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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14
15 JOSEPH HOLDER, PETER CANTISANI,
DOLORES HUERTA, JUDY
16 BERTELSEN, CHARLES L. KRUGMAN,
DAVID HAGUE GOGGIN, ALYCE E.
17 FRET LAND, HELEN ACOSTA, MARY
C. KENNEDY, CHARLES FOX, MARTY
18 KRASNEY, MITCH CLOGG, BEN P.
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19 CHARLES O. LOWERY, JR., LILLIAN
RITT, HAROLD C. CASE, SUSAN J.
20 CASE, KENNETH MARTIN
STEVENSON, LARRY MARKS, HARRY
21 JOHN RAPF. MERRILEE DAVIES,
BERNICE M. KANDARIAN, VICTORIA
22 POST, and VERONICA ELSEA,
individuals,

23 Plaintiffs/Petitioners,
24

25 v.

26 BRUCE MCPHERSON, as California
Secretary of State; ELAINE GINNOLD, as
Elections Official of Alameda County;
27 VICTOR E. SALAZAR, as Elections
Official of Fresno County; CAROLYN
28 WILSON CRNICH, as Elections Official of

ENDORSED
FILED
San Francisco County Superior Court

MAR 21 2006

GORDON PARK-II, Clerk
BY: DEBORAH STEPPE
Deputy Clerk

HOWARD
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No. CPF 06-506171

VERIFIED PETITION FOR WRIT OF
MANDATE (ELEC. CODE 13314(a);
CODE CIV. PROC. §§1085, 1094.5),
DECLARATORY AND INJUNCTIVE
RELIEF

IMMEDIATE ACTION REQUESTED,
ELECTION LAW MATTER CALENDAR
PREFERENCE PURSUANT TO ELEC.
CODE §13314(a)(3)

1 Humboldt County, ANN BARNETT, as
Elections Official of Kern County;
2 THERESA NAGEL, as Elections Official
of Lassen County; CONNY
3 MCCORMACK, as Elections Official of
Los Angeles County; MICHAEL SMITH,
4 as Elections Official of Marin County;
MARSHA WHARFF, as Elections Official
5 of Mendocino County; MAXINE
MADISON, as Elections Official of Modoc
6 County; JIM MCCAULEY, as Elections
Official of Placer County; KATHLEEN
7 WILLIAMS, as Elections Official of
Plumas County; MIKEL HASS, as
8 Elections Official of San Diego County;
DEBBIE HENCH, as Elections Official of
9 San Joaquin County; JULIE RODEWALD,
as Elections Official of San Luis Obispo
10 County; JOSEPH E. HOLLAND, as
Elections Official of Santa Barbara County;
11 COLLEEN BAKER, as Elections Official
of Siskiyou County; DERO FORSLUND,
12 as Elections Official of Trinity County;
JERRY T. MESSINGER, as Elections
13 Official of Tulare County; and DOES 1
through 50.

14 Defendants/Respondents.
15

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1 Plaintiffs and Petitioners Joseph Holder, Peter Cantisani, Dolores Huerta, Judy
2 Bertelsen, Charles L. Krugman, David Hague Goggin, Alyce E. Fretland, Helen Acosta,
3 Mary C. Kennedy, Charles Fox, Marty Krasney, Mitch Clogg, Ben P. Van Meter, Nancy
4 Tilcock, Charles O. Lowery, Jr., Lillian Ritt, Harold C. Case, Susan J. Case, Kenneth Martin
5 Stevenson, Larry Marks, Harry John Rapf, Merrilee Davies, Bernice M. Kandarian, Victoria
6 Post, and Veronica Elsea (collectively "Petitioners") allege as follows:
7

8 INTRODUCTION

9 1. Petitioners bring this Verified Petition For Writ Of Mandate, Declaratory And
10 Injunctive Relief (the "Petition") to protect their fundamental rights to vote and to protect the
11 integrity of their votes in California elections. Petitioners seek to reverse a decision by the
12 California Secretary of State improperly certifying an electronic voting system that does not
13 satisfy state law requirements and that presents unacceptable risks of vote manipulation,
14 election uncertainty and disputation, and incorrect election outcomes. Petitioners also seek
15 to prevent county election officials from using electronic voting equipment that does not
16 comply with applicable state law (or the federal requirements it incorporates), and from
17 expending their limited resources to purchase computerized voting systems that do not meet
18 these requirements and should not have been certified for use in California.

19 2. On February 17, 2006, Defendant/Respondent California Secretary of State Bruce
20 McPherson "conditionally" certified an electronic voting system manufactured by Diebold
21 Election Systems, Inc. (the "Diebold Voting System" or "Voting System") for use in
22 elections in California, including statewide elections to be held on June 6, 2006 and
23 November 7, 2006. The Diebold Voting System includes both the AccuVote-OS ("AV-
24 OS"), an optical scanner that reads votes from paper ballots, and the AccuVote-TSx ("AV-
25 TSx"), a Direct Recording Electronic ("DRE") device that allows a voter to vote by pressing
26 choices displayed on a computer "touchscreen."

27 3. As is explained in greater detail below, the Secretary of State's "conditional"
28 certification of the Voting System was improper and unlawful on numerous independent

1 grounds:

2 (a) *First*, the Secretary of State's certification of the AV-TSx violated
3 Petitioners' constitutional rights to vote, to have their votes counted, and to equal protection
4 of laws with respect to their votes in California elections. The Diebold AV-TSx does not
5 meet disability access requirements and is fraught with demonstrated substantive
6 vulnerabilities to "hacking," fraud and vote manipulation. Indeed, the Secretary's own
7 experts' analysis recognized that the Diebold Voting System failed to meet the requirements
8 of state law, that it has a large number of security flaws, and that there are additional known
9 security vulnerabilities outside the limited scope of their investigation. Moreover, the AV-
10 TSx does not meet accessibility requirements and its thermal paper "toilet roll" voting record
11 is inadequate to meet the vote audit and/or recount requirements. Use of the Diebold Voting
12 System poses a grave and present danger to the integrity of California elections in violation
13 of Petitioners' constitutional rights.

14 (b) *Second*, the Secretary of State's certification decision was unlawful
15 because, as his own voting experts acknowledged, the Voting System software was not
16 compliant with federal voluntary standards for voting system software because it contains
17 prohibited "interpreted code." The federal voluntary standards were adopted as mandatory
18 requirements in California law and the acknowledged presence of "interpreted code" in the
19 Voting System renders the Secretary of State's certification illegal.

20 (c) *Third*, the Secretary's attempt to impose "conditions" on the certification
21 was improper and unlawful. The Secretary's certification purports to require counties using
22 the Voting System to implement certain physical security regulations. However, these stop-
23 gap physical security regulations were designed to be *short-term* measures for *local*
24 elections, and they were designed by computer scientists with at best limited expertise in the
25 areas of physical and procedural, as opposed to programming, safeguards to the integrity of
26 the vote. The Secretary of State also did not address the feasibility or efficacy of adoption of
27 the new physical security regulations by California county election officials and poll
28 workers. For example, they may be ineffective because the AV-TSx memory cards, which

