

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEREMY COLTHARP, an individual and
EDITH FRAZIER, an individual,

Plaintiffs - Appellants,

v.

LARRY HERRERA, in his official
capacity as City Clerk for the City of
Long Beach,

Defendant - Appellee.

No. 15-55039

D.C. No. 2:13-cv-03263-AB-FFM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andre Birotte, Jr., District Judge, Presiding

Argued and Submitted February 11, 2016
Pasadena, California

Before: FARRIS, CLIFTON, and BEA, Circuit Judges.

Plaintiffs Jeremy Coltharp and Edith Frazier appeal the district court's order denying their motion for summary judgment and granting Defendant Larry

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Herrera’s motion for summary judgment with respect to their substantive due process claim. We affirm.

Plaintiffs fail to demonstrate that Herrera arbitrarily interpreted California Elections Code section 9215 in refusing to certify Plaintiffs’ petition for the next regularly scheduled election. No provision of California law clearly imposes a requirement that a petition requesting submission at a special election be alternatively considered for a general election upon failing to qualify for a special election. After finding Plaintiffs’ petition insufficient for a special election, Herrera followed California Elections Code section 9115(e), which requires that “no action [] be taken on the petition.” No due process violation resulted from that approach.¹

AFFIRMED.

¹ Plaintiffs’ requests for judicial notice are denied for lack of relevance. *See Ruiz v. City of Santa Maria*, 160 F.3d 543, 548 n.13 (9th Cir. 1998).