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PRO SE PLAINTIFFS

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT CALIFORNIA
SAN FRANCISCO DIVISION**

FRANCIS DROUILLARD, MARK GALPERIN,
JOHN TURNACLIFF, CHRIS CARPINIELLO,
WALTER JENSEN, MATTHEW BENNETT
AND MIA CAMERA

Plaintiffs,

vs.

LYNDA ROBERTS in her official capacity as
MARIN COUNTY REGISTRAR OF VOTERS
AND SHIRLEY WEBER, PH.D., in her official
Capacity as CALIFORNIA SECRETARY OF
STATE,

Defendants.

Case No.: 24-cv-06969 – CRB

**MEMORANDUM OF POINTS AND
AUTHORITIES FOR
TEMPORARY RESTRAINING
ORDER**

(Per USDC Local Civil Rules 65-1(2))

I. INTRODUCTION

1. This memorandum of points and authorities is submitted in support of a temporary restraining order.

2. Marin County's 2024 General Elections are imminent. In the 2024 Primary Election, 337 ballots were sent to individuals who moved out of state, and 48 of those ballots were returned and counted anyway, in violation of numerous federal statutes and the United States Constitution. Despite this, the election was certified.

3. For 2024, we have identified 994 ballots which were sent, and we expect 142 of them to be cast and counted, despite that they are in the name of individuals who are ineligible. These discrepancies, and others, were brought to the attention of the Marin County Registrar, who is charged with a duty to investigate. Plaintiffs are unaware that any investigation took place, and based on the registrar's own records, the ballots to the ineligible voters were still sent.

4. Only an election with counting errors below the maximum allowed by law can be certified, including errors caused by contests voted on by ineligible voters that cast ballots. The maximum errors permitted in Marin is 15. If somehow only 16 of the 994 ballots were cast and counted, despite that a fair estimate is 142, and miraculously those ineligible voters only voted in one contest, the election would still be uncertifiable.

5. The "All Ballots Returned" list produced after the election is over will be used to determine if any of the 994 ineligible voters voted in the election. By then it will be too late because ballots cast by ineligible voters cannot be identified after they are removed from their return envelopes. The sorting machine used to remove ineligible voters must be updated with the 994 names of individuals who received ballots but are ineligible to vote so those ballots may be intercepted and sequestered before they are extracted from their vote-by-mail return envelope.

6. To safeguard against inauthenticity, plaintiffs are requesting real-time AVMR-130 reports at regular intervals which will show the number of ballots challenged

1 and sequestered for verification. These ballots are still in their return envelopes from which
2 the voter can be identified. Once verified that they're from ineligible voters they should
3 remain sequestered, unopened and uncounted. This AVMR-130 report can be generated in a
4 few minutes, by pressing a button. There are several other errors we have yet to identify that
5 we believe will be discovered (or ideally avoided) through an Order mandating these reports.
6 Without these reports, it's likely that the County will certify an otherwise uncertifiable
7 election.

8 II. FACTUAL BACKGROUND

9 7. The National Change of Address ("NCOA") database is a comprehensive
10 database maintained by the United States Postal Service ("USPS") that contains updated
11 address information for individuals, families, and businesses that have filed a change of
12 address form with the USPS. The NCOA database is available to states for maintaining and
13 updating their voter registration files.

14 8. On or about December 7, 2023, Urson Russell on behalf of a volunteer group
15 called "Patriot Force California", a non-partisan group of citizens, extracted statewide voter
16 rolls from the California Secretary of State's office. The purpose was to compare and
17 analyze the active county voter rolls (including Marin County) and the NCOA database to
18 identify active voters on California's registered voter rolls that moved to another state before
19 the March 5, 2024, primary.

20 9. Plaintiffs Drouillard, Turnacliff, Bennett and Camera were among the group
21 of canvassers for Marin County who went door to door to confirm the accuracy of the data.
22 They only had the time to visit homes corresponding to 145 of 337 names of people who had
23 moved out of state as listed in the NCOA database yet remained on the Marin active voter
24 rolls. Of the 145 names, they confirmed 140 had in fact moved. See Affidavit of Drouillard,
25 filed herewith.

26 10. Using the September 30, 2024, voter rolls, 994 Marin voters who have moved
27 out of the county remain on the voter roll and were mailed a ballot.

20. Plaintiffs Drouillard, Turnacliﬀ, Bennett and Camera participated in a canvassing eﬀort to confirm that 140 of 337 out-of-state voters moved from the state.

21. Plaintiff Drouillard examined the September 30, 2024, voter rolls and found that 89 of 131 confirmed out-of-state voters remained on the voter rolls.

22. Plaintiff Drouillard examined the September 30, 2024, voter rolls and found that 994 of the 1,162 alleged out-of-county voters remained on the voter rolls.

23. Tony Aquilino, a Marin County elections staff employee of Defendant Roberts, told Plaintiff Drouillard that active voters on the September 30, 2024, voter rolls would be mailed a ballot.

24. If only a small fraction of ineligible voters cast ballots in the November 5, 2024, General Election, then excessive ballot errors will occur that render the election results unreliable.

III. ARGUMENT

(i) **Plaintiffs Have Standing to Bring This Action**

25. To establish standing, a plaintiff generally must show three elements: (1) the plaintiff has suffered an “injury in fact,” (2) a causal connection exists between the injury and the conduct complained of, and (3) there is a likelihood the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The Supreme Court has held that “[a] citizen’s right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution,” *Baker v. Carr*, 369 U.S. 186, 207-8 (1962); see also *Gray v. Sanders*, 372 U.S. 368, 375 (1963), and a loss of a constitutional right constitutes actual injury.

26. Plaintiffs' constitutional right to vote is impaired by the dilution of their vote resulting from counting votes of ineligible voters. They, along with the other eligible voters in Marin County, therefore, have standing to bring this action.

1 (ii) The Court Should Issue the Requested TRO

2 27. An injunction may be granted only where the movant shows that he or she “is
3 likely to succeed on the merits, that he [or she] is likely to suffer irreparable harm in the
4 absence of preliminary relief, that the balance of equities tips in his favor, and that an
5 injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20
6 (2008); see also *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th
7 Cir.2009). A request for a TRO is governed by the same general standards that govern the
8 issuance of a preliminary injunction. See *New Motor Vehicle Bd. v. Orrin W. Fox. Co.*, 434
9 U.S. 1345, 1347 n.2 (1977).

10 A. Plaintiffs Are Likely to Succeed On The Merits

11 (i) Defendants Have Violated Plaintiffs' Constitutional Rights To Equal Protection and
12 Substantive Due Process

13 28. The United States Supreme Court has long recognized that under the Equal
14 Protection Clause, “all qualified voters have a constitutionally protected right to vote, and to
15 have their votes counted.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964) (internal citation
16 omitted). The Equal Protection Clause provides that “[h]aving once granted the right to vote
17 on equal terms, the State may not, by later arbitrary and disparate treatment, value one
18 person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-5 (2000); see also *Hunter*
19 *v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 234 (6th Cir. 2011) (recognizing that “[t]he
20 right to vote includes the right to have one's vote counted on equal terms with others.”
21 (internal quotation omitted)).

22 29. The “fundamental unfairness” test was established in the seminal case of
23 *Bennett v. Yoshina*, 140 F.3d 1218 (9th Cir. 1998). The appellate court held that “an election
24 is a denial of substantive due process if it is conducted in a manner that is fundamentally
25 unfair.” *Id.* at 1226. The Ninth Circuit explained, however, that there is a distinction
26 “between ‘garden variety’ election irregularities and a pervasive error that undermines the
27 integrity of the vote.” *Id.* “In general, garden variety election irregularities do not violate the

1 Due Process Clause, even if they control the outcome of the vote or election.” Id. To trigger a
2 constitutional violation, the irregularities must “transcend garden variety problems.” Id. A
3 federal court will intervene when an officially-sponsored election is, in its basic aspect,
4 flawed. Id. (citing *Griffin v. Burns*, 570 F.2d 1065 (1st Cir. 1978)). Due process,
5 representing a profound attitude of fairness between individual and government, is implicated
6 in a situation where the official in charge of elections fails to perform his or her charged
7 duties which cause the resulting election to be fundamentally unfair.

8 30. In this case, this is exactly what is happening. The elections are not being
9 conducted properly, and the discrepancy is causing more than a few minor irregularities. The
10 results may contain well beyond 10,000 errors, directly caused by the failure of the Registrar
11 to perform her duties correctly, regardless of whether the error is innocent or not. For these
12 reasons, plaintiffs have been denied substantive due process and equal protection.

13 (ii) Defendants Have Violated Plaintiffs' Constitutional Right To Due Process

14 31. The Due Process Clause of the Fourteenth Amendment prohibits “any State”
15 or its agents from “depriv[ing] any person of life, liberty, or property, without due process of
16 law.” U.S. Const. amend. XIV. The procedural facet “guarantees due process in connection
17 with any deprivation of liberty by a State.” *Collins v. City of Harker Heights, Tex.*, 503 U.S.
18 115, 116 (1992).

19 32. “To obtain relief on a procedural due process claim, the plaintiff must
20 establish the existence of ‘(1) a liberty or property interest protected by the Constitution; (2)
21 a deprivation of the interest by the government; [and] (3) lack of process.’” *Shanks v.*
22 *Dressel*, 540 F.3d 1082, 1090 (9th Cir. 2008) (internal quotation omitted). A governmental
23 actor who deprives an individual of a cognizable liberty interest without adhering to
24 statutorily prescribed procedures and/or without affording adequate notice and an opportunity
25 for a hearing is liable under Section 1983. See *Cleveland Bd. of Educ. v. Loudermill*, 470
26 U.S. 532, 542 (1985) (“An essential principle of due process is that a deprivation of life,
27 liberty, or property be preceded by notice and opportunity for a hearing appropriate to the

1 nature of the case.” (internal quotation marks and citation omitted)); *Rivera-Powell v. Bd. of*
2 *Elections*, 470 F.3d 458, 466 (2d Cir. 2006) (finding no procedural due process violation in
3 an election contest because the plaintiff had been given adequate notice an opportunity to be
4 heard). An election runs afoul of due process when it results “in significant disenfranchisement
5 and vote dilution.” *Ne. Ohio Coalition for the Homeless v. Husted*, 696 F.3d 580, 597 (6th
6 Cir. 2012).

7 33. Regardless of motivation, in this case, the Registrar has knowingly and
8 intentionally departed from the National Voter Registration Act, 52 U.S.C. § 20507(d),
9 which requires the removal of registrants that moved outside the registrar’s jurisdiction, the
10 Help America Vote Act, 52 U.S.C. § 21083(a), which requires that voter roll databases
11 contain only the registrations of qualified citizen voters residing in that state, and the Cal.
12 Elec. Code § 349 which requires a registrant to reside in the precinct they are registered. The
13 aggregate result of this was to dilute every eligible vote. Moreover, there was no attempt to
14 hold a hearing or to afford plaintiffs an opportunity to be heard, rather, their concerns were
15 summarily disregarded and dismissed. For these reasons, they were denied procedural due
16 process.

17 (iii) Defendants Are in Violation of the National Voter Registration Act

18 34. The United States Congress enacted the National Voter Registration Act of
19 1993 (“NVRA”), also known as the “Motor Voter Act,” to make it easier to register to vote
20 for citizens eligible to vote. The NVRA also mandates procedures for States to maintain
21 accurate and current voter registration lists. 52 U.S.C. § 20507 through § 20511. The
22 National Voter Registration Act (NVRA) requires States to implement systems to maintain
23 accurate voter rolls by removing ineligible voters who are deceased, have relocated out of
24 state, or otherwise lost eligibility. The Act states “The State shall conduct a general program
25 that makes a reasonable effort to remove the names of ineligible voters from the official lists
26 of eligible voters by reason of—(A) the death of the registrant; or (B) a change in the
27 residence of the registrant...” (52 U.S.C. § 20507(a)(4)).

1 35. In this case, the registrar's complete failure to make a reasonable effort to
2 update the voter rolls, including failure to remove those who have moved out of state,
3 especially with an impending general election, is not a reasonable effort to maintain accurate
4 voter rolls as required by NVRA. See *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833
5 (2018).

6 (iv) Defendants are in violation of the Help America Vote Act

7 36. The Help America Vote Act (HAVA) establishes that federal elections must
8 be administered to strict error rate limits, permitting only one voting system error per
9 500,000 ballot positions, by reference to the Federal Election Commission standards. (52
10 U.S.C. § 21081(a)(5)) states the voting system "shall comply with the error rate standards in
11 section 3.2.1 of the voting system standards issued by the Federal Election Commission
12 which are in effect on the date of the enactment of this Act." The standards published at the
13 time state that the error rate must be no greater than 1 error in 500,000 ballot positions
14 (0.0002%). Errors are measured by the number of vote counting system errors. FEC Voting
15 System Standards, section 3.2.1.

16 37. Defendants' failure to remove ineligible voters has generated an excessive
17 number of ballot errors in Marin County elections historically and is almost certainly going
18 to for the impending election, should this Court fail to act. The result would be a direct and
19 unacceptable violation of HAVA.

20 B. Irreparable Harm Will Result if This Court Fails to Act

21 38. Plaintiffs are likely to succeed in showing irreparable harm. Plaintiffs do not
22 assert their right to win the election; they assert their right to a fair election and the voters'
23 right to cast an accurate and valid vote. The loss of these rights satisfies the irreparable harm
24 requirement. See *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (election case noting that the loss
25 of constitutional rights "for even minimal periods of time, unquestionably constitutes
26 irreparable injury"); *Fla. Democratic Party v. Hood*, 342 F. Supp. 2d 1073 (N.D. Fla. 2004)
27 ("A person who is denied the right to vote suffers irreparable injury.").

1 39. Dilution of the vote, just as a complete denial of an eligible vote, is irreparable
2 harm and there is no amount of money that can be paid to anyone which would adequately
3 restore justice in such a case. Accordingly, there will irreparable harm should this Court fail
4 to act and the election is unlawfully certified.

5 C. Balancing Of Equities and Public Interest Weigh Heavily in Plaintiffs' Favor

6 40. This is a very simple calculation. On the one side are plaintiffs' constitutional
7 rights, and on the other, there is absolutely no inequity. Defendants are being asked to do
8 their job. That is not an inequity.

9 41. With respect to public interest, the plaintiffs' and the People of Marin County
10 all have an interest in a fair election which reflects their vote accurately. They have an
11 interest in confidence about the result of their election, and in the integrity of the election
12 process. On the other side, there is no interest defendants can cite to, assuming an innocent
13 mistake, and regardless there is no interest that the Court should recognize.

14 42. For these reasons the balancing of equities and public interest both weigh
15 heavily toward granting the requested relief.

16 IV. CONCLUSION

17 43. For the foregoing reasons, this Court should grant the requested relief and
18 issue the Temporary Restraining Order.

1 DATED: October 22, 2024,

Respectfully Submitted,

3 FRANCIS DROUILLARD (Pro Se)

4 *I, Francis Drouillard, attest, under penalty of*
5 *perjury, that the six Signatories below have*
6 *concurred in the filing of this memorandum.*

7 /s/

8 MARK GALPERIN (Pro Se)

9 /s/

10 JOHN TURNACLIFF (Pro Se)

11 /s/

12 CHRIS CARPINIELLO (Pro Se)

13 /s/

14 WALTER JENSEN (Pro Se)

15 /s/

16 MATTHEW BENNETT (Pro Se)

17 /s/

18 MIA CAMERA (Pro Se)