

AUG 08 2006

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 CITY AND COUNTY OF SAN FRANCISCO
16

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

25 Plaintiffs/Petitioners,

26 v.

27 *(see following page)*
28

No. CPF 06-506171

Action Filed: March 21, 2006

Action Remanded to this Court:
July 17, 2006

[PROPOSED] ORDER ISSUING A
WRIT OF MANDATE AND
GRANTING PETITIONERS' MOTION
FOR PRELIMINARY INJUNCTION

Date: August 31, 2006
Time: 9:30 a.m.
Dep't: 302
Judge: Hon. Ronald E. Quidachay

Trial Date: None Set

1 BRUCE MCPHERSON, as California
2 Secretary of State; ELAINE GINNOLD, as
3 Elections Official of Alameda County;
4 CANDACE J. GRUBBS, as Elections
5 Official of Butte County; VICTOR E.
6 SALAZAR, as Elections Official of Fresno
7 County; ANN BARNETT, as Elections
8 Official of Kern County; THERESA NAGEL,
9 as Elections Official of Lassen County;
10 CONNY McCORMACK, as Elections
11 Official of Los Angeles County; MARSHA
12 WHARFF, as Elections Official of
13 Mendocino County; MAXINE MADISON, as
14 Elections Official of Modoc County;
15 KATHLEEN WILLIAMS, as Elections
16 Official of Plumas County; MIKEL HASS, as
17 Elections Official of San Diego County;
18 DEBBIE HENCH, as Elections Official of
19 San Joaquin County; COLLEEN BAKER, as
20 Elections Official of Siskiyou County; and
21 DOES 1 through 50,

22 Defendants/Respondents.

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NEMEROVSKI
CANADY
FALK
& RABKIN

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1 The Court, after considering the oral and written submissions of the parties in
2 connection with Petitioners' Petition for Writ of Mandate and Motion for Preliminary
3 Injunction finds a writ of mandate and a preliminary injunction are warranted. Petitioners
4 are entitled to a writ of mandate having shown that (1) that the Secretary of State's February
5 17, 2006 certification of the Diebold AccuVote-TSx ("AV-TSx") is in violation of the
6 Elections Code and/or the Constitution, and (2) that issuance of the writ will not
7 substantially interfere with the conduct of the November 7, 2006 election. Petitioners are
8 also entitled to injunctive relief having shown that: (1) Petitioners will likely suffer
9 irreparable injury if injunctive relief is not granted; (2) Petitioners are likely to prevail on the
10 merits; (3) the balance of equities decidedly favors Petitioners; and (4) it is in the public
11 interest to grant relief. Therefore,

12 IT IS HEREBY ORDERED that Petitioners' request for a Writ of Mandate is GRANTED:

13 1. Defendant/Respondent Secretary of State is ordered to rescind his February 17, 2006
14 approval of the Diebold AccuVote-TSx ("AV-TSx") voting system;

15 2. Defendant/Respondent Secretary of State is ordered to not approve any AV-TSx
16 systems which do not comply with state law;

17 3. Defendants/Respondents County Elections Officials are ordered to not purchase or
18 lease, or contract for the purchase or lease of, the AV-TSx voting system approved by the Secretary
19 of State on February 17, 2006;

20 4. Defendants/Respondents County Elections Officials are ordered to not purchase or
21 lease, or contract for the purchase or lease of, any AV-TSx systems which do not comply with state
22 law.

23 IT IS FURTHER ORDERED that:

24 1. Petitioners' Motion For Preliminary Injunction is GRANTED;

25 2. Respondents County Elections Officials are enjoined from using the Diebold Accu-Vote
26 TSx ("AV-TSx") in the November 7, 2006 general election; and
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