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2003-2714
2003-2923

Voting Section - NWB.
950 Pennsylvania Avenue, N.W., Room 7254
Washington, DC 20530

AUG 19 2003

John P. Mott-Smith, Esq.
Chief, Elections Division
Tony Miller, Esq.
Elections Counsel
Secretary of State's Office
1500 11th Street, 5th Floor
Sacramento, California 95814

Dear Messrs. Mott-Smith and Miller:

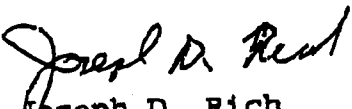
This letter responds to your recent submission to the Attorney General, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of (i) the setting of the date for the October 7, 2003, special gubernatorial recall election; (ii) the procedures for conducting the November 5, 1974, special referendum election; (iii) as approved by the voters, the repeal of pre-November 1974 recall procedures set forth in Article XXIII of the California Constitution, including the elimination of the requirement that a petition for recall of any officer cannot be circulated or filed until the officer has held office for at least six months; and (iv) the adoption of 1974 recall procedures under the same article number for the State of California. We received your submissions on August 4 and 13, 2003; supplemental information was received through August 18, 2003.

The Attorney General does not interpose any objection to the setting of October 7, 2003 as the date for the special gubernatorial recall election; the procedures for conducting the November 5, 1974, special referendum election; the repeal of then-existing recall procedures; or the adoption of new recall procedures. However, it should be noted that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of these changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

You have also submitted to the Attorney General for review, pursuant to Section 5, the procedures for conducting the June 4, 1974, special referendum election, and, as approved by the voters, changes to campaign finance provisions. However, on August 16, 2003, you withdrew your submission of these changes. Accordingly, no determination by the Attorney General is required concerning this matter. See 28 C.F.R. 51.25 and 51.35.

We also write to seek clarification about whether, in its August 4, 2003 letter to the Department, the State intended to submit for preclearance under Section 5 the change in the date for the initiative election from March 2, 2004, to October 7, 2003, and the several attendant changes to the timetable for certain events leading up to this election. It is our understanding that on August 15, 2003, the United States District Court for the Northern District of California held that these changes were covered by Section 5, and that the State may not implement them in the absence of compliance with Section 5. Salazar v. Monterey County, Case No. C-03-03584 HRL (N.D. Cal San Jose Div.). To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of whether the State of California intended to submit these changes in its submission of August 4 or whether it will make a subsequent submission. If you have any questions, please call Ms. Adrienne Fernandes (202-353-0790) or Ms. Judith Reed (202-305-0164) of our staff.

Sincerely,


Joseph D. Rich
Chief, Voting Section

cc: The Honorable Jeremy Fogel, United States District Judge
Counsel of Record, Oliver v. State of California
Counsel of Record, Salazar v. Monterey County