

1 THOMAS A. SAENZ, SBN 159430  
2 JOAQUIN G. AVILA, SBN 65484  
3 HECTOR O. VILLAGRA, SBN 177586  
4 STEVEN J. REYES, SBN 212849  
5 VICTOR VIRAMONTES, SBN 214158  
6 MEXICAN AMERICAN LEGAL  
7 DEFENSE AND EDUCATIONAL FUND  
8 634 South Spring St., 11th Floor  
9 Los Angeles, CA 90014  
10 Phone(213) 629-2512  
11 Fax (213) 629-0266

7 MARIA BLANCO, SBN 114655  
8 MEXICAN AMERICAN LEGAL  
9 DEFENSE AND EDUCATIONAL FUND  
10 926 "J" Street, #422  
11 Sacramento, CA 95814  
12 Phone(916) 443-7531  
13 Fax (916) 443-1541

11 Attorneys for Plaintiffs.

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

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,

24 Defendants.

25 AND RELATED ACTION.  
26

Case No. C-03-3584 JF (HRL)  
[Related to Case No. 03-3658 JF]

**FIRST AMENDED 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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28 ballot pamphlet for an initiative election also constitute voting changes that have not

1 received Section 5 preclearance.

2 5. As a result of the accelerated election, Monterey County has adopted  
3 additional voting changes. Monterey County has consolidated its voting precincts  
4 for the October 7, 2003 election. During the November 2002 general election,  
5 Monterey County had 190 voting precincts. On August 14, 2003, Monterey  
6 County Registrar, Tony Anchundo submitted a preclearance request to the  
7 Department of Justice seeking approval of its precinct consolidation plan that  
8 reduced the number of precincts from 190 to 86 for the October 7, 2003 election.  
9 As of August 11, 2003, Monterey County's Elections Department website indicated  
10 that the October 7, 2003 election would utilize consolidated precincts. As of  
11 August 19, 2003, the website did not list polling location information for voters.  
12 Additionally, for the October 7, 2003 election, Monterey County will reduce the  
13 total number of bilingual workers assigned to assist voters. These all constitute  
14 voting changes that have not received Section 5 preclearance.

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

### 18 JURISDICTION

19 7. This Court has jurisdiction over this action under 42 U.S.C. §  
20 1973c, 28 U.S.C. §§ 1331, 1343(3), 1343(4), and 2201.

### 21 PARTIES

22 8. Plaintiffs AURELIO SALAZAR, JUAN MARTINEZ, and BILL  
23 MELENDEZ are citizens of the United States, and registered voters residing in  
24 Monterey County, California.

25 9. Defendant MONTEREY COUNTY, CALIFORNIA is a  
26 governmental entity organized under the laws of the State of California.

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28 10. Defendant STATE OF CALIFORNIA is a governmental entity

1 organized under the laws of the State of California.

2 11. Defendant KEVIN SHELLEY is the duly elected Secretary of State  
3 of California. As Secretary of State, Defendant Shelley serves as California's Chief  
4 Elections Officer. Defendant Shelley is sued in his official capacity.

## 5 **FACTS**

### 6 Section 5 Coverage

7 12. Monterey County is a covered political subdivision under Section 5  
8 of the Voting Rights Act. 42 U.S.C. § 1973c. Accordingly, all voting  
9 qualifications or prerequisites to voting, or standards, practices, or procedures with  
10 respect to voting enacted, adopted, or implemented by Monterey County,  
11 California on or after November 1, 1968 must be precleared under Section 5 of the  
12 Voting Rights Act. 42 U.S.C. § 1973c.

### 13 CRECNO Initiative Chronology For March 2, 2004 Election

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

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

- 20 • November 13, 2003 - Last Day For Submission of Summary  
21 Information And Rebuttal Arguments;
- 22 • November 14, 2003 - Submission of Titles and Summaries, Analyses,  
23 "Yes/No" Information, Overview of State Bond Debt and Text For  
24 Measures;
- 25 • November 18, 2003 - Available For Public Inspection;
- 26 • December 8, 2003 - Last Day To Deliver Copy To The Printer;
- 27 • January 17, 2004 - Last Day To Furnish Ballot Pamphlets To Counties  
28 Mailing Their Own Ballot Pamphlets;

- 1 • January 22, 2004 - Secretary of State To Mail Ballot Pamphlets;
- 2 • February 10, 2004 - Last Day To Complete Ballot Pamphlet Mailing
- 3 To Voters Registered By E-60;
- 4 • February 21, 2004 - Last Day To Complete Ballot Pamphlet Mailing
- 5 To Voters Registered By E-29;
- 6 • March 2, 2004 - Election Day.

7 CRECNO Initiative Chronology For October 7, 2003 Election

8 15. On July 25, 2003, the Secretary of State issued a news release  
9 assigning proposition numbers to the initiatives set to appear on the October 7,  
10 2003 special election, one of which was the CRECNO Initiative, now designated as  
11 “Proposition 54.”

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

- 16 • July 31, 2003 - Last Day Arguments Accepted For Measures;
- 17 • August 1, 2003 - Selection and Exchange of Arguments For and
- 18 Against Measures;
- 19 • August 7, 2003 - Last Day For Submission of Summary Information
- 20 And Rebuttal Arguments;
- 21 • August 11 to August 31, 2003 - Available For Public Inspection;
- 22 • October 7, 2003 - Election Day.

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

26 17. Through its Elections Code, the State of California has established  
27 certain minimum mandatory timelines for the preparation, review, printing, and  
28 mailing of the ballot pamphlet for an initiative election. These mandates include the

1 requirement that ballot pamphlets be mailed beginning at least 40 days before the  
2 election, that the ballot pamphlet be provided to the printer at least 80 days before  
3 the election, and that the ballot pamphlet be available for public inspection at least  
4 100 days before the election. The timelines relating to the October 7, 2003 election  
5 on the CRECNO Initiative depart from the established electoral procedures that the  
6 State of California ordinarily follows for an initiative election.

7 Monterey County's Additional Voting Changes

8 18. In early August 2003, Monterey County publicized its plan to  
9 consolidate precincts. On August 14, 2003, Monterey County Registrar Tony  
10 Anchundo filed a short, three-page letter requesting preclearance for its precinct  
11 consolidation plan from the Department of Justice under Section 5 of the Voting  
12 Rights Act. Based on information and belief, this voting change has not received  
13 preclearance. An informational cartoon on the Monterey County Elections  
14 Department website advised voters that Monterey County was facing "Super  
15 Consolidation." This informational cartoon, as of August 19, 2003, still appeared  
16 on the website. Monterey County has also planned an overall reduction in the  
17 number of bilingual workers assigned to assist voters for the October 7, 2003  
18 election.

19 19. Defendants will enforce these voting changes which have not been  
20 precleared, in violation of Section 5 of the Voting Rights Act, unless injunctive  
21 relief that enjoins the implementation of such changes until preclearance is received  
22 is granted.

23 **REQUEST FOR THREE JUDGE COURT**

24 20. Under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c,  
25 Plaintiffs request the convening of a Three Judge Court.

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28 **FIRST CLAIM FOR RELIEF**

42 U.S.C. § 1973c

21. Plaintiffs reallege paragraphs 1 through 20 above and incorporate the same as though fully set forth here.

22. The changes to the ballot initiative election date and the procedures adopted by the Secretary of State and set forth in the October 7, 2003 Voter Guide, Monterey County's adoption of a precinct consolidation plans, the reduction in the number of bilingual pollworkers, and any additional as yet undiscovered voting changes, constitute voting qualifications, or prerequisites to voting, or standards, practices, or procedures with respect to voting different from those in force or effect on November 1, 1968, in Monterey County, within the meaning of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

23. After this action was filed on August 1, 2003, Defendants submitted a request for preclearance on August 4, 2003 (Submission Request No. 2003-2714) for the limited purpose of seeking approval of the change in election date from March 2, 2004 to October 7, 2003 for the Proposition 54 ballot initiative election. Defendants have not received preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, from either the United States Attorney General or the United States District Court for the District of Columbia, for changes to the ballot initiative election date and procedures as set forth in the October 7, 2003 Voter Guide, the precinct consolidation plan, the reduction in the number of bilingual pollworkers, or any other voting changes associated with the October 7, 2003 election.

24. The failure of Defendants to secure a determination from either the United States Attorney General or the United States District Court for the District of Columbia that the change in the ballot election initiative date, that the changed procedures adopted by the Secretary of State and set forth in the October 7, 2003 Voter Guide, that Monterey County's adoption of a precinct consolidation plan, that the reduction in the number of bilingual pollworkers, or any other voting

1 change associated with the October 7, 2003 election, do not have the purpose and  
2 do not have the effect of denying or abridging the right to vote on account of race,  
3 color, or membership in a language minority group, constitutes a violation of  
4 Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

5       25. The failure of Defendants to secure a determination from either the  
6 United States Attorney General or the United States District Court for the District  
7 of Columbia that the change in the ballot election initiative date, that the changed  
8 procedures adopted by the Secretary of State and set forth in the October 7, 2003  
9 Voter Guide, that Monterey County's adoption of a precinct consolidation plan,  
10 and that the reduction in the number of bilingual pollworkers, or any other voting  
11 change associated with the October 7, 2003 election, do not have the purpose and  
12 do not have the effect of denying or abridging the right to vote on account of race,  
13 color, or membership in a language minority group, renders the implementation of  
14 these changes legally unenforceable.

15       26. Defendants will enforce the procedures set forth for the October 7,  
16 2003 election unless the enforcement of such procedures is enjoined by this Court.  
17 Only by granting injunctive relief will Defendants be prevented from proceeding  
18 with the procedures relating to the ballot initiative election until they properly  
19 comply with Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

20       27. Upon information and belief, Plaintiffs allege that the voting changes  
21 specified in paragraphs 1 through 19, will not receive the required Section 5  
22 preclearance from either the United States Attorney or the United States District  
23 Court for the District of Columbia.

24       28. Plaintiffs also allege that Defendants may implement other types of  
25 voting changes – as yet unknown to Plaintiffs – in preparation for the October 7,  
26 2003 election for which preclearance has not been received. Defendants will

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28 enforce these voting changes, in violation of Section 5 of the Voting Rights Act,



1 unless injunctive relief is granted.

2 **INJUNCTIVE AND DECLARATORY RELIEF**

3 29. Plaintiffs reallege paragraphs 1 through 28 above and incorporate the  
4 same as though fully set forth here.

5 30. This is also an action for declaratory, preliminary, and permanent  
6 injunctive relief sought under 28 U.S.C. §§ 2201 and 2202, and Fed. R. Civ. P. 57  
7 and 65. Plaintiffs seek a declaration that the failure of Defendants to secure a  
8 determination from either the United States Attorney General or the United States  
9 District Court for the District of Columbia that the change in the ballot initiative  
10 election date, and that the changed procedures adopted by the Secretary of State  
11 and set forth in the October 7, 2003 Voter Guide, that Monterey County's precinct  
12 consolidation plan, and that the reduction in the number of bilingual pollworkers, or  
13 any other voting change associated with the October 7, 2003 election, do not have  
14 the purpose and do not have the effect of denying or abridging the right to vote on  
15 account of race, color, or membership in a language minority group, constitutes a  
16 violation of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, thereby making  
17 injunctive relief appropriate. Unless enjoined, Defendants will continue with the  
18 enforcement and implementation of the legally unenforceable changes affecting the  
19 voting rights of language, racial, and ethnic minority groups residing in Monterey  
20 County.

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

25 **BASIS FOR EQUITABLE RELIEF**

26 32. Plaintiffs have no plain, adequate, or complete remedy at law to  
27 redress the wrongs alleged here, and this suit for declaratory and injunctive relief is  
28 their only means of securing adequate redress from the unlawful practices of

1 Defendants. Plaintiffs will continue to suffer irreparable injury from the acts,  
2 policies, and practices of Defendants as set forth here unless enjoined by this  
3 Court.

4 **PRAYER**

5 33. WHEREFORE, Plaintiffs respectfully pray that this Court enter  
6 judgment granting Plaintiffs:

- 7 a. A declaration that the changes in the ballot election initiative date, the  
8 change in the initiative election procedures adopted by the Secretary of  
9 State and set forth in the October 7, 2003 Voter Guide, Monterey  
10 County’s precinct consolidation plan, the reduction in the number of  
11 bilingual pollworkers, and any other as yet undiscovered voting  
12 changes, constitute changes affecting voting within the meaning of  
13 Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and are legally  
14 unenforceable absent the requisite Section 5 preclearance;
- 15 b. A permanent injunction restraining and enjoining Defendants, their  
16 officers, agents, employees, attorneys and successors in office and all  
17 other persons in active concert and participation with them, from any  
18 further implementation or enforcement of the changes in the ballot  
19 election initiative date, and changes in the initiative election procedures  
20 adopted by the Secretary of State and set forth in the October 7, 2003  
21 Voter Guide, Monterey County’s precinct consolidation plan, its  
22 reduction in the number of bilingual pollworkers, and any other as yet  
23 undiscovered voting changes, unless and until those changes affecting  
24 voting are pre-cleared pursuant to Section 5 of the Voting Rights Act;
- 25 c. An Order granting Plaintiffs their costs of court, necessary litigation  
26 expenses, and reasonable attorneys’ fees to be adjudged against the  
27 Defendants as provided for under 42 U.S.C. §§ 1973l(e) and 1988;
- 28 d. An Order retaining jurisdiction to render such further and additional

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Orders as the Court may, from time to time, deem appropriate; and  
e. An Order granting such other additional relief at law or in equity as  
may be deemed appropriate.

Dated: August 21, 2003

Respectfully submitted,  
Mexican American Legal Defense  
and Educational Fund

By:         /s/          
Joaquin G. Avila

Attorneys for Plaintiffs.