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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

10 CENTER FOR VOTING AND
11 DEMOCRACY; CALIFORNIA
12 CONGRESS OF SENIORS; SAN
13 FRANCISCO LABOR COUNCIL, AFL-
14 CIO; CALIFORNIA PUBLIC INTEREST
15 RESEARCH GROUP; CHINESE
16 PROGRESSIVE ASSOCIATION;
17 ENRIQUE ASIS; GWENN CRAIG;
18 ARTHUR CHANG; TRACY BAXTER,

19 Plaintiffs and Petitioners,

20 v.

21 JOHN ARNTZ, Director of Elections, City
22 and County of San Francisco; ALIX
23 ROSENTHAL, President of the San
24 Francisco Elections Commission;
25 MICHAEL MENDELSON, ROBERT
26 KENEALY, THOMAS SCHULTZ,
27 RICHARD SHADOIAN, BRENDA
28 STOWERS, ARNOLD TOWNSEND, San
Francisco Elections Commissioners; SAN
FRANCISCO DEPARTMENT OF
ELECTIONS; SAN FRANCISCO
ELECTIONS COMMISSION,

Defendants and Respondents.

CASE NO.

VERIFIED COMPLAINT FOR
INJUNCTIVE RELIEF and
VERIFIED PETITION FOR WRIT OF
MANDATE

COMPLAINT/PETITION

1 **PARTIES**

2 1. Plaintiff and Petitioner Center for Voting and Democracy (“CVD”) is a nonprofit
3 501(c)(3) organization dedicated to fair elections where every vote counts and all voters are
4 represented. As a catalyst for reform, CVD conducts research, analysis, education and advocacy
5 to build understanding of and support for more democratic voting systems. CVD promotes full
6 representation as an alternative to winner-take-all elections and instant runoff voting as an
7 alternative to plurality elections and traditional runoff elections. CVD has its headquarters in
8 Tacoma Park, Maryland, and also maintains a San Francisco office. CVD was a primary sponsor
9 of San Francisco Proposition A on the March 5, 2002 ballot, which amended the San Francisco
10 City Charter to provide for instant runoff (“IRV”) voting in elections for most city elective
11 offices.

12 2. Plaintiff and Petitioner Congress of California Seniors is a statewide seniors advocacy
13 organization founded in 1978. CCS has over a half-million members through its many affiliate
14 member organizations. It is a coalition of union retirees, church groups, tenants associations, local
15 seniors clubs, and other community-based organizations. CCS advocates on behalf of seniors,
16 their families, and communities.

17 3. Plaintiff and Petitioner Chinese Progressive Association is a non-profit community-based
18 organization that works to empower the local Chinese community and to promote justice and
19 equality for all people. The organization conducts community education, organizing and advocacy
20 around issues of concern to its 1,000 members and its broader constituency of low-income
21 immigrants in San Francisco. CPA's current campaigns and programs focus on low-income
22 housing, labor rights, environmental health and youth and women's leadership.

23 4. Plaintiff and Petitioner San Francisco Labor Council, AFL-CIO represents over 80,000
24 members of more than 140 affiliated local unions and constituency groups. The San Francisco
25 Labor Council was chartered in 1893 and is the local organization of the American Federation of
26 Labor and Congress of Industrial Organizations. The Council represents the collective interests of
27 its affiliated unions and of working people in the City.

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5. Plaintiff and Petitioner CALPIRG is a thirty-year old advocacy group for the public interest that encourages a fair, sustainable economy, and fosters responsive, democratic government. CALPIRG advocates for corporate reform and accountability, election reform, prescription drug reform, and other consumer issues.

6. Plaintiff and Petitioner Enrique Asis is a resident of and registered voter in the City and County of San Francisco who wishes to cast a ranked-choice ballot for candidates in the 2003 San Francisco general municipal election. Mr. Asis was born in Argentina and moved from Spain to San Francisco twelve years ago. He has been a U.S citizen and registered San Francisco voter for 7 years. He is a community organizer and immigrant rights activist. He is one of the cofounders of the International Gay Lesbian Human Rights Commission, a former Director of the SF Aids Foundation, and a founder of the Hayes Valley Neighborhood Association.

7. Plaintiff and Petitioner Gwenn Craig is a resident of and registered voter in the City and County of San Francisco who wishes to cast a ranked-choice ballot for candidates in the 2003 San Francisco general municipal election. Ms. Craig is the former chair of the Elections Task Force of San Francisco, 1994-1998 and chair of the San Francisco Elections Task Force on Redistricting, 2002 to present. She was a member of the San Francisco Police Commission 1989 - 1992.

8. Plaintiff and Petitioner Arthur Chang is a resident of and registered voter in the City and County of San Francisco who wishes to cast a ranked-choice ballot for candidates in the 2003 San Francisco general municipal election. He has lived in San Francisco for 31 years, after arriving in this country not knowing a word of English. Mr. Chang is a board director of the Chinese American Democratic Club, vice president and board director of San Francisco Tomorrow, board director of San Francisco Common Cause, and board director of the North Beach Neighborhood Coalition.

9. Plaintiff and Petitioner Tracy Baxter is a resident of and registered voter in the City and County of San Francisco who wishes to cast a ranked-choice ballot for candidates in the 2003 San Francisco general municipal election. Ms. Baxter is a member of the Newspaper Guild-CWA Local 39521, an elected member of the San Francisco Democratic County Central Committee and

1 serves on the boards of the Democratic Women's Forum, the African American Democratic Club,
2 and the San Francisco chapter of NOW, the National Organization for Women.

3 10. Defendant and Respondent John Arntz is the Director of Elections for the City and
4 County of San Francisco and is sued in his official capacity.

5 11. Defendant and Respondent Alix Rosenthal is President of the San Francisco Elections
6 Commission and is sued in her official capacity.

7 12. Defendants and Respondents Michael Mendelson, Robert Kenealy, Thomas Schultz,
8 Richard Shadoian, Brenda Stowers, and Arnold Townsend are members of the San Francisco
9 Elections Commission and are sued in their official capacities.

10 **FACTUAL ALLEGATIONS**

11 13. Pursuant to the San Francisco City Charter, a general municipal election is scheduled
12 for November 4, 2003 to elect the Mayor, District Attorney, and Sheriff for the City and County
13 of San Francisco.

14 14. Section 13.102 of the City Charter requires the use of instant runoff or ranked choice
15 voting in the general municipal election. A true and correct copy of City Charter section 13.102
16 is attached hereto as Exhibit A. The voters adopted Section 13.102 as part of Proposition A,
17 which passed by a 55% to 45% margin at the March 5, 2002 election. A true and correct copy of
18 Proposition A is attached hereto as Exhibit B.

19 15. Defendant John Arntz, as Director of Elections, is charged with the responsibility for
20 implementing instant runoff voting pursuant to the City Charter and for conducting the 2003
21 general municipal election.

22 16. In a letter dated May 31, 2002, Mr. Arntz informed San Francisco Mayor Willie L.
23 Brown, Jr. that the Department of Elections would be unable to implement instant runoff voting
24 for the November 2002 election. The letter acknowledged that the City Charter required use of
25 IRV starting with the November 2003 election. Mr. Arntz stated that the Department and its
26 vendor ES&S would "develop the necessary systems and procedures to implement IRV for
27 November 2003" and that "the Department will not delay its responsibility to plan for IRV." A
28 true and correct copy of the letter is attached hereto as Exhibit C.

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17. Defendants Rosenthal, Mendelson, Kenealy, Schultz, Shadoian, Stowers, and Townsend, as appointed members of the San Francisco Elections Commission, are charged by section 13.103.5 of the City Charter with responsibility for setting general policies for the Department of Elections and for hiring, firing, and supervising the Director of Elections.

18. On March 14, 2003, the San Francisco Department of Elections submitted to the Secretary of State an application for certification of a partial hand count voting system to implement ranked choice voting.

19. San Francisco contracts for its voting machines and software with ES&S, a private vendor. On June 2, 2003, ES&S submitted to the California Secretary of State an application for certification of a fully mechanized and computerized instant runoff voting system that involves an upgrade to the city's Eagle optical scan voting machines and vote-counting software. No decision has been made on certification of the proposed voting system.

20. At a meeting of the San Francisco Elections Commission on June 18, 2003, a representative of ES&S told the Commission that a four-person team would require only two weeks to upgrade the city's 682 Eagle voting machines for use as part of the proposed ES&S instant runoff voting system. A true and correct copy of the minutes of the June 18, 2003 meeting is attached hereto as Exhibit D.

21. On July 7, 2003, Electoral Reform Services, a British company with decades of experience administering instant runoff elections, sent Plaintiff Center for Voting and Democracy a proposal to conduct a hand count for a San Francisco instant runoff election in November 2003. The proposal gave a fee estimate of \$29,000 plus expenses and stated that the hand count could be completed in two days. The Center promptly relayed the proposal to Defendant Arntz, the Director of Elections. A true and correct copy of the July 7, 2003 proposal is attached hereto as Exhibit E.

22. In a letter dated July 15, 2003, Defendant Arntz requested additional details from Electoral Reform Services concerning its proposal. A true and correct copy of the letter is attached hereto as Exhibit F.

23. On July 31, 2003, Electoral Reform Services sent Mr. Arntz a proposal that included

1 detailed procedures for conducting the hand count, as well as information on a number of large
2 instant runoff elections it had conducted. A true and correct copy of the July 31, 2003 proposal is
3 attached hereto as Exhibit G. Plaintiffs and Petitioners (hereafter "Plaintiffs") are informed and
4 believe that Defendants have not communicated further with Electoral Reform Services and have
5 taken no action either to reject or to pursue the proposal.

6 24. On July 23, 2003, the Department of Elections requested the release of \$250,000 in
7 reserve funds by the Board of Supervisors Finance Committee for the Department's Public
8 Education Plan for Ranked Choice Voting. A true and correct copy of the request as submitted
9 with supporting documentation is attached hereto as Exhibit H.

10 25. On July 28, 2003, the Voting Systems and Procedures Panel recommended denial of
11 certification for the Department of Elections partial hand count voting system proposal that had
12 been submitted on March 14, 2003. The Secretary of State subsequently adopted the Panel's
13 recommendation.

14 26. At the August 6, 2003 meeting of the Board of Supervisors Finance Committee,
15 Defendant Arntz withdrew the July 23, 2003 request by the Department of Elections for release of
16 \$250,000 in reserve funds for the Department's Public Education Plan for Ranked Choice Voting.
17 Mr. Arntz told the committee that the Department of Elections would not implement instant
18 runoff voting for the November 2003 election.

19 27. At the August 6, 2003 hearing of the San Francisco Board of Elections, Mr. Arntz
20 again stated that the Department of Elections would not implement instant runoff voting for the
21 November 2003 election.

22 28. On July 15, 2003, San Francisco City Attorney Dennis Herrera issued an opinion
23 addressing several questions with respect to instant runoff voting and the 2003 municipal general
24 election. A true and correct copy of the opinion is attached hereto as Exhibit I.

25 **FIRST CAUSE OF ACTION**
26 **(Injunctive Relief)**

27 29. Plaintiffs re-allege each of the allegations in paragraphs 1 through 28 and incorporate
28 them herein.

30 Unless ordered to do otherwise, Defendants will fail to prepare for and to conduct the
COMPLAINT/PETITION

1 2003 San Francisco municipal general election as a ranked choice, instant runoff election as
2 mandated by the City Charter and will continue preparations to conduct and will conduct the
3 election using a separate December runoff election in violation of the San Francisco City Charter.

4 31. Plaintiffs will suffer great and irreparable injury unless Defendants are enjoined from
5 conducting a non-instant runoff voting election in violation of the City Charter. The individual
6 Plaintiffs will suffer irreparable harm to their interests as registered San Francisco voters in
7 casting ranked choice ballots in an instant runoff municipal election, as guaranteed by their City
8 Charter. San Francisco residents and voters who are members of Plaintiff organizations will also
9 suffer the same harm.

10 32. Plaintiffs have no plain, speedy or adequate remedy at law.

11 **SECOND CAUSE OF ACTION**
12 **(Mandamus)**

13 33. Plaintiffs re-allege each of the allegations in paragraphs 1 through 32 and incorporate
14 them herein.

15 34. Unless ordered to do otherwise, Defendants will fail to prepare for and to conduct the
16 2003 San Francisco municipal general election as a ranked choice, instant runoff election as
17 mandated by the City Charter and will continue preparations to conduct and will conduct the
18 election using a separate December runoff election in violation of the San Francisco City Charter.

19 35. Plaintiffs will suffer great and irreparable injury unless Defendants are ordered to
20 conduct the 2003 San Francisco municipal general election as a ranked choice, instant runoff
21 election as mandated by the City Charter and to cease preparations to conduct the election using a
22 separate December runoff election in violation of the Charter. The individual Plaintiffs will suffer
23 irreparable harm to their interests as registered San Francisco voters in casting ranked choice
24 ballots in an instant runoff municipal election, as guaranteed by the City Charter. San Francisco
25 residents and voters who are members of Plaintiff organizations will also suffer the same harm.

26 36. Plaintiffs have no plain, speedy or adequate remedy at law.

27 **WHEREFORE, PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:**

28 1. That this Court issue temporary and permanent injunctive relief, prohibiting Defendants
from taking any actions to conduct the 2003 San Francisco general municipal election using a

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1 separate runoff election procedure and prohibiting Defendants from failing to take all necessary
2 actions to implement instant runoff voting for the 2003 San Francisco general municipal election.

3 2. That this Court issue a peremptory writ of mandate requiring Defendants to take all
4 necessary actions to implement runoff voting for the 2003 San Francisco general municipal
5 election and requiring Defendants to refrain from taking any actions to conduct the 2003 San
6 Francisco general municipal election using a separate runoff election procedure.

7 3. That this Court grant Plaintiffs their costs and fees pursuant to Code of Civil Procedure
8 section 1021.5 and such other and further relief as is just.

9 DATED: August 11, 2003

Respectfully submitted,

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12 Lowell Finley

13 Attorney for Plaintiffs and Petitioners
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VERIFICATION

1 I, Lowell Finley, declare as follows:

2 I am the attorney for Plaintiffs and Petitioners herein and I make this verification because
3 the Plaintiffs and Petitioners are absent from the county in which I have my office.

4 I have read the foregoing VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF and
5 VERIFIED PETITION FOR WRIT OF MANDATE and know the contents thereof. I certify
6 that the same is true of my own personal knowledge except for matters alleged on information
7 and belief, and as to those matters, I believe them to be true.

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

9 Executed on August 11, 2003 at Berkeley, California.

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11
12 Lowell Finley