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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

WILLIAM C. VELASQUEZ)
INSTITUTE, a Texas Non-Profit)
Corporation, CONGRESS ON RACIAL)
EQUALITY OF CALIFORNIA LEGAL)
DEFENSE FUND, a California Non-Profit)
Corporation,)

Petitioner,

v.

BRUCE McPHERSON, as Secretary of)
State for the State of California, and)
GEOFF BRANDT, as the Acting State)
Printer with the Office of the State)
Publishing,)

Respondents.

EDWARD J. ("TED") COSTA, SIDNEY)
S. NOVARESI, ARTHUR LAFFER,)
JIMMIE JOHNSON,)

Real Party In Interest.

CASE NO.:
**PETITION FOR WRIT OF
MANDATE**
[Code Civ. Proc. §1085]
STATEWIDE ELECTION MATTER
IMMEDIATE ACTION REQUESTED

1 **INTRODUCTION**

2 Petitioner William C. Velasquez Institute (“WCVI”) and the Congress on Racial
3 Equality of California (CORE-CA) brings this petition for writ of mandate asking the
4 Court to issue a peremptory writ of mandate compelling respondents Bruce Mcpherson, as
5 Secretary of State for the State of California, and Geoff Brandt, as the Acting State Printer
6 with the Office of the State Publishing, to remove all materials pertaining to Initiative No.
7 SA2004RF037, Amdt.#1-NS and any materials pertaining to the initiative that have been
8 designated by the Secretary of State as Proposition 77 from (1) the Voter Information
9 Guide for the November 8, 2005 Special Statewide Election (2) posting on the Secretary
10 of State website and (3) the ballot for the for the November 8, 2005 Special Statewide
11 Election.

12 On or about December 7, 2004, the Real Parties in Interest, submitted a proposed
13 initiative to the Attorney General so that he could prepare a title and summary of the
14 proposed initiative as required by law. Cal. Const., Art. II, §10(d), Cal. Elec. Code §9002.
15 Subsequently, the proponents circulated a petition for signature which contained the title
16 and summary prepared by the Attorney General but did not include the text of the
17 initiative for which the title and summary were prepared. Subsequently, this unreview and
18 different petition was submitted to the Secretary of State for certification and placement
19 on the November 2005 Special Election ballot.

20 Petitioners seek this relief because the Real Parties in Interest, Edward J. (“Ted”)
21 Costa, Sidney S. Novaresi, Arthur Laffer, Jimmie Johnson, the proponents of the proposed
22 measure, failed to submit the text of the proposed initiative to the Attorney General for
23 preparation of a title and summary prior to circulating the proposed measure to the voters
24 as required by Article II, Section 10(d) of the California Constitution. Instead the
25 proponents of the initiative circulated a petition with a different and revised text of a
26 proposed initiative in violation of the Constitution and statutory requirements. This
27 failure to comply with the Constitutional and statutory requirements of the initiative

1 process disqualifies the petitions circulated but not submitted to the Attorney General
2 purporting to be Proposition 77 from the ballot.

3 Time is of the essence in this matter since the printing deadlines for the ballot
4 pamphlet are pending. Therefore, Petitioners will have to have this matter heard and
5 decided, including appeals by Monday, August 15, 2005, at 5 p.m.

6 Petitioner, by this Petition, alleges:

7 1. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
8 section 1085.

9 **PARTIES**

10 2. Petitioner WILLIAM C. VELASQUEZ INSTITUTE (“WCVI”) is an
11 organization with a direct, vital interest in this litigation. WCVI is dedicated to the
12 empowerment of disenfranchised voters, especially those in the Latino community. To
13 that end, WCVI regularly conducts polls to measure Latino attitudes on the major issues
14 of the day, develops policy positions on those issues, asserted such policy position on
15 behalf of the Latino community, and conducts education campaigns to inform members of
16 the Latino Community on issues that affect them.

17 3. In addition, WCVI has been actively involved in promoting active participation
18 in the political process, especially of disenfranchised communities. This includes
19 encouraging Latinos to register, vote, and become involved in the political process.

20 4. WCVI was active in 1990 and 2000 California Redistricting process, including
21 making redistricting mapping technology and data available to communities in California
22 so that they could participate in the restricting process. WCVI conducted community
23 outreach sessions thought the state of California, explained to community groups how the
24 redistricting process worked, assembled community of interest data, and showed
25 community members how to redistrict their area. WCVI assisted in developing
26 redistricting plans during the 1990 and 2000 California redistricting process for the
27 California Assembly, Senate, and Congressional delegation which were submitted to the

1 Legislature.

2 5. Prior to June 23, 2005, WCVI learned of possible discrepancies between the text
3 attached to the petitions being circulated for signature on behalf of the proposed initiative
4 and the text of the initiative SA2004RF0037, Amdt. #1-NS submitted to the Attorney
5 General by the proponents for which the Attorney General prepared the title and
6 summary. On or about June 23, 2005, Antonio Gonzalez, President of WCVI, sent a letter
7 to the Secretary of State and the Attorney General on behalf of WCVI, requesting that
8 they investigate the matter and determine if any additional action was required. A true
9 and correct copy of the Gonzalez’s Letter is attached hereto as Exhibit A and incorporated
10 herein by reference. WCVI is dedicated to the empowerment of disenfranchised voters,
11 especially those in the Latino community.

12 6. Petitioner CONGRESS OF RACIAL EQUALITY OF CALIFORNIA LEGAL
13 DEFENSE FUND (“CORE-CA/LDEF”) is a direct development from the Congress of
14 Racial Equality, and it is an organization with a long-standing, direct and vital interest in
15 securing the rights of voters throughout the state of California. The original antecedent,
16 CORE, was the third oldest of the major historical Civil Rights organizations of the
17 United States, and was originated in the 1940’s by inventing the Non-Violent Freedom
18 Rides and Sit-Ins of the 40’s, 50’and 60’s. It was the antecedents of CORE-CA, founded
19 by James Farmer in Chicago in 1942, which introduced the concept of full-scale
20 confrontation through Non-Violent Resistance to laws that were immoral but which had
21 been adhered to since the end of Reconstruction and the Plessy v. Ferguson decision by
22 which the past Supreme Court had enshrined the fallacious concept of ‘Separate but Equal
23 as the law of the land.

24 7. CORE-CA has also established a Legal Defense and Education Fund (“CORE-
25 CA/LDEF”), and is therefore uniquely situated – with its widespread membership among
26 the African-American community, to represent that community. The community and
27 People represented by CORE-CA/LDEF, together with the membership and populations
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1 represented by the co-Petitioners, stand to be particularly adversely impacted by the
2 unlawful conduct of the State with respect to voting and redistricting rights unlawfully
3 impacted by the redistricting initiative, as described herein.

4 8. CORE-CA, and now its subsidiary CORE-CA/LDEF, has also had significant
5 historical involvement in the efforts to enact changes to the law regarding redistricting in
6 both the 1991 and 2001 redistricting processes. In the 1991 California Redistricting that
7 was based on the 1990 Decennial Census, CORE-CA submitted a complete set of maps
8 and provided testimony at all of the Assembly and Senate Committee Hearings on
9 Redistricting and also met with the Governor's Office to represent basic concerns of the
10 minority "communities of interest.". When the Legislature and the Governor (then from
11 opposite political parties) became deadlocked and the decision was referred to a Panel of
12 Special Masters, Adrian Dove, the principal representative of CORE-CA/LDEF, was
13 admitted to the bar to present Oral Arguments before the panel of masters on behalf of the
14 State Supreme Court.. CORE-CA/LDEF, alongside MALDEF, in the Redistricting after
15 the 2000 Census was one of the only Civil Rights organizations which prepared a
16 complete and comprehensive set of proposed redistricting maps covering the entire state.
17 Some of the CORE-CA/LDEF recommended lines and concepts were adopted in both the
18 1991 and 2001 Statewide Redistricting and by the County of Los Angeles in their 1992
19 and 2002. Redistricting processes. CORE-CA/LDEF and its Legal Defense and
20 Education Fund have conducted Outreach and Awareness campaigns in the
21 African-American, Hispanic, Asian-American and Low-Income Non-Hispanic White
22 communities for participation in the Censuses of 1990 and 2000. CORE-CA has
23 designed, organized and conducted effective campaigns of public information via media
24 and has conducted public rallies and hearings to raise awareness of census and
25 redistricting issues for inner-city voters and potential voters. CORE-CA is a 501-c-3,
26 non-profit California Corporation which is headquartered in Los Angeles. It was founded
27 by General Celes King III and is today Chaired by Adrian Dove a former White House

1 Budget Analyst and Writer.

2 9. Respondent BRUCE McPHERSON, is the Secretary of State for the State of
3 California. The Secretary of State is charged by statute with the duty to issue instruction
4 to county clerks and registrars of voters regarding the verification of petition signatures; to
5 receive from the county clerks and registrars of voters their certificates as to the number of
6 valid signatures submitted in support of an initiative. Cal. Elec. Code §§9081, 9082,
7 9086. As the chief elections officer, the Secretary of State has the duty to ensure the
8 integrity of the elections process and to ensure that proposed measures have met all
9 constitutional and statutory requirements for presentment to and circulation among the
10 voters before those initiatives can be placed on the ballot.

11 10. Respondent GEOFF BRANDT, is the Acting State Printer with the Office of
12 the State Publishing, and is sued in his official capacity only. The State Printer is charged
13 by statute with the duty to print the ballot pamphlets as furnished by the Secretary of State
14 (Cal. Elec. Code §9082), and in particular, printing the Voter Information Guide for the
15 November 8, 2005, Special Statewide Election.

16 11. The real parties in Interest EDWARD J. (“TED”) COSTA, SIDNEY S.
17 NOVARESI, ARTHUR LAFFER, and JIMMIE JOHNSON, (real parties) are the
18 proponents of a proposed initiative constitutional amendment designated by the Secretary
19 of State as Proposition 77. Real parties are also the proponents of a proposed
20 constitutional amendment review by the Attorney General, and designated by him as
21 SA2004RF0037, Amdt.#1-NS.

22 **STATEMENT OF FACTS**

23 12. On June 10, 2005, the Secretary of State announced that he had certified
24 Proposition 77 for inclusion on the next statewide ballot. The Secretary of State
25 announced that based on random sample verifications, Proposition 77 had received a
26 projected 677,977 signatures, more than the 657,916 signatures needed to qualify. On
27 June 13, 2005, California Governor Arnold Schwarzenegger issued a proclamation calling

1 for a statewide special election for November 8, 2005.

2 13. This matter must be decided as soon as possible in order to comply with the
3 time requirements in the Elections Code section 9092 and the Government code Section
4 88006 that this case not interfere with the printing and distribution of the Voter
5 Information Guide.

6 14. The California Constitution and Elections Code dictate the requirements for
7 handling the initiative petitions.

8 15. The California Constitution requires that an initiative is proposed by presenting
9 to the Secretary of State a petition that sets forth the text of the proposed statute or
10 amendment to the Constitution.” Cal. Const., Art. II, §10(b). The Secretary of State must
11 then submit the measure at the next general or special election (at least 131 days after it
12 qualifies). Cal. Const., Art. II, §10(c).

13 16. The Constitution requires that a copy of the initiative be circulated among
14 voters must be first delivered to the Attorney General with a request for the preparation of
15 a title and summary. Cal. Const., art II, §10(d); Cal. Elec. Code §9002. The California
16 Constitution also provides that the “Legislature shall provide the manner in which
17 petitions shall be circulated, presented, and certified, and measures submitted to the
18 electors.” Cal. Const., art II, §10(e).

19 17. The California Legislature has adopted statutes requiring that upon receipt of
20 the petition, the Attorney General shall prepare a “summary of the chief purposes and
21 points of the proposed measure.” Cal. Elec. Code §9004.

22 18. The California Legislature has adopted statutes which require the Attorney
23 General, immediately upon completion of the title and summary, “to transmit copies of the
24 measure and summary to the Senate and Assembly.” Cal. Elec. code §9007. The
25 Attorney General is also required to transmit a copy of the title and summary to the
26 Secretary of State “within 15 days of receipt of the final version of a proposed initiative
27 measure,” or within 15 days after “receipt of the fiscal estimate or opinion prepared by the
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1 Department of Finance and the Joint Legislative Budget Committee” if required. Id.

2 19. The California Legislature has adopted statutes governing the specific formats
3 for initiative’s petition to be circulated for signatures. The Elections Code requires that
4 every proposed initiative measure, prior to circulation, shall include at the top of the
5 petition (a) the summary prepared by the Attorney General (on each petition’s page), (b)
6 the summary prepared by the Attorney General (on petition section preceding the text),
7 and (c) the statement “Initiative measure to be submitted directly to the voters” before the
8 Attorney General’s summary. Cal. Elec. Code §9008.

9 20. The California Legislature has adopted statutes which require the manner in
10 which the heading of a proposed initiative measure must appear. Cal. Elec. Code. §9002.
11 “Any initiative or referendum petition may be presented in sections, but each section shall
12 contain a full and correct copy of the title and text of the proposed measure.” Cal. Elec.
13 Code §9014.

14 21. The California Legislature has adopted statutes which require the manner in
15 signed petitions must be submitted to the local elections official who must certify the
16 signatures on the petitions. Cal. Elections Code. §9030. These Officers required by law
17 to receive or file in their offices any initiative or referendum petition shall not receive or
18 file any initiative or referendum petition not in conformity with this article. Cal. Elec.
19 Code §9014.

20 22. On or about December 7, 2004, the proposed initiative was received from real
21 party Ted Costa, and was assigned a docket number SA2004RF0037 by the Attorney
22 General. On the same day the Attorney General requested that the Department of Finance
23 and the Legislative Analyst’s Office provide an analysis of the fiscal impacts the measure
24 would have on the state and local governments.

25 23. On or about January 28, 2005, Mr. Costa submitted a technical and non
26 substantive amendment to the proposed measure which added real parties Sidney S.
27 Novaresi, Dr. Arthur Laffer, Jimmie Johnson, as proponents. The initiative was

1 renumbered to SA2004RF0037, Amdt. #1-NS to reflect the change. The proponents
2 proposed no other changes to the proposed measure and submitted a copy of the
3 initiative's text originally filed with the Attorney General.

4 24. On or about February 3, 2005, the Attorney General issued his title and
5 summary for SA2004RF0037, Amdt. #1-NS to the Secretary of State. On the same date,
6 the Attorney General sent the title, summary and text of proposed initiative
7 SA2004RF0037, Amdt. #1-NS to the Chief Clerk of the Assembly and the Secretary of
8 the Senate.

9 25. Prior to June 23, 2005, WCVI learned of possible discrepancies between the
10 text attached to the petitions being circulated for signature on behalf of the proposed
11 initiative and the text of the initiative SA2004RF0037, Amdt. #1-NS submitted to the
12 Attorney General by the proponents for which the Attorney General prepared the title and
13 summary. On or about June 23, 2005, Antonio Gonzalez, President of the WCVI sent a
14 letter to the Secretary of State and the Attorney General requesting that they investigate
15 the matter and determine if any additional action was required. A true and correct copy of
16 Mr. Gonzalez's Letter is attached as Exhibit A to the declaration of Antonio Gonzalez,
17 hereto, and incorporated herein by reference.

18 26. When the Attorney General's Office compared the circulating petition filed
19 with Yuba County against the proposed redistricting initiatives submitted since the
20 November 2004 statewide general election, the Attorney General determined that the
21 petition circulated for signatures were never submitted to the Attorney General for
22 preparation of the title and summary, as required by the Constitution and Elections code.

23 27. On or about July 1, 2005, Undersecretary of State William P. Wood advised
24 the Senior Assistant Attorney General Louis R. Mauro "The initiative in question has been
25 given the title 'Reapportionment. Initiative Constitutional Amendment.' by your office.
26 We have been informed by the proponent that the text printed on the petitions that were
27 circulated for this initiative differs from the text that was submitted to your office for the

1 preparation of the Attorney General’s title and summary.” Petitioners are informed and
2 believe and upon such information and belief allege that the letter enclosed a
3 memorandum dated June 10, 2005, from Daniel M. Kolkey, who Mr. Wood identified as
4 counsel for the Initiative’s proponents (“Kolkey Memorandum”). The Kolkey
5 Memorandum included an attached chart that listed differences between the Initiative as
6 submitted to the Attorney General and the text printed on the circulating petitions. A true
7 and correct copy of Mr. Wood’s Letter is attached as Exhibit B, hereto and incorporated
8 herein by reference. True and correct copy of this chart listing differences between the
9 Initiative as submitted to the Attorney General and the text printed on the circulating
10 petitions is attached as Exhibit C, and in incorporated herein by reference.

11 28. There exist substantial and material differences between the text of the
12 initiative certified by the Secretary of State for inclusion on the California November 2005
13 ballot and the proposed initiative reviewed by the Attorney General for which he prepared
14 a title and summary. These changes do not reflect correction of typographical errors,
15 misspellings, minor word omissions, or other technical problems. The differences appear
16 to reflect a conscious, systematic series of changes designed to correct substantive
17 deficiencies or problems in the proposed initiative submitted to the Attorney General, and
18 are material and substantial in nature and effect.

19 29. The text of Proposition 77 was never submitted to the Attorney General so that
20 he could prepare a title and summary for that proposed initiative. Thus, Proposition 77
21 cannot qualify for the ballot since it was circulated in violation of the California
22 Constitution, Art. II, §10(d) and Election Code Section 9002. The proposed initiative
23 presented to the Attorney General, SA2004RF0037, Amdt. #1-NS, has not been circulated
24 to obtain the appropriate number of signatures. This proposed initiative cannot qualify for
25 the ballot since it violates California Elections Code 9035.

26 30. Respondent Secretary of State has a mandatory duty to certify only those
27 proposed measures which comply with state law, and he has no discretion to certify

1 proposed measures that do not conform to the law. A writ of mandate should issue
2 commanding respondent Secretary of State to (1) decertify Proposition 77, (2) inform the
3 election officials of each County in the State of California that Proposition 77 has been
4 decertified, (3) remove any and all materials pertaining to Proposition 77 or Initiative No.
5 SA2004RF0037, Amdt #1-NS from the Secretary of State's website, and (4) prohibit
6 respondent from posting any further such materials pertaining to Proposition 77 or
7 Initiative No. SA2004RF0037, Amdt #1-NS on the website. A writ of mandate should
8 further issue commanding respondent Secretary of State and the Acting State Printer to
9 not permit any materials pertaining to Proposition 77 or Initiative No. SA2004RF0037,
10 Amdt #1-NS to appear in (1) Voter Information Guide for the November 8, 2005, Special
11 Election, or (2) on the ballot for the November 8, 2005, Special Statewide Election.

12 31. The California Constitution and Election codes have been violated, and
13 Petitioners have no plain, speedy or adequate remedy at law. (Code Civ. Proc. §1085.)
14

15 WHEREFORE, Petitioners WCVI and CORE-CA/LDEF prays for the following
16 relief:

17 1. That this Court set this matter for hearing at the earliest time consistent with its
18 calendar.

19 2. That this Court issue a peremptory writ of mandate commanding:

20 a. Respondent, Bruce McPherson, Secretary of State for the State of
21 California, to decertify Proposition 77, and inform the election officials of each
22 County in the State of California that Proposition 77 has been decertified; and

23 b. Respondents, Bruce McPherson, Secretary of State for the State of
24 California, to remove any and all materials pertaining to Proposition 77 or Initiative
25 No. SA2004RF0037, Amdt #1-NS from the Secretary of State's website; that he be
26 prohibited from posting any further such materials on the website; and
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1 c. Respondents, Bruce McPherson, Secretary of State for the State of
2 California, and Geoff Brandt, the Acting State Printer with the Office of the State
3 Publishing, to not allow any materials pertaining to Proposition 77 or Initiative No.
4 SA2004RF0037, Amdt #1-NS to appear in (1) Voter Information Guide for the
5 November 8, 2005, Speciall Election, or (2) on the ballot for the November 8,
6 2005, Special Statewide Election.

7 3. For such other and further relief as the Court deems just and proper.

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9 Dated: July 18, 2005

Respectfully submitted by:
LUNA & FAJARDO

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12 By: _____

Richard P. Fajardo
Attorney for WCVI

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14 Dated: July 18, 2005

Respectfully submitted by:
RAVIS & MARTIN

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17 By: _____

David H. Martin
Attorney for CORE-CA/LDEF

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VERIFICATION

I, ANTONIO GONZALEZ, declare as follows:

I am the President of the William C. Velasquez Institute (“WCVI”), a Texas non profit corporation, qualified to do business in the State of California, and a Petitioner in the above entitled matter. I have read the foregoing Petition for Writ of Mandate and know its contents. In addition, I read and reviewed the Petition for Writ of Mandate filed by the Attorney General in Lockyer v. McPherson, et al. (Ted Costa, et al, the Real Parties in Interest) Case No. 05CS00998 (filed Sacramento County, July 8, 2005), the Exhibits in support thereof, the Memorandum of Points and Authorities in support of the Attorney General’s Petition for a Writ of Mandate, and the Declaration of Tricia Knight, and the Exhibits in support thereof, which were filed by the Attorney General in Lockyer v. McPherson, et al. (Ted Costa, et al, the Real Parties in Interest) Case No. 05CS00998 (filed Sacramento County, July 8, 2005). The facts stated therein are true and within my personal knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true; and except as to those matters contained in the materials filed in matter of Lockyer v. McPherson, et al. (Ted Costa, et al, the Real Parties in Interest) Case No. 05CS00998 (filed Sacramento County, July 8, 2005), and of which the Court can take Judicial Notice, and as to those matters I believe them to be true.

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

Executed on July ____, 2005, at Los Angeles, California.

Antonio Gonzalez

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VERIFICATION

I, ADRIAN DOVE, declare as follows:

I am the Chairman of the Congress of Racial Equality of California (“CORE-CA”), a California non-profit corporation, and also the Chairman of its subsidiary, the CORE-CA Legal Defense and Educational Fund (“CORE-CA/LDEF”), also a California non-profit corporation. CORE-CA/LDEF is a Petitioner in the above entitled matter, and, as Chairman, am authorized to sign on its behalf. I have read the foregoing Petition for Writ of Mandate and know its contents. In addition, I read and reviewed the Petition for Writ of Mandate filed by the Attorney General in Lockyer v. McPherson, et al. (Ted Costa, et al, the Real Parties in Interest) Case No. 05CS00998 (filed Sacramento County, July 8, 2005), the Exhibits in support thereof, the Memorandum of Points and Authorities in support of the Attorney General’s Petition for a Writ of Mandate, and the Declaration of Tricia Knight, and the Exhibits in support thereof, which were filed by the Attorney General in Lockyer v. McPherson, et al. (Ted Costa, et al, the Real Parties in Interest) Case No. 05CS00998 (filed Sacramento County, July 8, 2005). To the best of my knowledge ,the facts stated therein are true and within my personal knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true; and except as to those matters contained in the materials filed in matter of Lockyer v. McPherson, et al. (Ted Costa, et al, the Real Parties in Interest) Case No. 05CS00998 (filed Sacramento County, July 8, 2005), and of which the Court can take Judicial Notice, and as to those matters I believe them to be true.

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

Executed on July 18, 2005, at Los Angeles, California.

Adrian Dove
Chairman, Congress of Racial Equality
Of California Legal Defense and Educational
Fund