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 Los Angeles Superior Court

MAR 30 2005

John A. Clarke, Executive Officer/Clerk
 By J. SUNGA, Deputy

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 7 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

9 ELENA ARREOLA, an individual,
 10
 Plaintiff,
 11
 vs.
 12
 THE CITY OF HUNTINGTON PARK, a
 13 municipal corporation, and DOES 1 through 10,
 14
 Defendants

Case Number BC 331079

**COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF**

28

1 Plaintiff seeks declaratory and injunctive relief against defendants and, in support
2 thereof, states as follows:

3 **INTRODUCTION**

4 1. This is an election contest brought pursuant to California Election Code Section
5 16100. Plaintiff alleges that irregularities in the conduct of the March 8, 2005 Huntington Park
6 City Council election were serious and substantial. As a result, Plaintiff seeks an annulment of
7 that election and that a new election be ordered, free of the irregularities alleged below, so that
8 elections can be held to permit free, fair, unhindered, and intimidation-free voting by the
9 electors of Huntington Park.
10

11 **JURISDICTION**

12 2. Jurisdiction is proper in the Superior Court of the State of California pursuant to
13 Election Code Section 16500.
14

15 **VENUE**

16 3. Venue is proper in the County of Los Angeles, Superior Court of the State of
17 California, because both the Plaintiff and all defendants reside in this district, and this is the
18 county in which the disputed election was held. Venue is proper in this judicial district because
19 a substantial part of the real and immediate harm faced by Plaintiff and other residents of
20 Huntington Park is threatened in this judicial district.
21

22 **PARTIES**

23 4. Plaintiff Elena Arreola is a resident of Huntington Park and an individual who
24 voted in the March 8, 2005 City Council election. Her assigned polling place was at The City of
25 Huntington Park's City Hall.
26

27 5. Defendant The City of Huntington Park is a municipal corporation located within
28

1 the County of Los Angeles, State of California. The City of Huntington Park, pursuant to the
2 City Charter, the California Elections Code, and The City of Huntington Park Municipal Code,
3 has the legal responsibility, through its agents and employees, including the City Clerk, of
4 conducting elections for The City of Huntington Park in compliance with all applicable laws.
5 The city's governance and administration is by City Council, consisting of five members,
6 elected directly by the public, one of whom serves as mayor. Each City Council member is
7 elected for a four-year term. In March of 2005, the terms of two of those members, Richard V.
8 Loya and Edward Escareno, expired and both individuals offered themselves as candidates for
9 reelection. It is the seats of those two City Council members that were the subject of the City
10 Council race in March 2005.
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13 **FACTUAL ALLEGATIONS**

14 6. On March 8, 2005, an election was held in the City of Huntington Park to
15 determine who would fill two open seats on the City Council. Eight candidates were listed on
16 the Ballot, including the two incumbents, Richard V. Loya and Edward Escareno. The results of
17 the vote tallies are shown below.
18

19

| <u>Candidate</u> | <u>Votes</u> |
|-----------------------|--------------|
| 20 Elba Guerrero | 1,021 |
| 21 Elba Romo | 1,020 |
| 22 Richard V. Loya* | 947 |
| 23 Andy Molina | 798 |
| 24 Rebecca Avila | 598 |
| 25 Efren Martinez Jr. | 433 |
| 26 Edward Escareno* | 140 |
| 27 Ruben M. Lopez | 72 |

28 7. Ordinarily, the top two vote getters would be declared the winners in the election
and assume the two City Council seats left vacant by the failure of either of the two incumbents
to receive sufficient votes to place them in the top two positions. However, in this case

1 irregularities occurred on voting day, and the results of the election should therefore not be
2 certified. In fact, the election results for The City of Huntington Park for March 8, 2005 should
3 be subject to annulment.

4
5 8. The fundamental right to a secret ballot by the citizens and electors of The City
6 of Huntington Park was violated by the presence of video cameras in the City Hall polling place,
7 such that persons entering the polling place to vote, and the votes that they cast, could be, and
8 were, recorded on videotape.

9
10 Videotaping Secret Balloting

11 9. Although the US Constitution does not specifically guarantee that a person has a
12 right to a secret ballot, such a right has been recognized as one of the fundamental civil liberties
13 of our democracy. This principle takes on such significance because it safeguards the purity of
14 our election process by eliminating the fear of scorn and ridicule, as well as lessening the evils
15 of violence, intimidation, bribery and other corrupt practices which can be incumbent in non-
16 secret elections. In order to protect the secrecy of the ballot, the California legislature has
17 expressly guaranteed the right of a secret ballot in its Voter's Bill of Rights, which states: "You
18 have the right to cast a secret ballot free from intimidation." Election Code Section 2300(a)(4).
19

20 10. Despite this guarantee of the fundamental right to cast a ballot in an election of
21 public officials in secret, The City of Huntington Park violated this right in its own City Hall
22 which served as a principal polling place for the citizens of Huntington Park for the election of
23 March 8, 2005. Security cameras in City Hall were positioned so that all persons entering the
24 polling place could be and were recorded. Further, cameras were positioned directly over the
25 voting booths. Thus, a video record was made of actual votes by identifiable voting citizens on
26 that voting day.
27
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1 11. This violation of the right of secret ballot harmed the public and the election in a
2 least two respects: First, the fundamental premise of a secure, intimidation-free environment in
3 which to cast a vote did not exist. When the actual choices of an individual may be known to
4 someone other than the person who cast the vote, the person casting the vote is not free to vote
5 without fear that their vote may have repercussions. Whether the information obtained by the
6 video cameras was used for purposes of intimidation is irrelevant if the potential for such use
7 exists. An actual threat of retribution need not be present if a voter's intention can be changed
8 through a more subtler form of intimidation. All votes cast at the City Hall polling place are
9 therefore tainted and cannot be utilized in assessing the true and fair results of free and fair
10 election.
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13 12. Second, *as a matter of public policy*, the results must be invalidated. As society
14 and technology move toward their inevitable conversion, the potential for abuse, either with
15 present day technology, and with that yet to come, mandates that *any* infringement of the right
16 of secret ballot be dealt with harshly and directly. Surveillance technology is becoming ever
17 smaller, more concealable, cheaper, and more publicly available. Many aspects of society today
18 are under assault, particularly in the realm of privacy. However, no right is more fundamental to
19 this country's democratic process than the right of the secret ballot. If any intrusion upon this
20 right is permitted to stand, than the myriad ills so well known and shunned in non-free voting
21 societies may arise in our own. At present, the threat to the secret ballot is not threatened by an
22 erosion of the will of the people to keep the ballot secret, but rather by an erosion of the *ability*
23 to keep balloting private against an advancing tide of technology. Thus, any infringement to the
24 right of secret ballot, whether intentional or unintentional, *must* be dealt with firmly and
25 demonstrably.
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SECOND CAUSE OF ACTION
(Violation of California Elections Code
Against The City Of Huntington Park)

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3 18. Plaintiff incorporates the above allegations by reference as if set forth herein at
4 length.

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6 19. The election officials responsible for supervision of the election in the City of
7 Huntington Park were guilty of malconduct in that, on Election Day, within 100 feet of a polling
8 place, they permitted detailed videotape recordings to be made of all voters entering and leaving
9 the polling place located at The City of Huntington Park's City Hall, in violation of Election
10 Code Section 18541 (3).

11
12 20. The election officials responsible for supervision of the election in the City of
13 Huntington Park were further guilty of malconduct in that, on Election Day, within 100 feet of a
14 polling place, they permitted detailed videotape recordings to be made of identifiable votes cast
15 by individual, identifiable voters who voted at The City of Huntington Park's polling place
16 located in City Hall, in violation of Election Code Section 2300.

17
18 21. The election officials responsible for supervision of the election in the City of
19 Huntington Park were further guilty of malconduct in that, on Election Day, within 100 feet of a
20 polling place, they utilized a tactic of coercion or intimidation by allowing detailed videotape
21 recordings to be made of identifiable votes cast by individual, identifiable voters who voted at
22 The City of Huntington Park's polling place located in City Hall, in violation of Election Code
23 Section 18540.

24
25 22. Wherefore, plaintiff seeks an Order annulling the results of The City of
26 Huntington Park's March 8, 2005 election for City Counsel and the issuance of an Order that a
27 new election be held to determine who should fill the two open seats on the City Council.
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PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court enter judgment in her favor:

1. Enjoining defendants to provide surveillance free voting places for all elections in The City of Huntington Park.

2. Declaring that The City of Huntington Park's March 8, 2005 election for City Counsel be annulled for misconduct and impermissible intrusions into the voting process.

3. Issuing an Order freezing the status quo and enjoining any newly elected office holders in The City of Huntington Park's City Council election from assuming any duties, unless and until this Court can make a determination upon the legality of the election contest, in light of the allegations alleged herein.

4. Issuing an Order that a new election be held to determine who should fill the two open seats on the City Council.


5. Awarding plaintiff her expenses, costs, fees and other disbursements associated with the filing and maintenance of this action, including reasonable attorneys fees

6. Awarding such other equitable and further relief as the Court deems just and proper.

DATED: March 29, 2005

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