

2001 WL 1916729

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United States District Court, C.D. California,
Western Division.

COMMON CAUSE, SOUTHERN CHRISTIAN
LEADERSHIP CONFERENCE OF GREATER LOS
ANGELES, Southwest Voter Registration
Education Project, Chicano Federation of San
Diego County, American Federation of Labor and
Congress of Industrial Organizations, Bryan Cahn,
Miguel Contreras, Laura Ho, Reverend Norman
Johnson, Joanne McCray, Trisha Murakawa,
Thomas Rankin, and Bob Richards, Plaintiffs,
v.
Bill JONES, in his official capacity as California
Secretary of State, Defendant.

No. 01-03470 SVW(RZX). | Oct. 12, 2001.

Attorneys and Law Firms

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Southwest Voter Registration Education Project, Chicano
Federation of San Diego, Bryan Cahn, Laura Ho,
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(AFL-CIO), Miguel Contreras and Thomas Rankin.

Opinion

STIPULATION AND ORDER

PHILLIPS, J.

*1 Plaintiffs and Defendant hereby stipulate as follows:

1. Defendant has decertified Votomatic and Pollstar punch-card voting systems for use in California elections pursuant to Government Code § 12175.2 and Elections Code § 19222, and this decertification is effective no later than January 1, 2006. Defendant shall not revoke this decertification.

2. The parties agree that the case should proceed to the issue of whether it is feasible to replace Votomatic and Pollstar punch-card voting systems with other certified voting equipment in the nine California counties that currently use such systems in advance of either the 2004 primary election or the 2004 general election, which will be the only issue remaining in the case prior to the parties entering into a consent decree. This is not to be construed as an admission or concession by Defendant of any of the claims or allegations set forth in Plaintiffs' First Amended Complaint in this action.

3. Discovery limited to the timing and feasibility of replacing Votomatic and Polistar punch-card voting systems with other certified voting equipment may proceed immediately, without prejudice to the parties' rights to object to particular discovery. All discovery disputes shall be submitted directly to the Honorable Stephen V. Wilson for resolution on an expedited basis.

4. The parties will attempt to finalize a consent decree fully resolving this action by December 14, 2001. If the parties are unable to reach agreement on a consent decree by that date, Plaintiffs and Defendant shall present evidence and argument to the Court will respect to whether it is feasible to replace Votomatic and Pollstar punch-card voting systems with other certified voting equipment in the nine California counties that currently use such systems in advance of either the 2004 primary election or 2004 general election. Although Defendant does not admit or concede any of the claims or allegations set forth in Plaintiffs' First Amended Complaint, the Court shall, in determining whether it is feasible to

replace such systems in advance of either 2004 election, apply the same standards that would have applied if Plaintiffs had prevailed on the merits of their claims. The specifics of such standards, and how they would apply to the facts regarding the feasibility issue, will be argued by the parties and determined by the Court in connection with the applicable trial or hearing. Any party may file a motion for summary judgment with respect to feasibility at any time, without prejudice to any party's right to request or to oppose a postponement of briefing and/or argument on such motion. The trial date of January 15, 2002 shall remain in effect for purposes of any trial or evidentiary hearing on feasibility.

5. If the Court determines that it is feasible to replace Votomatic and Pollstar punch-card voting systems with other certified voting equipment in advance of either 2004 election, Defendant shall consent to entry of a consent decree, without admitting or conceding any of the claims or allegations set forth in Plaintiffs' First Amended Complaint, that requires advancing the effective date of decertification to a date prior to such 2004 election. The parties agree that they shall not be entitled to and will not contest the validity of such consent decree based on the absence of a determination on the merits of Plaintiffs' claims. The parties shall otherwise be free to appeal from or otherwise contest the Court's ruling on the issue of whether it is feasible to replace the Votomatic and Pollstar punch-card voting systems with other certified voting equipment in advance of the 2004 elections.

ORDER

WILSON, J.

*2 IT IS SO ORDERED.

PROOF OF SERVICE BY MAIL

Footnotes

* Institutional affiliation given for the purpose of identification only; counsel acting in individual capacity.

CERILLY, J.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 355 South Grand Avenue, Los Angeles, California 90071.

On October 11, 2001, I served the foregoing document described as

STIPULATION AND PROPOSED ORDER

on the interested party in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Timothy M. Muscat

Deputy Attorney General

1300 I Street, P.O. Box 944255

Sacramento, CA 94244-2550

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service is made.

I declare under the penalty of perjury that the foregoing is true and correct.