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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 AURELIO SALAZAR, JUAN
17 MARTINEZ, and BILL MELENDEZ,
18 Plaintiffs,
19 v.
20 MONTEREY COUNTY,
21 CALIFORNIA; STATE OF
22 CALIFORNIA; KEVIN SHELLEY,
23 CALIFORNIA SECRETARY OF
24 STATE,
25 Defendants.

Case No. C0-3 03584 JF (HRL)

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

**VOTING RIGHTS ACTION
THREE JUDGE COURT**

1 **INTRODUCTION**

2 1. This voting rights action, filed under Section 5 of the Voting
3 Rights Act, 42 U.S.C. § 1973c, seeks declaratory and injunctive relief to address
4 the failure of Defendants Monterey County, the State of California, and Secretary
5 of State Kevin Shelley (collectively “Defendants”) to obtain the necessary Section 5
6 preclearance for numerous voting changes relating to the election date and the
7 timelines, deadlines, and procedures being applied to the “Classification By Race,
8 Ethnicity, Color or National Origin, Initiative Constitutional Amendment”
9 (“CRECNO Initiative”) ballot initiative election.

10 2. On or about July 25, 2003, the California Secretary of State certified
11 that the CRECNO Initiative had qualified for the March 2, 2004 primary election.
12 The Secretary of State then made available an “Official California Voter
13 Information Guide” for the March 2, 2004 election (“March 2, 2004 Voter Guide”).
14 It set forth various timetables and deadlines relating to conducting the March 2,
15 2004 ballot initiative election, which would include the CRECNO Initiative.

16 3. On or about July 24, 2003, the Secretary of State changed the election
17 date for the CRECNO Initiative from March 2, 2004 to October 7, 2003, and made
18 available an “Official California Voter Information Guide” for the October 7, 2003
19 special election (“October 7, 2003 Voter Guide”). This new guide set forth
20 timetables and deadlines relating to the October 7, 2003 election that differed
21 markedly from those first established by the Secretary of State for the March 2,
22 2004 election.

23 4. The change in election date for the CRECNO Initiative from March
24 2, 2004 to October 7, 2003 – a change of nearly five months – constitutes a voting
25 change that has not received Section 5 preclearance. The departure from statutorily
26 established timelines for the review, printing, and distribution of the

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1 ballot pamphlet for an initiative election also constitute voting changes that have not
2 received Section 5 preclearance.

3 5. Accordingly, Plaintiffs seek both preliminary and permanent
4 injunctive relief enjoining the enforcement or implementation of the changes in
5 voting practices until Section 5 preclearance is secured.

6 JURISDICTION

7 6. This Court has jurisdiction over this action under 42 U.S.C. §
8 1973c, 28 U.S.C. §§ 1331, 1343(3), 1343(4), and 2201.

9 PARTIES

10 7. Plaintiffs AURELIO SALAZAR, JUAN MARTINEZ, and BILL
11 MELENDEZ are citizens of the United States, and registered voters residing in
12 Monterey County, California.

13 8. Defendant MONTEREY COUNTY, CALIFORNIA is a
14 governmental entity organized under the laws of the State of California.

15 9. Defendant STATE OF CALIFORNIA is a governmental entity
16 organized under the laws of the State of California.

17 10. Defendant KEVIN SHELLEY is the duly elected Secretary of State
18 of California. As Secretary of State, Defendant Shelley serves as California's Chief
19 Elections Officer. Defendant Shelley is sued in his official capacity.

20 FACTS

21 Section 5 Coverage

22 11. Monterey County is a covered political subdivision under Section 5
23 of the Voting Rights Act. 42 U.S.C § 1973c. Accordingly, all voting qualifications
24 or prerequisites to voting, or standards, practices, or procedures with respect to
25 voting enacted, adopted, or implemented by Monterey County, California on or
26 after November 1, 1968 must be pre-cleared under Section 5 of the Voting Rights
27 Act. 42 U.S.C. § 1973c.

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2 CRECNO Initiative Chronology For March 2, 2004 Election

3 12. On or about July 15, 2002, the Secretary of State certified
4 that the CRECNO Initiative had qualified for the March 2, 2004 primary election.

5 13. On or about July 24, 2003, the Secretary of State made available the
6 March 2, 2004 Voter Guide. It set forth various timetables and deadlines relating to
7 conducting the March 2, 2004 ballot initiative election, as established by various
8 provisions of the California Elections Code:

- 9 • November 13, 2003 - Last Day For Submission of Summary
10 Information And Rebuttal Arguments;
- 11 • November 14, 2003 - Submission of Titles and Summaries, Analyses,
12 "Yes/No" Information, Overview of State Bond Debt and Text For
13 Measures;
- 14 • November 18, 2003 - Available For Public Inspection;
- 15 • December 8, 2003 - Last Day To Deliver Copy To The Printer;
- 16 • January 17, 2004 - Last Day To Furnish Ballot Pamphlets To Counties
17 Mailing Their Own Ballot Pamphlets;
- 18 • January 22, 2004 - Secretary of State To Mail Ballot Pamphlets;
- 19 • February 10, 2004 - Last Day To Complete Ballot Pamphlet Mailing
20 To Voters Registered By E-60;
- 21 • February 21, 2004 - Last Day To Complete Ballot Pamphlet Mailing
22 To Voters Registered By E-29;
- 23 • March 2, 2004 - Election Day.

24 CRECNO Initiative Chronology For October 7, 2003 Election

25 14. On July 25, 2003, the Secretary of State issued a news release
26 assigning proposition numbers to the initiatives set to appear on the October 7,
27 2003 special election, one of which was the CRECNO Initiative, now designated as

1 “Proposition 54.”

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3 15. On or about July 26, 2003, the Office of the Secretary of State made
4 available the October 7, 2003 Voter Guide. It set forth various timetables and
5 deadlines relating to conducting the October 7, 2003 ballot initiative election, as
6 established in various provisions of the California Elections Code:

- 7 • July 31, 2003 - Last Day Arguments Accepted For Measures;
- 8 • August 1, 2003 - Selection and Exchange of Arguments For and
9 Against Measures;
- 10 • August 7, 2003 - Last Day For Submission of Summary Information
11 And Rebuttal Arguments;
- 12 • August 11 to August 31, 2003 - Available For Public Inspection;
- 13 • October 7, 2003 - Election Day.

14 Plainly, the election date, timetable, and deadlines relating to the October 7, 2003
15 election differed markedly from those first established by the Secretary of State for
16 the March 2, 2004 election.

17 16. Through its Elections Code, the State of California has established
18 certain minimum mandatory timelines for the preparation, review, printing, and
19 mailing of the ballot pamphlet for an initiative election. These mandates include the
20 requirement that ballot pamphlets be mailed beginning at least 40 days before the
21 election, that the ballot pamphlet be provided to the printer at least 80 days before
22 the election, and that the ballot pamphlet be available for public inspection at least
23 100 days before the election. The timelines relating to the October 7, 2003 election
24 on the CRECNO Initiative depart from the established electoral procedures that the
25 State of California ordinarily follows for an initiative election.

26 **REQUEST FOR THREE JUDGE COURT**

27 17. Under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c,

1 Plaintiffs request the convening of a Three Judge Court.

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4 **FIRST CLAIM FOR RELIEF**

5 42 U.S.C. § 1973c

6 18. Plaintiffs reallege paragraphs 1 through 17 above and incorporate the
7 same as though fully set forth here.

8 19. The changes to the ballot initiative election date and the procedures
9 adopted by the Secretary of State and set forth in the October 7, 2003 Voter
10 Guide, constitute voting qualifications, or prerequisites to voting, or standards,
11 practices, or procedures with respect to voting different from those in force or
12 effect on November 1, 1968, in Monterey County, within the meaning of Section 5
13 of the Voting Rights Act, 42 U.S.C. § 1973c.

14 20. Based on information and belief, Defendants have not applied for or
15 received preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. §
16 1973c, from either the United States Attorney General or the United States District
17 Court for the District of Columbia, for changes to the ballot initiative election date
18 and procedures as set forth in the October 7, 2003 Voter Guide.

19 21. The failure of Defendants to secure a determination from either the
20 United States Attorney General or the United States District Court for the District
21 of Columbia that the change in the ballot election initiative date and that the changed
22 procedures adopted by the Secretary of State and set forth in the October 7, 2003
23 Voter Guide, do not have the purpose and do not have the effect of denying or
24 abridging the right to vote on account of race, color, or membership in a language
25 minority group, constitutes a violation of Section 5 of the Voting Rights Act, 42
26 U.S.C. § 1973c.

27 22. The failure of Defendants to secure a determination from either the

1 United States Attorney General or the United States District Court for the District
2 of Columbia that the change in the ballot election initiative date and that the changed
3 procedures adopted by the Secretary of State and set forth in the October 7, 2003
4 Voter Guide, do not have the purpose and do not have the effect of denying or
5 abridging the right to vote on account of race, color, or membership in a language
6 minority group, renders the implementation of these changes legally unenforceable.

7 23. Defendants will enforce the procedures set forth for the October 7,
8 2003 election unless the enforcement of such procedures is enjoined by this Court.
9 Only by granting injunctive relief will Defendants be prevented from proceeding
10 with the procedures relating to the ballot initiative election until they properly
11 comply with Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

12 24. Upon information and belief, Plaintiffs allege that the voting changes
13 specified in paragraphs 1 through 23 will not receive the required Section 5
14 preclearance from either the United States Attorney or the United States District
15 Court for the District of Columbia.

16 **INJUNCTIVE AND DECLARATORY RELIEF**

17 25. Plaintiffs reallege paragraphs 1 through 24 above and incorporate the
18 same as though fully set forth here.

19 26. This is also an action for declaratory, preliminary, and permanent
20 injunctive relief sought under 28 U.S.C. §§ 2201 and 2202, and Fed. R. Civ. P. 57
21 and 65. Plaintiffs seek a declaration that the failure of Defendants to secure a
22 determination from either the United States Attorney General or the United States
23 District Court for the District of Columbia that the change in the ballot initiative
24 election date and that the changed procedures adopted by the Secretary of State
25 and set forth in the October 7, 2003 Voter Guide, do not have the purpose and do
26 not have the effect of denying or abridging the right to vote on account of race,
27 color, or membership in a language minority group, constitutes a violation of

1 Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, thereby making injunctive
2 relief appropriate. Unless enjoined, Defendants will continue with the enforcement
3 and implementation of the legally unenforceable changes affecting

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5 the voting rights of language, racial, and ethnic minority groups residing in
6 Monterey County.

7 27. Plaintiffs seek a declaration that the enforcement of the dates and
8 procedures for the October 7, 2003 election set forth by Defendants, unless
9 enjoined, will violate the protections afforded by Section 5 of the Voting Rights
10 Act, 42 U.S.C. § 1973c, thereby making injunctive relief appropriate.

11 **BASIS FOR EQUITABLE RELIEF**

12 28. Plaintiffs have no plain, adequate, or complete remedy at law to
13 redress the wrongs alleged here, and this suit for declaratory and injunctive relief is
14 their only means of securing adequate redress from the unlawful practices of
15 Defendants. Plaintiffs will continue to suffer irreparable injury from the acts,
16 policies, and practices of Defendants as set forth here unless enjoined by this
17 Court.

18 **PRAYER**

19 29. WHEREFORE, Plaintiffs respectfully pray that this Court enter
20 judgment granting Plaintiffs:

- 21 a. A declaration that the changes in the ballot election initiative date and
22 in the initiative election procedures adopted by the Secretary of State
23 and set forth in the October 7, 2003 Voter Guide, constitute changes
24 affecting voting within the meaning of Section 5 of the Voting Rights
25 Act, 42 U.S.C. § 1973c, and are legally unenforceable absent the
26 requisite Section 5 preclearance;
- 27 b. A permanent injunction restraining and enjoining Defendants, their

1 officers, agents, employees, attorneys and successors in office and all
2 other persons in active concert and participation with them, from any
3 further implementation or enforcement of the changes in the ballot
4 election initiative date and in the initiative election procedures adopted
5 by the Secretary of State and set forth in the October 7, 2003 Voter
6 Guide, unless and until those changes affecting voting are pre-cleared
7 pursuant to Section 5 of the Voting Rights Act;

- 8 c. An Order granting Plaintiffs their costs of court, necessary litigation
9 expenses, and reasonable attorneys' fees to be adjudged against the
10 Defendants as provided for under 42 U.S.C. §§ 1973l(e) and 1988;
- 11 d. An Order retaining jurisdiction to render such further and additional
12 Orders as the Court may, from time to time, deem appropriate; and
- 13 e. An Order granting such other additional relief at law or in equity as
14 may be deemed appropriate.

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16 Dated: July 31, 2003

Respectfully submitted,
Mexican American Legal Defense
And Educational Fund

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21 By: _____
Joaquin G. Avila
22 Attorneys for Plaintiffs.