UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA, Plaintiff, v. UPPER SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT; ANTHONY R. FELLOW (Division 1), FRANK F. FORBES (Division 2), KENNETH R. MANNING (Division 3), R. WILLIAM ROBINSON (Division 4), MARVIN JOE CICHY (Division 5), Members of the Board of Directors for the Upper San Gabriel Valley Municipal Water District; CONNY B. McCORMACK, Los Angeles County Registrar-Recorder/Clerk Defendants.	CASE NO. CV 00-7903 AHM (BQRx) ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiff United States seeks to enforce § 2 of the Voting Rights Act of 1965 (42 U.S.C. § 1973 or "section 2") against Defendant Upper San Gabriel Valley Municipal Water District ("District"), named members of its current Board of Directors and the Los Angeles County Registrar-Recorder. Plaintiff alleges that the boundaries for the five seats on the Board of Directors were drawn in such a way as to impermissibly dilute votes of Hispanics. The Board of Directors is responsible for carrying out the mission of the District: "To provide a reliable supply

of imported water for groundwater recharge and domestic consumption within the boundaries of the Upper San Gabriel Valley Municipal Water District."

The Board of Directors is comprised of five positions elected from five single member divisions to four year terms. (Mem. In Supp. Of United States' Mot. For Prelim. Relief at 5.) The Directors are elected to staggered terms. (Id.) Three Directors are up for election in the November 7, 2000 General Election. (Id.) To succeed, a candidate must only garner the most votes in a plurality system. (Id.) The incumbents are running in all three races. (Defs.' Opp'n to Pl.'s Mot. For Prelim. Inj. Exh. E.) It appears that candidates with Hispanic surnames are running in Divisions 3 & 4. (Id.) The election is scheduled for November 7, 2000.

On August 29, 2000, Plaintiff first brought this matter before the Court by moving for leave to seek an injunction on an expedited basis. Because the Los Angeles County Registrar-Recorder must complete the General Election ballot materials by the close of business today, September 8, 2000, the Court ordered an expedited briefing schedule because of the importance of the issues raised here. The Defendants thus were required to file their opposition to Plaintiff's Motion for Preliminary Injunction ("Motion") on September 5, 2000 and Plaintiff's reply was filed on September 6, 2000. A hearing was conducted yesterday. The Court took the matter under submission.

This Order provides the parties with the Court's ruling and a brief explanation based on the balance of the hardships. As disclosed at the hearing, the Court has serious questions concerning Plaintiff's theories and conclusions. The Court will at a later date provide a more detailed opinion illustrating how Plaintiff failed to meet its burden to show a probability of success.

DISCUSSION

I. LEGAL STANDARD FOR PRELIMINARY INJUNCTION

"The standard for granting a preliminary injunction in redistricting cases does not differ from the general preliminary injunction standard." *Cardona v. Oakland Unified School District*, 785 F. Supp. 837, 839-40 (N.D. Cal. 1992). A plaintiff is entitled to a preliminary injunction upon showing "either (1) a combination of probable success on the merits and the possibility of

irreparable injury or (2) the existence of serious questions going to the merits and that the balance of hardships tips sharply in his favor." *Sardi's Restaurant Corp. v. Sardie*, 755 F.2d 719, 723 (9th Cir. 1985) (*citing Apple Computer, Inc. v. Formula Int'l, Inc.*, 725 F.2d 521, 523 (9th Cir. 1984)). These standards are not two distinct tests, but rather are "the opposite ends of a single continuum in which the required showing of harm varies inversely with the required showing of meritoriousness." *Rodeo Collection, Ltd v. West Seventh*, 812 F.2d 1215, 1217 (9th Cir. 1987) (internal quotations omitted). "Where an injunction is authorized by statute, and the statutory conditions are satisfied . . . the agency to whom the enforcement of the right has been entrusted is not required to show irreparable injury." *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 175 (9th Cir.1987) (footnote omitted); *see also Cardona*, 785 F. Supp. at 840 ("Abridgement or dilution of a right so fundamental as the right to vote constitutes irreparable injury."). As the Court stated on the record at the hearing, if it found probability of success it would also find irreparable injury.

However, before issuing an injunction, this Court "must consider the public interest as a factor in balancing the hardships when the public interest may be affected." *Caribbean Marine Services Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir.1988). In the context of voting rights cases, the Supreme Court frames this test as follows:

> [O]nce a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan. However, under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid. In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree.

Reynolds v. Sims, 377 U.S. 533, 585 (1964).

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II. APPLICATION TO THIS CASE

The Court is persuaded that "[t]he strong public interest in having elections go forward . . . weighs heavily against an injunction that would delay an upcoming election," for the following reasons. *Cardona*, 785 F. Supp. at 842.

A. Expense and Administrative Burden

In addition to enjoining the upcoming election, Plaintiff proposes to conduct a special election after boundaries are redrawn. The expense would certainly be borne by the District and, ultimately, the District water customers. If, on the other hand, the November election proceeds and Plaintiff does not prove its case at trial, the results of the election would be valid and there would be no need for a special election. The costs of a special election are substantial. The Registrar-Recorder of Los Angeles County filed a declaration establishing that it will cost the District $185,000 to conduct the election for Divisions 2, 3 and 4 as part of the November 7, 2000 General Election and that a special election would cost three to five times that amount.[1] Decl. of Kathleen Scollard at 3. The cost of a special election should be avoided if possible. Should Plaintiff prevail at trial, the Court could order a special election at that time.

B. The November Election Will Provide Relevant Evidence

Plaintiff conceded at the hearing that under the "totality of the circumstances" method of assessing the lawfulness of the current election structure, it would be relevant evidence if an Hispanic candidate were elected this November, although this would not be decisive or make the case moot. *See Ruiz v. City of Santa Maria*, 160 f.3d 543, 549 (9th Cir. 1998). The Court believes that it would be advisable, and perhaps very enlightening, to have the record include the results of the upcoming election.

C. Harm to the Candidates

Thirteen citizens already chose to run in November for the three vacancies on the District Board. These candidates each had to pay a $550 fee associated with the filing of their candidate

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[1] Plaintiff makes an unsworn assertion that the cost of a special election would be "reduced substantially" if conducted in conjunction with the regularly scheduled November 2001 election. United States' Supp. Brief Re: Mot. For Prelim. Inj. at 5.

statements on or about September 1, 2000. The nomination period for candidates closed September 1, 2000. The candidates have already begun to organize their campaigns, raise funds, and incur campaign costs. *See, e.g.*, Manning Decl. To enjoin the election now would be unfair to the candidates and their supporters who have acted in reliance on the scheduled date for the election. *See Cardona*, 785 F. Supp. at 842-43 (denying a preliminary injunction because the "election machinery [was] already in gear" for the upcoming election on similar facts).

D. Plaintiff's Request Would Subject the Electorate to an Anomalous Result

Plaintiff contends that the incumbents obtained their positions illegally. Nevertheless, Plaintiff requests this Court not only to enjoin the November election but to allow the incumbents to remain in office until this case is resolved and a special election is held. That would take approximately 18 months. In the meantime, the voters would have been deprived of their right to replace the allegedly unlawful incumbents. If Plaintiff prevails at trial the Court can and will fashion a remedy at that time. Until then, based on the record before the Court, it would be inequitable to interfere with the democratic process.

E. Inadequate Record and Time

This Court is exceedingly reluctant on such an incomplete record and absurdly short notice[2] to interfere with the right of all the citizens in the District to exercise their vote. *See Banks v. Bd. of Education*, 659 F. Supp. 394 (C.D. Ill. 1987) (denying preliminary injunction precluding an election that was less than a month from the hearing date). "The issues raised in these voting rights cases are complex and require the Court to review a great deal of social and demographic statistical evidence. *If the Court is to make a reasoned decision* on the request for preliminary injunction, *the Court must allow the parties the opportunity to gather and evaluate this type of evidence*." *Id.* at 398 (emphasis added).

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[2] The parties are aware of the Court's concern, expressed at the hearing, that this Motion was brought on unusually short notice, and unnecessarily so.

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CONCLUSION

Based on the foregoing, and the fact that Plaintiff has failed to make a sufficient showing, the Court DENIES Plaintiff's Motion for Preliminary Injunction.

IT IS SO ORDERED.

DATE: September 8, 2000

A. Howard Matz
United States District Judge