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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

AURELIO SALAZAR, et al.,

Plaintiffs,

v.

MONTEREY COUNTY, CALIFORNIA, et al.,

Defendants.

Case No. C-03-03584 JF

ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION WITHOUT
PREJUDICE AND CONDITIONALLY
DISSOLVING TEMPORARY ORDER
RESTRAINING MAILING OF OVERSEAS
BALLOTS

BEFORE: FOGEL, District Judge, CALLAHAN, Circuit Judge and WHYTE, District Judge¹

Plaintiffs seek a preliminary injunction prohibiting Defendants from going forward with the special election on Proposition 54 (also known as the Classification by Race, Ethnicity, Color or National Origin (CRECNO) Initiative) currently scheduled for October 7, 2003 and from conducting any election to decide Proposition 54 other than on March 2, 2004. On August 15, 2003, this Court issued an order to show cause why injunctive relief should not be granted and a temporary order restraining Defendant Monterey County (“the County”) from mailing absentee

¹The Honorable Consuelo M. Callahan, United States Circuit Judge, United States Court of Appeals for the Ninth Circuit, and the Honorable Ronald M. Whyte, United States District Judge, Northern District of California, sitting by designation pursuant to 28 U.S.C. 2284.

1 ballots to overseas voters without first obtaining preclearance of certain changes in voting
2 procedures pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (“Section
3 5”). Since August 15, 2003, Defendants have obtained Section 5 preclearance as to all of the
4 changes at issue except for five precinct and polling place consolidations identified in a letter from
5 the Civil Rights Division of the United States Department of Justice dated September 4, 2003.²
6 The County has represented to the Department of Justice and to this Court that plans for the
7 remaining consolidations have been withdrawn and that the consolidations will not occur. The
8 County also has represented that it will provide additional bilingual poll workers at these
9 locations.

10
11 The right to vote is fundamental to a democratic society, and thus litigation to ensure
12 compliance with the provisions of the Voting Rights Act is of the utmost importance. However, in
13 cases brought pursuant to Section 5, the role of the three-judge court is limited to a determination
14 of 1) whether a change in voting procedures triggers the preclearance requirement of Section 5, 2)
15 whether preclearance has been obtained, and 3) what temporary remedy, if any, is appropriate.
16 Lopez v. Monterey County, 519 U.S. 9, 23 (1996). The court’s goal “must be to ensure that the
17 covered jurisdiction submits its election plan to the appropriate federal authorities for
18 preclearance as expeditiously as possible.” Id. at 24. The court does not assess independently
19 whether the Department of Justice has acted appropriately in granting preclearance.³

20 Because all changes in voting procedures subject to Section 5 have been either precleared

21
22 ²The Department of Justice generated two letters on September 4, 2003. The first
23 identified several unresolved issues, including a change in the number of bilingual poll workers
24 and the consolidation of thirty-two precincts and polling places. The second granted preclearance
25 as to all issues except the consolidation of five precincts and polling places and concluded that
26 because the County has withdrawn submission of these consolidations, preclearance no longer is
27 required.

28 ³A decision by the Department of Justice to grant preclearance does not bar future litigation
under other provisions of the Voting Rights Act, nor does it preclude the Department of Justice
itself from interposing subsequent objections to changes in voting procedures within a sixty-day
period. 28 C.F.R. §§ 51.41 and 51.43.

1 or withdrawn, the Court concludes that there is no factual basis for injunctive relief at the present
2 time. The Court nonetheless will retain jurisdiction to grant appropriate injunctive relief in the
3 event that circumstances change prior to the October 7, 2003 election, or if the County for any
4 reason fails to act in accordance with its representations to the Department of Justice concerning
5 the withdrawal of the five consolidations and the provision of bilingual poll workers referenced in
6 the Department's second letter dated September 4, 2003.

7 Accordingly, and good cause therefor appearing, IT IS HEREBY ORDERED that the
8 motion for preliminary injunction is denied without prejudice. The temporary order restraining
9 mailing of absentee ballots to overseas voters is dissolved, conditioned upon the County's making
10 reasonable efforts to expedite delivery and return of such ballots prior to the October 7, 2003
11 election. The Court retains jurisdiction to grant appropriate relief in the event of a change in
12 circumstances prior to the October 7, 2003 election.

13
14 DATED: September 5, 2003

15
16 _____/s/_____
17 JEREMY FOGEL
18 United States District Judge

19 _____/s/_____
20 CONSUELO M. CALLAHAN
21 United States Circuit Judge

22 _____/s/_____
23 RONALD M. WHYTE
24 United States District Judge