

1 GAUTAM DUTTA, ESQ. (State Bar No. 199326)
2 39270 Paseo Padre Parkway # 206
3 Fremont, CA 94538
4 Telephone: 415.236.2048
5 Email: dutta@businessandelectionlaw.com
6 Fax: 213.405.2416

SERVICE COPY

7 Attorney for Plaintiffs
8 MONA FIELD, RICHARD WINGER, STEPHEN A.
9 CHESSIN, JENNIFER WOZNIAK, JEFF MACKLER, and
10 RODNEY MARTIN

ENDORSED
FILED
Superior Court of California
County of San Francisco

SEP 10 2010
CLERK OF THE COURT
by: WESLEY RAMIREZ
Deputy Clerk

11 CALIFORNIA SUPERIOR COURT
12 COUNTY OF SAN FRANCISCO

13 MONA FIELD, RICHARD WINGER,
14 STEPHEN A. CHESSIN, JENNIFER
15 WOZNIAK, JEFF MACKLER, and
16 RODNEY MARTIN,

CASE NO. CGC-10-502018

17 *Plaintiffs,*

**PLAINTIFFS' OPPOSITION TO
INTERVENORS' WRITTEN
OBJECTIONS TO PLAINTIFFS'
EVIDENCE**

18 vs.

19 DEBRA BOWEN, in only her official
20 capacity as California Secretary of State;
21 JOHN ARNTZ, in only his official
22 capacity as Director of Elections of the
23 City and County of San Francisco; DAVE
24 MACDONALD, in only his official
25 capacity as Registrar of Voters of the
26 County of Alameda; JESSE DURAZO, in
27 only his official capacity as Registrar of
28 Voters of the County of Santa Clara;
DEAN LOGAN, in only his official
capacity as Registrar-Recorder / County
Clerk of the County of Los Angeles; NEAL
KELLEY, in only his official capacity as
Registrar of Voters of the County of
Orange; RITA WOODARD, in only her
official capacity as Registrar of Voters of
the County of Tulare; and DOES 1-20;

HEARING DATE: Sept. 14, 2010
HEARING TIME: 9:30 A.M.
JUDGE: Hon. Charlotte Walter Woolard
DEPARTMENT: 302 (Law & Motion)

Defendants.

1 Plaintiffs respond to all objections raised against evidence submitted by Plaintiffs.

EVIDENCE	OBJECTIONS	RULES OF EVIDENCE
<p>3 1. First Amended 4 Complaint, ¶ 3, fn. 1.</p>	<p>5 “Insofar as the cited 6 newspaper article is offered 7 and relied upon to establish 8 the truth of the matter 9 asserted – the timing of the 10 adoption of SB 6 and SCA 4 11 – it is hearsay, and does not 12 come with the exception to 13 the hearsay rule.”</p> <p>14 “Plaintiff/Declarants have in 15 no way or manner 16 established that they have 17 any personal knowledge of 18 the timing of the adoption of 19 SB 6 and SCA 4.”</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28 “The timing of the adoption</p>	<p>Under California Evidence Code § 452(h), judicial notice may be taken of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”</p> <p>Courts may take notice of the contents of newspaper articles. <i>See</i> <i>Ritter v. Hughes Aircraft Co.</i>, 58 F.3d 454, 458-59 (9th Cir. 1995) (holding that district court properly took judicial notice of newspaper article detailing widespread layoffs by defendant because existence of the layoffs “is a fact which would be generally known in Southern California and which would be capable of sufficiently accurate and ready determination.”). <i>See also</i> <i>Hurvitz v. Hoefflin, et. al.</i> (2000) 84 <i>Cal.App.4th</i> 1232, 1235, <i>fn. 1</i>; <i>League of United Latin American</i> <i>Citizens v. Wilson</i> (9th Cir. 1997) 131 F.3d 1297, 1305 (citing newspaper article about political circumstances surrounding voter initiative).</p> <p>Furthermore, judicial notice of law, legislative facts, or factual matters is proper where there is no dispute as to the authenticity of those matters. <i>See Oneida Indian Nation</i> <i>of New York v. New York</i>, 691 F.2d 1070, 1086 (2nd Cir. 1982); <i>see</i> <i>also Zimomra v. Alamo Rent-A-</i> <i>Car, Inc.</i>, 111 F.3d 1495, 1503 (10th Cir. 1997).</p> <p>The timing of the adoption of SB 6</p>

	<p>of SB 6 and SCA 4 by the Legislature is irrelevant to the question of whether those acts are valid and constitutional.”</p>	<p>and SCA 4 by the Legislature is indeed relevant to the question of whether those acts are valid and constitutional. Under <i>Doe v. Reed</i>, two U.S. Supreme Court Justices stated that they would be “<u>less than willing to defer</u> to the institutional strengths of the legislature” – particularly “when a law appears to have been adopted <u>without reasoned consideration.</u>”¹</p>
<p>2. First Amended Complaint, ¶ 33, fn. 19.</p>	<p>“Insofar as the cited press release is offered and relied upon to establish the truth of the matter asserted – when and how many special elections have been held in California since 1990 – it is hearsay, and does not come with the exception to the hearsay rule.”</p> <p>“Plaintiff/Declarants have in no way or manner established that they have any personal knowledge regarding when and how many special elections have been held in California since 1990.”</p>	<p>Under California Evidence Code § 452(h), judicial notice may be taken of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.</p> <p>The press release posted on the California Secretary of State’s website at http://www.sos.ca.gov/admin/press-releases/2010/db10-048.pdf is judicially noticeable as it presents recent patterns of special elections as reported by the state’s Chief Election officer. See <i>People v. Harris</i> (1984) 36 Cal.3d 36, 48, fn. 3 (taking judicial notice of the federal census); <i>Diaz v. Kay-Dix Ranch, et al.</i> (1970) 9 Cal.App.3d 588, 596, fn. 6 (court taking judicial notice of statistics “from an official government source”).</p> <p>Courts can take judicial notice of the contents of news articles. <i>Hurvitz v. Hoefflin, et al.</i> (2000) 84 Cal.App.4th 1232, 1235, fn. 1. Courts have taken judicial notice of press releases. See <i>People v.</i></p>

¹ *Doe v. Reed* (June 24, 2010) 561 U.S. ____, No. 09-559, concurring op., Stevens & Breyer, JJ., at 3 n.3 (citations omitted, emphases added).

		<i>Roman</i> (2001) 92 Cal.App.4 th 141, 145, fn. 4.
<p>3. First Amended Complaint, ¶ 61, fn. 37.</p>	<p>“The footnote in question purports to relay the contents of [the] a letter without providing the letter. This statement is hearsay, and does not come within the exception to the hearsay rule.”</p>	<p>In their Verified First Amended Complaint, each Plaintiff attested that he/she had personal knowledge of the contents of the letter.</p>
<p>4. First Amended Complaint, Exhibit 3 (Senate Bill Analysis of SB 6).</p>	<p>“Plaintiffs submit a Senate Bill Analysis of SB 6, and represent that Analysis as ‘SB 6’s legislative history ... mentions no details whatsoever about write-in voting.’ However, Plaintiffs have failed to provide the Court with the entire legislative history of SB 6 – they have conveniently excluded the Assembly Bill Analysis of SB 6, which states that SB 6 ‘[e]liminates the ability of voters to write-in candidates for a voter-nominated office at a general election, and eliminates the ability of candidates to run as write-in candidates for a voter-nominated office at a general election.’</p> <p>A copy of the Assembly Bill Analysis is filed herewith.”</p>	<p>Intervenors here misquote Plaintiffs’ Reply. Plaintiffs’ Reply referred <u>only</u> to the Senate Bill Analysis of SB 6, not to <u>all</u> legislative history of SB 6. The correct language from Plaintiffs’ Reply is: “[i]n fact, SB 6’s Senate Rules Committee analysis mentions no details whatsoever about write-in voting.” Thus, Evid. C. § 356 does not apply to Plaintiffs’ evidence because only the SB 6 Senate Rules Committee Analysis is discussed in the Reply, and the entirety of the SB 6 Senate Rules Committee Analysis has been submitted.</p> <p>Intervenors here attempt to submit evidence long after the opportunity to do so has passed. As a general rule, litigants are barred from raising arguments they could have raised earlier, unless they can make an application “based upon sickness, inadvertence, or other excusable neglect.”²</p>
<p>5. Declaration of Gautam Dutta, filed July 28, 2010, Exhibit N (law review article).</p>	<p>“The exhibit in question is provided to establish the fact of the matter asserted: that there is ‘substantial support in the lower courts’ for invalidating laws favoring incumbents. This law review article is hearsay, and does not come within any</p>	<p>Law review articles are admissible because they are legal authority. Courts consistently rely on analyses provided by law review articles. <i>See, e.g., Ophir v. City of Boston</i>, 647 F.Supp.2d 86 (D. Mass. 2009) and <i>U.S. v. Graham</i>, 538 F.2d 261 (9th Cir. 1976).</p>

² *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 765 (emphasis added).

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	exception to the hearsay rule.”	
6. Reply Declaration of Gautam Dutta, filed September 7, 2010, Exhibit BB (newspaper article)	<p>“Insofar as the cited newspaper article is offered and relied upon to establish the truth of the matter asserted – the timing of the adoption of SB 6 and SCA 4 – it is hearsay, and does not come within the exception to the hearsay rule.”</p> <p>“Plaintiff/Declarants have in no way or manner established that they have any personal knowledge of the timing of the adoption of SB 6 and SCA 4.”</p>	<p>Under California Evidence Code § 452(h), judicial notice may be taken of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”</p> <p>Courts may take notice of the contents of newspaper articles. <i>See Ritter v. Hughes Aircraft Co.</i>, 58 F.3d 454, 458-59 (9th Cir. 1995) (holding that district court properly took judicial notice of newspaper article detailing widespread layoffs by defendant because existence of the layoffs “is a fact which would be generally known in Southern California and which would be capable of sufficiently accurate and ready determination.”). <i>See also Hurvitz v. Hoefflin, et. al.</i> (2000) 84 Cal.App.4th 1232, 1235, fn. 1; <i>League of United Latin American Citizens v. Wilson</i> (9th Cir. 1997) 131 F.3d 1297, 1305 (citing newspaper article about political circumstances surrounding voter initiative).</p> <p>Furthermore, judicial notice of law, legislative facts, or factual matters is proper where there is no dispute as to the authenticity of those matters. <i>See Oneida Indian Nation of New York v. New York</i>, 691 F.2d 1070, 1086 (2nd Cir. 1982); <i>see also Zimomra v. Alamo Rent-A-Car, Inc.</i>, 111 F.3d 1495, 1503 (10th Cir. 1997).</p>
	“The timing of the adoption	The timing of the adoption of SB 6

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	<p>of SB 6 and SCA 4 by the Legislature is irrelevant to the question of whether those acts are valid and constitutional.”</p> <p>“The proffered newspaper article does not discuss SB 6, SCA 4, or any subject relevant to this litigation – it discusses the adoption of an entirely unrelated piece of litigation amending CEQA.”</p>	<p>and SCA 4 by the Legislature is indeed relevant to the question of whether those acts are valid and constitutional. Under <i>Doe v. Reed</i>, two U.S. Supreme Court Justices stated that they would be “<u>less than willing to defer to the institutional strengths of the legislature</u>” – particularly “when a law appears to have been adopted <u>without reasoned consideration.</u>”³</p> <p>The news article is relevant to this matter because it demonstrates a <u>process</u> used in the Legislature to avoid routine scrutiny in the normal course of a bill’s passage through both houses of the Legislature. The news article is offered because the <u>process</u> discussed in the article is the process used by Intervenor Maldonado to pass SB 6.</p>
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³ Id.

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DATED: September ¹⁰ / 2010

Respectfully submitted,

By: 
GAUTAM DUTTA, ESQ.

Attorney for Plaintiffs

MONA FIELD, RICHARD WINGER,
STEPHEN A. CHESSIN, JENNIFER
WOZNIAK, JEFFREY MACKLER, and
RODNEY MARTIN