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14 GUADALUPE JOAN PEREZ

15
16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18

19 MARIA BUELL; ANTONIO ALVARO
20 MORALES; and GUADALUPE JOAN
PEREZ,

21 Plaintiffs,

22
23 v.

24 MONTEREY COUNTY, CALIFORNIA; and
25 THE STATE OF CALIFORNIA

26 Defendants.
27
28

Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

**VOTING RIGHTS ACTION
THREE JUDGE COURT REQUESTED**

1 **INTRODUCTION**

2 1. This action is filed pursuant to § 5 of the Voting Rights Act of 1965, 42 U.S.C.
3 § 1973c, as amended by Public Law 109-246, 120 Stat. 577, on July 27, 2006 (hereinafter cited
4 as § 5 of the Voting Rights Act). This action seeks declaratory and injunctive relief to address
5 the failure to obtain the necessary approval pursuant to § 5 of the Voting Rights Act, for the
6 adoption, approval, or implementation of a Proclamation (hereinafter cited as Proclamation) filed
7 on April 27, 2010 in the Office of the Secretary of State of the State of California, and issued by
8 the Governor of the State of California, Arnold Schwarzenegger, which proclaims and orders that
9 a special election shall be conducted on August 17, 2010, to fill the vacancy in the Office of
10 Senator from California State Senate District 15. As a result of this Proclamation, the Secretary
11 of State of the State of California has established an election timetable with a special primary
12 election scheduled for June 22, 2010, and a special run-off election timetable with a special
13 election scheduled for August 17, 2010. The special primary election and special election
14 schedules ordered by the Proclamation and the implementation of such election schedules by
15 Monterey County, California, result in a violation of § 5, since the requisite statutory approval
16 has not been secured prior to the implementation of these changes in election dates. Plaintiffs
17 seek a temporary restraining order, a preliminary injunction and a permanent injunction
18 preventing the continued implementation of such election schedules unless and until the required
19 approval pursuant to § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, has been obtained.

20 **JURISDICTION AND VENUE**

21 2. This Court has jurisdiction over this action pursuant to § 5 of the Voting Rights Act
22 of 1965, 42 U.S.C. § 1973c, 28 U.S.C. §§ 1331, 1343(3) and (4) and 28 U.S.C. § 2201.

23 3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because
24 Defendant Monterey County resides in this district, and a substantial part of the events or
25 omissions giving rise to the claim occurred in the Northern District of California.

26 **INTRADISTRICT ASSIGNMENT**

27 4. Assignment of this case to the San Jose division of this Court is appropriate under
28 Civil L.R. 3-2(e) because this action arises in Monterey County.

1 **PARTIES**

2 5. Plaintiffs MARIA BUELL, ANTONIO ALVARO MORALES and GUADALUPE
3 JOAN PEREZ, who reside in Monterey County, California, are citizens of the United States and
4 are members of a language minority group and registered voters residing in California State
5 Senate District 15.

6 6. Defendant MONTEREY COUNTY, CALIFORNIA is a governmental entity
7 organized pursuant to the laws of the State of California and is a political subdivision subject to
8 the requirements of § 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

9 7. Defendant STATE OF CALIFORNIA is a governmental entity organized pursuant
10 to the laws of the State of California. Defendant STATE OF CALIFORNIA is not a political
11 subdivision subject to the requirements of § 5 of the Voting Rights Act, 42 U.S.C. § 1973c.
12 However, the Proclamation issued by Governor Arnold Schwarzenegger constitutes a change
13 affecting voting when Defendant MONTEREY COUNTY, CALIFORNIA, implements or seeks
14 to administer the change. Defendant STATE OF CALIFORNIA is a necessary party for this
15 Court to effectuate any temporary, preliminary and permanent injunctive relief addressing any
16 violation of § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

17 **FACTS**

18 8. Defendant STATE OF CALIFORNIA, through the Office of the Governor of the
19 State of California, Arnold Schwarzenegger, issued a Proclamation on April 27, 2010, which was
20 filed in the Office of the Secretary of State of the State of California (hereinafter cited as
21 “Secretary of State”) on April 27, 2010.

22 9. The Proclamation proclaims and orders that a special election shall be conducted
23 on August 17, 2010, to fill the vacancy in the Office of Senator from California State Senate
24 District 15. As a result of this Proclamation, the Secretary of State has established an election
25 timetable with a special primary election scheduled for June 22, 2010, and a special run-off
26 election timetable with a special election scheduled for August 17, 2010.

27 10. The special primary election and special election schedules ordered by the
28 Proclamation and established by the Secretary of State will be implemented by Defendant

1 MONTEREY COUNTY, CALIFORNIA, in elections to fill the vacancy in the Office of Senator
2 from California State Senate District 15.

3 11. Defendant MONTEREY COUNTY, CALIFORNIA, conducts elections in
4 Monterey County, California.

5 12. Defendant MONTEREY COUNTY, CALIFORNIA, is a covered jurisdiction
6 under § 5 of the Voting Rights Act, 42 U.S.C. § 1973c and must secure approval or preclearance
7 before enacting or seeking to administer any voting qualifications or prerequisites to voting, or
8 standards, practices, or procedures with respect to voting that are different from those that were
9 in force or effect on November 1, 1968, the date upon which § 5 coverage for Defendant
10 MONTEREY COUNTY, CALIFORNIA, began. A voting qualification or prerequisite to
11 voting, or standard, practice, or procedure subject to approval pursuant to § 5 of the Voting
12 Rights Act, 42 U.S.C. § 1973c, is hereinafter referred to as a “change affecting voting.”

13 13. A covered jurisdiction is a political subdivision subject to the preclearance
14 requirements of § 5 of the Voting Rights Act. A covered jurisdiction can secure § 5 preclearance
15 from either the United States Attorney General or the United States District Court for the District
16 of Columbia. Under the administrative proceeding before the United States Attorney General or
17 the judicial proceeding seeking a declaratory judgment before the United States District Court for
18 the District of Columbia, the covered jurisdiction must demonstrate that the proposed change
19 affecting voting does not have the purpose and will not have the effect of denying or abridging
20 the right to vote on account of race or color, or membership in a language minority group. If the
21 covered jurisdiction cannot meet its burden, the United States Attorney General will deny
22 administrative preclearance and the United States District Court for the District of Columbia will
23 not grant a declaratory judgment approving the change affecting voting. Absent preclearance
24 pursuant to § 5, the change affecting voting cannot be implemented or enforced in any elections.
25 28 C.F.R. § 51.10.

26 14. Defendant MONTEREY COUNTY, CALIFORNIA, has and will be seeking to
27 administer or implementing a change in the primary and general election dates for the Office of
28 Senator from California State Senate District 15. According to the Proclamation issued by the

1 Governor of California, a special primary election will be held in Monterey County, California,
2 on June 22, 2010 and a special run-off election on August 17, 2010, for the Office of Senator
3 from California State Senate District 15. The regularly scheduled primary election and election
4 for the Office of Senator from California State Senate District 15 will be held on June 5, 2012
5 (primary election) and on November 6, 2012 (election). These changes in election dates for the
6 Office of Senator from California State Senate District 15 constitute changes affecting voting.
7 These changes in election dates for the Office of Senator from California State Senate District 15
8 constitute voting qualifications or prerequisites to voting, or standards, practices, or procedures
9 with respect to voting different from those that were in force or effect on November 1, 1968.
10 Under § 5, Defendant MONTEREY COUNTY, CALIFORNIA, must submit these changes
11 affecting voting to the United States Attorney General or the United States District Court for the
12 District of Columbia for § 5 preclearance.

13 15. Upon information and belief, Defendant MONTEREY COUNTY, CALIFORNIA,
14 will reduce the number of polling places in order to conduct the June 22, 2010, special primary
15 election and the August 17, 2010, special election. These anticipated reductions in polling places
16 constitute changes affecting voting. These anticipated reductions in polling places constitute
17 voting qualifications or prerequisites to voting, or standards, practices, or procedures with respect
18 to voting different from those that were in force or effect on November 1, 1968. Under § 5,
19 Defendant MONTEREY COUNTY, CALIFORNIA, must submit these changes affecting voting
20 to the United States Attorney General or the United States District for the District of Columbia
21 for § 5 preclearance.

22 16. Defendant MONTEREY COUNTY, CALIFORNIA, has not secured the requisite
23 determination pursuant to § 5 of the Voting Rights Act from either the United States Attorney
24 General or the United States District Court for the District of Columbia that the changes affecting
25 voting implemented by Defendant MONTEREY COUNTY, CALIFORNIA that are specified in
26 paragraphs Fourteen (14) and Fifteen (15) of this Complaint, do not have the purpose and will
27 not have the effect of denying or abridging the right to vote on account of race, color, or
28 membership in a language minority group.

1 17. Notwithstanding the lack of preclearance as required by § 5 of the Voting Rights
2 Act, Defendant MONTEREY COUNTY, CALIFORNIA has and will be seeking to administer
3 or implementing the changes affecting voting specified in paragraphs Fourteen (14) and Fifteen
4 (15) of this Complaint.

5 18. This Complaint alleges that the changes affecting voting specified in paragraphs
6 Fourteen (14) and Fifteen (15) of this Complaint cannot be applied to any elections in Monterey
7 County, California, for the Office of Senator from California State Senate District 15 until such
8 changes affecting voting have received administrative preclearance by the United States Attorney
9 General or judicial preclearance by the United States District Court for the District of Columbia
10 pursuant to § 5 of the Voting Rights Act.

11 19. Plaintiffs seek an Order enjoining any elections conducted within Defendant
12 MONTEREY COUNTY, CALIFORNIA, for the Office of Senator from California State Senate
13 District 15 unless and until the changes affecting voting specified in paragraphs Fourteen (14)
14 and Fifteen (15) of this Complaint have received the requisite preclearance under § 5 of the
15 Voting Rights Act.

16 **REQUEST TO CONVENE A THREE JUDGE COURT**

17 20. Pursuant to § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, the convening of a
18 Three Judge Court is requested.

19 **CLAIM FOR RELIEF**

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

22 22. Plaintiffs allege that the failure of Defendant MONTEREY COUNTY,
23 CALIFORNIA, to secure a determination pursuant to § 5 of the Voting Rights Act, 42 U.S.C.
24 § 1973c, from either the United States Attorney General or the United States District Court for
25 the District of Columbia that the changes affecting voting specified in paragraphs Fourteen (14)
26 and Fifteen (15) of this Complaint do not have the purpose and will not have the effect of
27 denying or abridging the right to vote on account of race, color, or membership in a language
28

1 minority group, constitutes a violation of § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and
2 renders the adoption of these changes affecting voting legally unenforceable.

3 **DECLARATORY AND INJUNCTIVE RELIEF**

4 23. Plaintiffs reallege paragraphs 1 through 22 above and incorporate the same as
5 though fully set forth herein.

6 24. This is also an action for declaratory, preliminary and permanent injunctive relief
7 sought pursuant to 28 U.S.C. §§ 2201 and 2202, and Fed. R. Civ. Pro. 57 and 65. Plaintiffs seek
8 a declaration that the failure of Defendant MONTEREY COUNTY, CALIFORNIA to secure a
9 determination from either the United States Attorney General or the United States District Court
10 for the District of Columbia that the changes affecting voting specified in paragraphs Fourteen
11 (14) and Fifteen (15) do not have the purpose and will not have the effect of denying or abridging
12 the right to vote on account of race, color, or membership in a language minority group
13 constitutes a violation of § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, thereby making
14 injunctive relief appropriate. Unless enjoined, Defendant MONTEREY COUNTY,
15 CALIFORNIA, will continue to seek to administer, enforce, and otherwise implement legally
16 unenforceable changes affecting the voting rights of language, racial, and ethnic minority groups
17 residing in MONTEREY COUNTY, CALIFORNIA, in continued violation of § 5 of the Voting
18 Rights Act, 42 U.S.C. § 1973c.

19 **BASIS FOR EQUITABLE RELIEF**

20 25. Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs
21 alleged herein, and this suit for declaratory and injunctive relief is their only means of securing
22 adequate redress from the unlawful practices of Defendants MONTEREY COUNTY,
23 CALIFORNIA and the State of California. Plaintiffs will continue to suffer irreparable injury
24 from the acts, policies, and practices of Defendant set forth herein unless enjoined by this Court.

25 **PRAYER**

26 WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment granting
27 Plaintiffs:
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1 1. A declaration that the Defendants' changes affecting voting specified in paragraphs
2 Fourteen (14) and Fifteen (15) of this Complaint constitute changes affecting voting within the
3 meaning of § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, and are legally
4 unenforceable absent the requisite § 5 preclearance;

5 2. A permanent injunction restraining and enjoining Defendants and their officers,
6 agents, employees, attorneys, and successors in office and all other persons in active concert and
7 participation with them from any further implementation of the changes affecting voting that are
8 specified in paragraphs Fourteen (14) and Fifteen (15) of this Complaint unless and until said
9 changes affecting voting are precleared pursuant to § 5 of the Voting Rights Act, 42 U.S.C.
10 § 1973c;

11 3. An Order enjoining any elections conducted in Monterey County for the Office of
12 Senator from California State Senate District 15 and/or any certifications or other actions to
13 finalize the results of said elections until the changes affecting voting specified in paragraphs
14 Fourteen (14) and Fifteen (15) of this Complaint have received the requisite preclearance under
15 § 5 of the Voting Rights Act, 42 U.S.C. § 1973c;

16 4. In the event that any of the changes affecting voting specified in paragraphs
17 Fourteen (14) and Fifteen (15) of this Complaint do not receive the requisite preclearance under
18 § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, an Order enjoining any elections conducted in
19 Monterey County, California for the Office of Senator from California State Senate District 15
20 and/or any certifications or other actions to finalize the results of said elections unless and until
21 preclearance under § 5 of the Voting Rights Act, 42 U.S.C. § 1973c is secured;

22 5. An Order granting Plaintiffs their costs of court, related non-taxable expenses,
23 necessary litigation expenses, and reasonable attorneys' fees to be adjudged against the
24 Defendants as provided under 42 U.S.C. §§ 1973 1(e) and 1988;

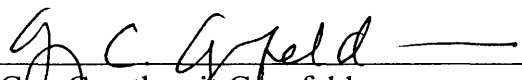
25 6. An Order retaining jurisdiction to render such further and additional Orders as the
26 Court may, from time to time, deem appropriate; and
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1 7. An Order granting such other additional relief at law or in equity as may be
2 deemed appropriate.

3
4 Dated: May 5, 2010

Respectfully submitted,

ROSEN, BIEN & GALVAN, LLP

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7 By:  _____
8 Gay Crosthwait Grunfeld
9 Attorneys for Plaintiffs
10 MARIA BUELL, ANTONIO ALVARO
11 MORALES and GUADALUPE JOAN
12 PEREZ
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