief purpose and points of a referendum petition against "The California Oil and Gas Control Act", *supra*, and since that time this petition has been signed by approximately twice the number of persons required by the Constitution to submit the measure to the electors. If on or before September 18th this petition, certified as having been signed by "qualified electors equal in number to five per cent of all the votes cast for all candidates for Governor at the last preceding general election", is presented to the Secretary of State, the challenged enactment of the legislature shall be submitted to the electors "at the next succeeding general election occurring at any time subsequent to thirty days after the filing of said petition or at any special election which may be called by the Governor, in his discretion, prior to such regular election ...". (Const., art. IV, sec. 1.) As the petitioner asserts that there are now on file the names of sufficient electors to qualify the referendum petition, the question for decision primarily concerns the construction of the constitutional provision in connection with certain statutes relating to elections.

(1) Article IV, section 1, of the Constitution relates not only to referendums but also to initiative petitions. It specifies with particularity the requirements of each of such classes of petitions, and also the

elections at which proposed or challenged laws are to be submitted to the voters. An act proposed by an initiative petition for submission directly to the electors must be presented "at the next succeeding general election occurring subsequent to 130 days after the presentation aforesaid of said petition, or at any special election called by the Governor in his discretion prior to such general election". This differs from the provision concerning initiative measures to be first submitted to the legislature, in that the general election must occur ninety days after the presentation of the petition and the special election need not be one "called for such purpose." (2) Issues raised by a referendum petition must be submitted to the *291 People at the next succeeding general election occurring at any time subsequent to thirty days, after the filing of the petition or at any special election called by the Governor in his discretion.

(3) In considering these different provisions, the petitioner contends that because the Constitution provides that "no law or amendment to the Constitution, proposed by the Legislature, shall be submitted at any election unless at the same election there shall be submitted all measures proposed by petition of the electors, if any be so proposed", in all other cases it is discretionary with the Governor which qualified initiative or referendum measures shall be submitted at a special election called for a particular purpose. There are two answers to this contention. In the first place, the Constitution, for obvious reasons, provides that in the particular situation specified, all qualified measures must be submitted to the People at one time. This requirement does not apply when initiatives to be submitted directly to the People and referendums are the only measures which have qualified for submission to the People.

In the second place, the legislature in providing that a special election may be called by the Governor, left it within his power, as a matter of discretion, whether to call such an election. But when he has acted in the exercise of discretion, all measures which are qualified to go before the People by the constitutional provisions must be placed upon the ballot. This is the plain mandate of the Constitution and a court has no authority to change the requirements which the People have imposed.

(4) The petitioner places considerable reliance upon the provision of the Constitution that the failure to submit any referendum measure "at the election specified in this section" shall not prevent its submission at a succeeding general election. This can only mean that if for any reason a referendum measure is not submitted to the voters as required by the Constitution, it shall not thereby fail but must be placed before them at a succeeding general election. This provision safeguards the power reserved by the People.

(5) As against this construction, however, are certain statutory provisions fixing times for the doing of acts in connection with an election on a referendum measure greater than the constitutional period of thirty days. For example, the Constitution provides that "all measures submitted to a *292 vote of the electors, under the provisions of this section, shall be printed, and together with arguments for and against each such measure by those in favor of, and those opposed to, it shall be mailed to each elector in the same manner as now provided by law as to amendments to the Constitution, proposed by the Legislature; and the persons to prepare and present such arguments shall, until otherwise provided by law, be selected by the presiding officer of the Senate". (Art. IV, sec. 1.)

Under section 1195 of the Political Code, arguments for or against a proposed constitutional amendment or other proposition to be submitted to the People "shall be submitted to the secretary of state within ninety days after the adjournment of the legislature". A succeeding section authorizes the Secretary of State, in the event the argument for or against a referendum measure is not filed as required by the Constitution, to make a general press release eighty-five days prior to the date of the election, inviting electors to submit such arguments within sixty-five days prior to the election. (Sec. 1195c, Pol. Code.)

Another requirement laid upon the Secretary of State is that not less than forty-five days before the election he shall furnish each county clerk and registrar of voters a stated number of pamphlets containing the text of the measures to be submitted at such election, with the ballot titles and arguments thereon. The pamphlets are to be mailed to the voters not more than forty days nor less than fifteen days prior to the election. (Sec. 1195b, Pol. Code.)

The essential purpose of these provisions is to give the voters information concerning the measures on the ballot. It does not appear that the statutory requirements cannot be either fully or substantially complied with by the respondents in preparing material for the coming election, but wherever they conflict with constitutional provisions, the latter must prevail.

The alternative writ of mandate heretofore issued herein is discharged and a peremptory writ is denied. ***293**

Cal., 1939.

Hart v. Jordan