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6 RODNEY MARTIN

7
8 CALIFORNIA SUPERIOR COURT
9 COUNTY OF SAN FRANCISCO

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11 MONA FIELD, RICHARD WINGER,
STEPHEN A. CHESSIN, JENNIFER
12 WOZNIAK, JEFF MACKLER, and
RODNEY MARTIN,

13 *Plaintiffs,*

14 vs.

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

25 *Defendants.*

CASE NO. CGC-10-502018

**VERIFIED FIRST AMENDED
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

HEARING DATE: Sept. 14, 2010 (PI Motion)
HEARING TIME: 9:30 am
JUDGE: Hon. Charlotte Woolard
DEPARTMENT: 302 (Law & Motion) & 212

INTRODUCTION

1
2 1. Plaintiffs bring this action in the public interest to enjoin all Defendants (the
3 “Defendants”) from violating Plaintiffs’ constitutionally protected right to fully participate in
4 state and federal elections. Specifically, Plaintiffs seek to enjoin Defendants from implementing
5 and enforcing SB 6, a statutory scheme that will disenfranchise a class of voters and discriminate
6 against a class of candidates for federal and state office.
7

8 2. SB 6 was originally introduced on December 1, 2008 by then-State Senator Abel
9 Maldonado, as a bill to address the disposal of hazardous waste.

10 3. Between 3:40 am and 6:55 am on February 19, 2009, SB 6 was simultaneously
11 amended and passed by the Legislature, without public notice.¹ SB 6 was signed by the Governor
12 the next day.

13 4. The amended version of SB 6 contained a raft of amendments to the Elections
14 Code.² A true copy of SB 6 has been attached as Exhibit 1.³

15 5. SB 6 explicitly bans the counting of any vote cast for a write-in candidate in the
16 general election for any of the following offices: Governor, Lieutenant Governor, Secretary of
17 State, State Treasurer, State Controller, State Insurance Commissioner, Member of the Board of
18 Equalization, Attorney General, State Senator, Member of the State Assembly, United States
19

20
21 ¹ “State Legislature Passes Emergency Budget Plan,” SF CHRONICLE, Feb. 19, 2009, *available at*
22 http://articles.sfgate.com/2009-02-19/news/17190540_1_budget-plan-state-income-tax-gop-vote (last visited on July
14, 2010).

23 ² SB 6, Exh. 1, at 1-3, *codified at* Ch. 1, Stats. 2009, version passed by the Legislature *available at*
24 http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sb_6_bill_20090219_amended_sen_v98.pdf (last visited
25 July 16, 2010). According to its chaptered version, SB 6 amends “Sections 13, 334, 337, 2150, 2151, 2152, 2154,
8025,8062, 8068, 8081, 8121, 8124, 8142, 8148, 8150, 8300, 8550, 8600, 8605,8805, 8807, 10705, 10706, 12108,
13102, 13105, 13110, 13206, 13207,13208, 13230, 13300, 13302, 13305, 15451, 15452, 15670, 15671, 19300,and
26 19301 of, to amend Part 1 of Division 7 of, to add Sections 300.5, 325,332.5, 338.5, 359.5, 8002.5, 8005, 8141.5,
8606, 9083.5, 9084.5, 13109.5,and 14105.1 to, to add Chapter 0.5 (commencing with Section 6000) to Part 1 of
27 Division 6 of, to amend and renumber Section 6000 of, to repeal and add Section 8125 of, to repeal Sections 8802
and 8806 of, the Elections Code, and to amend Section 88001 of the Government Code, relating to elections.” SB 6,
supra note 3, Exh. 1.

28 ³ *Id.* at 1-3, *codified at* Ch. 1, Stats. 2009.

1 Senator, Member of the United States House of Representatives.⁴

2 6. Unless otherwise indicated, those offices listed in the previous paragraph will be
3 referred to as the “Offices at Issue.”

4 7. As described below, SB 6 bans candidates for the Offices at Issue from stating a
5 preference for “non-qualified” (non-state-recognized) parties on the ballot.

6 8. Unless otherwise indicated, the word “candidate” will refer to a candidate for one
7 of the Offices at Issue.

9 BACKGROUND

10 California’s Qualified-Party Election System

11 9. Under existing law, California voters fill the Offices at Issue through a “qualified
12 party” election system. Every even-numbered year, voters have had up to two opportunities to
13 vote for state and federal candidates: (a) the qualified-party primary election, and (b) the
14 November general election.⁵

15 10. Only “qualified parties” have the right to hold party primaries.

16 11. A political party or organization will gain “qualified” status if it satisfies one of
17 three stringent requirements: (a) one of that party’s candidates receives at least 2 percent of the
18 vote in a statewide contest during the last preceding gubernatorial election; (b) at least 1 percent
19 of “the entire vote of the state at the last preceding gubernatorial election have declared their
20 intention to affiliate with that political party”; or (c) at least 10 percent of registered voters have
21 signed a petition.⁶

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25 ⁴ *Id.* §7 Pt. 359.5(a).

26 ⁵ Since 2006, the qualified-party primary election has been held in June. In 2007, the Legislature passed
27 legislation to move Presidential primaries to February. SB 113, *codified at* Ch. 2 Stats. 2007, *available at*
http://info.sen.ca.gov/pub/07-08/bill/sen/sb_0101-0150/sb_113_bill_20070315_chaptered.html (last visited July 23,
2010).

28 ⁶ Elections Code §5100.

1 19. According to the Senate Rules Committee, SB 6 was passed in order to implement
2 SCA 4: “This bill implements SCA 4 (Maldonado), the Top-Two Candidates Open Primary
3 Act.”⁹ A true copy of that Senate Bill Analysis has been attached as Exhibit 3.

4 20. SCA 4, also authored by Maldonado, consisted of a proposed state constitutional
5 amendment to eliminate qualified-party primaries. A true copy of SCA 4 has been attached as
6 Exhibit 2.¹⁰

7 21. In its Statement of Purpose, SCA 4 stated: “This act, along with legislation
8 already enacted by the Legislature to implement this act, are intended to implement an open
9 primary system in California[.]”¹¹

10 22. Between 3:40 am and 6:55 am on February 19, 2009, without giving any notice to
11 the public, the Legislature voted to put SCA 4 on the statewide ballot.

12 23. On June 8, 2010, SCA 4 appeared on the statewide ballot as Proposition 14 (“Prop
13 14”).

14 24. The June 8, 2010 Official Voter Information Guide for Prop 14 did not provide
15 either a summary or the text of SB 6.

16 25. A true copy of certain pages from June 8, 2010 Voter Guide have been attached:
17 the text of Prop 14 (Exhibit 4); the Official Title and Summary of Prop 14 (Exhibit 5); the
18 Analysis by the Legislative Analyst (Exhibit 6); and the Arguments In Favor of and Against Prop
19 14 (Exhibit 7).¹²

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23 _____
24 ⁹ Senate Bill Analysis for SB 6, Feb. 19, 2009, Exh. 3, available at http://info.sen.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sb_6_cfa_20090219_031945_sen_floor.html (last visited July 14, 2010).

25 ¹⁰ SCA 4, Exh. 2, codified at Res. Ch. 2, Stats. 2009, available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sca_4_bill_20090219_amended_sen_v98.pdf (last visited July 17, 2010) (hereinafter “Prop
26 14”).

27 ¹¹ *Id.* at 3:4-6.

28 ¹² Exhibits 4, 5, 6, and 7 are also available at <http://www.voterguide.sos.ca.gov/propositions/14/> (last visited July 14, 2010).

1 in all state and federal elections, including special elections.¹⁹ Elections Code Section 15340 –
2 which SB 6 does not amend – states: “Each voter is entitled to write the name of any public
3 office ... on the ballot of any election.”²⁰

4 34. Existing California law also gives voters the right to have all lawfully cast votes be
5 counted. Article II, Section 2.5 of the California Constitution states: “A voter who casts a vote in
6 an election in accordance with the laws of this State shall have that vote counted.”²¹

7 35. Under existing California law, all votes legally cast for an eligible write-in
8 candidate must be counted. Elections Code Section 15342 – which SB 6 does not amend –
9 mandates that write-in votes for eligible candidates be counted: “Any name written upon a ballot
10 for a qualified write-in candidate ... shall be counted for the office, if it is written in the blank
11 space provided[.]”²²

12 SB 6: Write-In Votes Don’t Count

13 36. SB 6 purports to protect the right to cast a ballot for a write-in candidate:

14
15 Nothing in this section shall be construed as preventing or prohibiting any
16 qualified voter of this state from casting a ballot for any person by writing
17 the name of that person on the ballot, or from having that ballot counted
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21 ¹⁹ On July 26, 2010, the Governor called a special election to replace former State Senator Dave Cox, who had
22 died of cancer two weeks earlier. Since 1990, there has been at least one special election every year, except for 2002-
23 04. “Just How ‘Special’ Are Special Elections?”, Apr. 12, 2010, Secretary of State Debra Bowen’s website,
24 available at <http://www.sos.ca.gov/admin/press-releases/2010/db10-048.pdf> (last visited July 23, 2010).

25 ²⁰ Elections Code §15340 (emphases added), available at [http://info.sen.ca.gov/cgi-
26 bin/displaycode?section=elec&group=15001-16000&file=15340-15342](http://info.sen.ca.gov/cgi-bin/displaycode?section=elec&group=15001-16000&file=15340-15342) (last visited July 22, 2010).

27 ²¹ CAL. CONST. art. II §2.5 (emphases added), available at http://www.leginfo.ca.gov/const/article_2 (last
28 visited July 18, 2010).

29 ²² Elections Code §15342 (emphases added), available at [http://www.leginfo.ca.gov/cgi-
30 bin/waisgate?WAISdocID=6549796982+0+0+0&WAIAction=retrieve](http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=6549796982+0+0+0&WAIAction=retrieve) (last visited July 20, 2010). Elections Code
31 §15341 sets forth the requirements for a write-in candidate to be deemed “qualified”. Elections Code §15341,
32 available at [http://www.leginfo.ca.gov/cgi-
33 bin/waisgate?WAISdocID=6549796982+0+0+0&WAIAction=retrieve](http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=6549796982+0+0+0&WAIAction=retrieve) (last visited July 20, 2010).

1 and tabulated, nor shall any provision of this section be construed as
2 preventing or prohibiting any person from standing or campaigning for any
3 elective office by means of a “write-in” campaign.²³

4 37. According to SB 6, every ballot must give voters the option to vote for write-in
5 candidates:
6

7 There shall be printed on the ballot ... [t]he names of candidates with
8 sufficient blank spaces to allow the voters to write in names not printed on
9 the ballot.²⁴

10 38. Nevertheless, Section 35 of SB 6 explicitly bans all votes cast for write-in
11 elections from being counted in the general election:

12 “A person whose name has been written on the ballot as a write-in
13 candidate at the general election for a voter-nominated office [i.e., any of
14 the Offices at Issue] shall not be counted.”²⁵

15
16
17 SB 6: No Party Label for Non-Qualified Party Candidates

18 39. SB 6 does not allow all political candidates to state a preference on the ballot for
19 the political party of their choice.

20 40. Before SB 6 was introduced, Elections Code Section 338 defined the word “party”
21 as “a political party or organization” that has qualified status.²⁶

22 41. Neither SB 6 nor Prop 14 amended Elections Code Section 338.

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24
25 ²³ SB 6, *supra* note 2, §1 Pt. 13(b).

26 ²⁴ *Id.* §50 Pt. 13207(a)(2).

27 ²⁵ *Id.* §35 Pt. 8606 (emphases added).

28 ²⁶ Elections Code §338 (emphasis added), *codified at* SB 1547 (Stats. 1994), *available at*
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=elec&group=00001-01000&file=300-362> (last visited July
17, 2010).

1 42. Under Section 9 of SB 6, voters may include the name of the “political party he or
2 she prefers” on his or her voter registration card.²⁷

3 43. SB 6 mandates that every voter registration card “include a listing of all qualified
4 political parties”, and must also include a listing for “No Party Preference” at the top of that
5 listing.²⁸

6 44. If “no party preference is shown” on a voter’s registration card, SB 6 “presumes”
7 that the voter “has chosen” to state “No Party Preference.”²⁹ Namely, all voters who state a
8 preference for a non-qualified political party will be “presumed” to have stated “No Party
9 Preference” on their voter registration cards.

10 45. SB 6 gives candidates the option of whether or not to disclose any “party
11 preference” to the voters.³⁰

12 46. Under SB 6, a candidate who states a preference for a “political party” need not
13 have been endorsed by or nominated by that party.³¹

14 47. SB 6 bans a candidate from stating his or her party preference on his declaration of
15 candidacy, unless he or she stated a “party preference” for that party on his or her “most recent
16 statement of [voter] registration.”³² Thus, all candidates whose voter registrations state a
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18
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20 ²⁷ SB 6, *supra* note 2, §9 Pt. 2151(a).

21 ²⁸ SB 6, *supra* note 2, §9 Pt. 2151(b)(2)(emphasis added).

22 ²⁹ *Id.* §11 Pt. 2154(b).

23 ³⁰ *Id.* §17 Pt. 8002.5(a) (“A candidate ... may also choose not to have the party preference disclosed upon the
candidate’s most recent affidavit of registration indicated upon the ballot.”).

24 ³¹ *Id.* §17 Pt. 8002.5(c) (“A candidate designating a party preference pursuant to subdivision (a) shall not be
deemed to be the official nominee of the party designated as preferred by the candidate. A candidate’s designation of
party preference shall not be construed as an endorsement of that candidate by the party designated.”).

25 ³² *Id.* §17 Pt. 8002.5 (a) (“A candidate for a voter-nominated office [i.e., any of the Offices at Issue] may
26 indicate his or her party preference, or lack of party preference, as disclosed upon the candidate’s most recent
statement of registration, upon his declaration of candidacy.” In section 16 (pt. 7000), SB 6 makes it clear that the
27 word “registration” refers to the “party preference or lack of party preference disclosed by the voter or candidate” on
his or her voter registration card. SB 6’s requirements for voter registration cards may be found at §9 Pt. 2151(b)(2)
28 and §11 Pt. 2154(b).

1 preference for a non-qualified political party will be banned from stating their desired party
2 preference on their declarations of candidacy.

3 48. SB 6 bans a candidate from stating his or her party preference on the ballot, unless
4 he or she has been permitted to state a “party preference” on his or her statement of candidacy.³³
5 Thus, candidates stating a preference for non-qualified parties (i.e., those who have already been
6 banned from stating their party preference on their declarations of candidacy) will be banned
7 from stating their desired party preference on the ballot.

8 49. If a candidate has been permitted to state a “party preference” on the ballot
9 (because the candidate has stated a preference for a qualified political party), the sentence “My
10 party preference is the _____ Party” will appear on the ballot below his or her name, where the
11 blank space will be filled with the name of the qualified political party for which the candidate
12 has stated a preference.³⁴

13 50. If a candidate has been banned from stating a “party preference” on the ballot
14 (because the candidate has stated a preference for a non-qualified party), the phrase “No Party
15 Preference” will appear on the ballot below his or her name.³⁵

16 51. SB 6 bans all candidates from changing their ballot designation (i.e., his or her
17 “party preference”) between the June primary election and the November general election.³⁶

18 52. In summary, SB 6 bans candidates from stating their desired party preference on
19 the ballot – unless they have stated a preference for a qualified (state-recognized) political party.

20 21 22 23 **VENUE and JURISDICTION**

24 53. The Superior Court of the County of San Francisco (the “Court”) is a proper venue

25 ³³ *Id.* §46 Pt. 13105 (a).

26 ³⁴ SB 6, *supra* note 2, §46 Pt. 13105 (a).

27 ³⁵ *Id.* §46 Pt. 13105 (a).

28 ³⁶ *Id.* §17 Pt. 8002.5(a)(“The candidate’s designated party preference on the ballot shall not be changed
between the primary and general election.”)(emphases added).

1 for this action pursuant to California Rule of Civil Procedure §393(b). Defendant John Arntz,
2 Director of Elections of the City and County of San Francisco, performs the duties of his office
3 within the County of San Francisco. The Court has original jurisdiction to hear Plaintiffs' claims
4 brought under the California Constitution. The Court has concurrent jurisdiction to hear
5 Plaintiffs' claims brought under the United States Constitution.
6

7 **PARTIES**

8 54. Plaintiff Mona Field, an individual, lives and is registered to vote in the County of
9 Los Angeles. She paid taxes to the State of California during the past year. Plaintiff Field has
10 voted in several recent elections for the Offices at Issue, and intends to continue doing so in
11 future special and regularly scheduled elections. She wishes to vote, and have her vote be
12 counted, in future elections for candidates whose names might not appear on the ballot.
13

14 55. Plaintiff Richard Winger, an individual, lives and is registered to vote in the
15 County of San Francisco. He paid taxes to the State of California during the past year. Plaintiff
16 Winger has voted in several recent elections for the Offices at Issue, and intends to continue
17 doing so in future special and regularly scheduled elections. He wishes to vote, and have his vote
18 be counted, in future elections for candidates whose names might not appear on the ballot.
19

20 56. Plaintiff Stephen A. Chessin, an individual, lives and is registered to vote in the
21 County of Santa Clara. He paid taxes to the State of California during the past year. Plaintiff
22 Chessin has voted in several recent elections for the Offices at Issue, and intends to continue
23 doing so in future special and regularly scheduled elections. He wishes to vote, and have his vote
24 be counted, in future elections for candidates whose names might not appear on the ballot.
25

26 57. Plaintiff Jennifer Wozniak, an individual, lives and is registered to vote in the
27 County of Orange. She paid taxes to the State of California during the past year. Plaintiff
28 Wozniak has voted in several recent elections for the Offices at Issue, and intends to continue

1 doing so in future special and regularly scheduled elections. She wishes to vote, and have her
2 vote be counted, in future elections for candidates whose names might not appear on the ballot.

3 58. Plaintiff Jeff Mackler, an individual, lives and is registered to vote in the County
4 of Alameda. He paid taxes to the State of California during the past year. In 2012, Plaintiff
5 Mackler wishes to run for the office of Member of the United States House of Representatives
6 (9th Congressional District), as a candidate stating a preference for Socialist Action, a “non-
7 qualified” political organization. In the interim, should a special election be called for any of the
8 Offices at Issue, he may also wish to run for that office, as a candidate stating a preference for
9 Socialist Action.

11 59. Plaintiff Rodney Martin, an individual, lives and is registered to vote in the County
12 of Tulare. He paid taxes to the State of California during the past year. In 2012, Plaintiff Martin
13 wishes to run for the office of Member of the United States House of Representatives (21st
14 Congressional District), as a candidate stating a preference for the Reform Party, a “non-
15 qualified” political organization. In the interim, should a special election be called for any of the
16 Offices at Issue, he may also wish to run for that office, as a candidate stating a preference for the
17 Reform Party.

19 60. This Complaint will refer to Plaintiffs Field, Winger, Chessin, and Wozniak as
20 “Write-In Plaintiffs” in this Complaint; and will refer to Plaintiffs Mackler and Martin as “Party-
21 Preference Plaintiffs”.

23 61. Defendant Debra Bowen, in her official capacity as California Secretary of State,
24 serves as the State’s chief elections officer; and administers and enforces the provisions of the
25 Elections Code with respect to elections for the Offices at Issue.³⁷

27 ³⁷ Elections Code §12172.5. On June 16, 2010, Plaintiffs’ Counsel sent Defendant Bowen a letter, which was
28 delivered the next morning to Defendant Bowen’s office (signed for on June 17, 2010 by “D. Kuhlman”). In that
letter, Counsel alerted Defendant Bowen to the constitutional infirmities of SB 6’s statutory scheme, and invited her

1 62. Defendant John Arntz, in his official capacity as Director of Elections of the City
2 and County of San Francisco, administers the preparation of all ballots and the counting of all
3 votes cast within the County of San Francisco for the Offices at Issue.

4 63. Defendant Dave Macdonald, in his official capacity as Registrar of Voters of the
5 County of Alameda, administers the preparation of all ballots and the counting of all votes cast
6 within the County of Alameda for the Offices at Issue.

7 64. Defendant Jesse Durazo, in his official capacity as Registrar of Voters of the
8 County of Santa Clara, administers the preparation of all ballots and the counting of all votes cast
9 within the County of Santa Clara for the Offices at Issue.

10 65. Defendant Dean Logan, in his official capacity as Registrar-Recorder / County
11 Clerk of the County of Los Angeles, administers the preparation of all ballots and the counting of
12 all votes cast within the County of Los Angeles for the Offices at Issue.

13 66. Defendant Neal Kelley, in his official capacity as Registrar of Voters of the
14 County of Orange, administers the preparation of all ballots and the counting of all votes cast
15 within the County of Orange for the Offices at Issue.

16 67. Defendant Rita Woodard, in her official capacity as Registrar of Voters of the
17 County of Tulare, administers the preparation of all ballots and the counting of all votes cast
18 within the County of Tulare for the Offices at Issue.

19 68. This Complaint will refer to Defendants Bowen, Logan, Arntz, Durazo, and Kelley
20 as “Write-In Defendants”; and will refer to Defendants Bowen, Macdonald, and Woodard as
21 “Party-Preference Defendants”.

22 69. Plaintiffs do not know the true names and capacities of Defendants DOES 1
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24

25
26
27 to discuss how those infirmities might be remedied. As of the time of this action’s filing, Counsel had received no
28 response from Defendant Bowen.

1 through 20, and therefore sue those Defendants by fictitious names. Based on their information
2 and belief, Plaintiffs allege that each of the fictitiously named Defendants is in some manner
3 responsible for the actions described in this Complaint. When the true identities and capacities of
4 those fictitiously named Defendants are determined, Plaintiffs will seek leave to amend this
5 Complaint to insert those identities and capacities.
6

7 **FIRST CLAIM FOR RELIEF (Write-In Voting)**

8 *Violation of the California Constitution*
9 (Article II, Section 2.5)

10 By Write-In Plaintiffs Against Write-In Defendants

11 70. The allegations of paragraphs 1 through 69 are hereby incorporated by reference.

12 71. The conduct of Write-In Defendants threatens to violate Write-In Plaintiffs' right,
13 under Article II, Section 2.5 of the California Constitution, to have votes cast for eligible write-in
14 candidates be counted in all future special or regularly scheduled elections.

15 72. Write-In Plaintiffs will be irreparably harmed if Defendants infringe on their
16 constitutional rights, and they have no speedy or adequate remedy at law. Unless Write-In
17 Defendants are enjoined, Write-In Plaintiffs will suffer imminent and irreparable harm, while
18 Write-In Defendants will illegally spend public funds to implement SB 6. Consequently, they are
19 entitled to preliminary and permanent injunctive relief to restrain Write-In Defendants from
20 implementing SB 6 for all future elections.

21 73. An actual controversy now exists between Write-In Plaintiffs and Write-In
22 Defendants as to whether Write-In Defendants' actions threaten to violate their rights under the
23 California Constitution. The parties therefore need a declaration from the Court regarding
24 whether Write-In Defendants' ongoing and imminent actions, as alleged in this Complaint,
25 violate Article II, Section 2.5 of the California Constitution.
26

27 **SECOND CLAIM FOR RELIEF (Write-In Voting)**
28

1 *Violation of the California Constitution*
2 (Free Speech Clause, Article I, Section 2(a))

3 By Write-In Plaintiffs Against Write-In Defendants

4 74. The allegations of paragraphs 1 through 69 are hereby incorporated by reference.

5 75. The conduct of Write-In Defendants threatens to violate Write-In Plaintiffs' right,
6 under Article I, Section 2(a) of the California Constitution (the Free Speech Clause), to have
7 votes cast for eligible write-in candidates be counted in all future special or regularly scheduled
8 elections.

9 76. Write-In Plaintiffs will be irreparably harmed if Defendants infringe on their
10 constitutional rights, and they have no speedy or adequate remedy at law. Unless Write-In
11 Defendants are enjoined, Write-In Plaintiffs will suffer imminent and irreparable harm, while
12 Write-In Defendants will illegally spend public funds to implement SB 6. Consequently, they are
13 entitled to preliminary and permanent injunctive relief to restrain Write-In Defendants from
14 implementing SB 6 for all future elections.

15 77. An actual controversy now exists between Write-In Plaintiffs and Write-In
16 Defendants as to whether Write-In Defendants' actions threaten to violate their rights under
17 Article I, Section 2(a) of the California Constitution. The parties therefore need a declaration
18 from the Court regarding whether Write-In Defendants' ongoing and imminent actions, as alleged
19 in this Complaint, violate Article I, Section 2(a) of the California Constitution.
20
21

22 **THIRD CLAIM FOR RELIEF (Write-In Voting)**

23 *Violation of the United States Constitution*
24 (1st Amendment and 42 U.S.C. § 1983)

25 By Write-In Plaintiffs Against Write-In Defendants

26 78. The allegations of paragraphs 1 through 69 are hereby incorporated by reference.

27 79. The conduct of Write-In Defendants threatens to violate Write-In Plaintiffs' right,
28 under United States Constitution (1st Amendment) and 42 U.S.C. § 1983, to have votes cast for

1 eligible write-in candidates be counted in all future special or regularly scheduled elections.

2 80. Write-In Plaintiffs will be irreparably harmed if Defendants infringe on their
3 constitutional rights, and they have no speedy or adequate remedy at law. Unless Write-In
4 Defendants are enjoined, Write-In Plaintiffs will suffer imminent and irreparable harm, while
5 Write-In Defendants will illegally spend public funds to implement SB 6. Consequently, they are
6 entitled to preliminary and permanent injunctive relief to restrain all Defendants from
7 implementing SB 6 for all future elections.
8

9 81. An actual controversy now exists between Write-In Plaintiffs and Write-In
10 Defendants as to whether Write-In Defendants' actions threaten to violate their rights under and
11 the United States Constitution (1st Amendment) and 42 U.S.C. §1983. The parties therefore need
12 a declaration from the Court regarding whether Write-In Defendants' ongoing and imminent
13 actions, as alleged in this Complaint, violate the United States Constitution (1st Amendment) and
14 42 U.S.C. § 1983.
15

16 **FOURTH CLAIM FOR RELIEF (Write-In Voting)**

17 *Violation of United States Constitution*
18 (Elections Clause, Article I, Section 4, Clause 1 and 42 U.S.C. § 1983)

19 By Write-In Plaintiffs Against Write-In Defendants

20 82. The allegations of paragraphs 1 through 69 are hereby incorporated by reference.

21 83. The conduct of Write-In Defendants threatens to violate Write-In Plaintiffs' right,
22 under the United States Constitution (Elections Clause, Article I, Section 4, Clause 1) and 42
23 U.S.C. § 1983, to have votes cast for eligible write-in candidates for federal office be counted in
24 all future special or regularly scheduled elections.

25 84. Write-In Plaintiffs will be irreparably harmed if Defendants infringe on their
26 constitutional rights, and they have no speedy or adequate remedy at law. Unless Write-In
27 Defendants are enjoined, Write-In Plaintiffs will suffer imminent and irreparable harm, while
28

1 Write-In Defendants will illegally spend public funds to implement SB 6. Consequently, they are
2 entitled to preliminary and permanent injunctive relief to restrain Write-In Defendants from
3 implementing SB 6 for all future elections for United States Senator and United States Member of
4 Congress.

5
6 85. An actual controversy now exists between Write-In Plaintiffs and Write-In
7 Defendants as to whether Write-In Defendants' actions threaten to violate their rights under the
8 United States Constitution (Elections Clause, Article I, Section 4, Clause 1) and 42 U.S.C. §1983.
9 The parties therefore need a declaration from the Court regarding whether Write-In Defendants'
10 ongoing and imminent actions, as alleged in this Complaint, violate United States Constitution
11 (Elections Clause, Article I, Section 4, Clause 1) and 42 U.S.C. §1983.

12 **FIFTH CLAIM FOR RELIEF (Write-In Voting)**

13 *Violation of United States Constitution*
14 (Due Process Clause, 14th Amendment and 42 U.S.C. § 1983)

15 By Write-In Plaintiffs Against Write-In Defendants

16 86. The allegations of paragraphs 1 through 69 are hereby incorporated by reference.

17 87. The conduct of Write-In Defendants threatens to violate Write-In Plaintiffs' right,
18 under the Due Process Clause of the United States Constitution (14th Amendment) and 42 U.S.C.
19 § 1983, to have votes cast for eligible write-in candidates be counted in all future special or
20 regularly scheduled elections.

21
22 88. Write-In Plaintiffs will be irreparably harmed if Defendants infringe on their
23 constitutional rights, and they have no speedy or adequate remedy at law. Unless Write-In
24 Defendants are enjoined, Write-In Plaintiffs will suffer imminent and irreparable harm, while
25 Write-In Defendants will illegally spend public funds to implement SB 6. Consequently, they are
26 entitled to preliminary and permanent injunctive relief to restrain Write-In Defendants from
27 implementing SB 6 for all future elections.
28

1 need a declaration from the Court regarding whether Write-In Defendants' ongoing and imminent
2 actions, as alleged in this Complaint, violate the Due Process Clause of the California
3 Constitution (Article I, Section 7).

4 **SEVENTH CLAIM FOR RELIEF (Party Preference)**

5 *Violation of the California Constitution*
6 (Equal Protection Clause, Article I, Section 7)

7 By Party-Preference Plaintiffs Against Party-Preference Defendants

8 94. The allegations of paragraphs 1 through 69 are hereby incorporated by reference.

9 95. The conduct of Party-Preference Defendants threatens to violate Party-Preference
10 Plaintiffs' right, under the California Constitution (Equal Protection Clause, Article I, Section 7),
11 to state a party preference on the ballot for a non-qualified party.

12 96. Party-Preference Plaintiffs will be irreparably harmed if Party-Preference
13 Defendants infringe on their constitutional rights, and they have no speedy or adequate remedy at
14 law. Unless Party-Preference Defendants are enjoined, Party-Preference Plaintiffs will suffer
15 imminent and irreparable harm, while Party-Preference Defendants will illegally spend public
16 funds to implement SB 6. Consequently, they are entitled to preliminary and permanent
17 injunctive relief to restrain Party-Preference Defendants from implementing SB 6 for all future
18 elections.
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20 97. An actual controversy now exists between Party-Preference Plaintiffs and Party-
21 Preference Defendants as to whether Party-Preference Defendants' conduct threatens to violate
22 their rights under the California Constitution (Equal Protection Clause, Article I, Section 7). The
23 parties therefore need a declaration from the Court regarding whether Party-Preference
24 Defendants' ongoing and imminent actions, as alleged in this Complaint, violate the California
25 Constitution (Equal Protection Clause, Article I, Section 7).
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27 **EIGHTH CLAIM FOR RELIEF (Party Preference)**
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1 *Violation of the United States Constitution and 42 U.S.C. § 1983*
2 (Elections Clause, Article I, Section 4, Clause 1)

3 By Party-Preference Plaintiffs Against Party-Preference Defendants

4 98. The allegations of paragraphs 1 through 69 are hereby incorporated by reference.

5 99. The conduct of Party-Preference Defendants threatens to violate Party-Preference
6 Plaintiffs' right, under the United States Constitution (Elections Clause, Article I, Section 4,
7 Clause 1) and 42 U.S.C. § 1983, to state a party preference on the ballot for a non-qualified party.

8 100. Party-Preference Plaintiffs will be irreparably harmed if Party-Preference
9 Defendants infringe on their constitutional rights, and they have no speedy or adequate remedy at
10 law. Unless Party-Preference Defendants are enjoined, Party-Preference Plaintiffs will suffer
11 imminent and irreparable harm, while Party-Preference Defendants will illegally spend public
12 funds to implement SB 6. Consequently, they are entitled to preliminary and permanent
13 injunctive relief to restrain Party-Preference Defendants from implementing SB 6 for all future
14 elections for United States Senator and Member of United States Congress.

15 101. An actual controversy now exists between Party-Preference Plaintiffs and Party-
16 Preference Defendants as to whether Party-Preference Defendants' conduct threatens to violate
17 their rights under the United States Constitution (Elections Clause, Article I, Section 4, Clause 1)
18 and 42 U.S.C. § 1983. The parties therefore need a declaration from the Court regarding whether
19 Party-Preference Defendants' ongoing and imminent actions, as alleged in this Complaint, violate
20 the United States Constitution (Elections Clause, Article I, Section 4, Clause 1) and 42 U.S.C. §
21 1983.
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24 **PRAYER FOR RELIEF**

25 Plaintiffs request the following relief from the Court:

26 A. That the Court, pursuant to California Code of Civil Procedure §§525 & 526(a),
27 issue a preliminary injunction prohibiting all Defendants, and all persons acting pursuant to their
28

1 direction and control, from implementing SB 6 for all future elections and from illegally spending
2 public funds.

3 B. That the Court, pursuant to California Code of Civil Procedure §§525 & 526(a),
4 issue a permanent injunction prohibiting all Defendants, and all persons acting pursuant to their
5 direction and control, from implementing SB 6 for all future elections and from illegally spending
6 public funds.
7

8 C. That the Court, pursuant to California Code of Civil Procedure §§525 & 526(a),
9 declare that Write-In Defendants' ongoing and imminent actions will impermissibly infringe on
10 Write-In Plaintiffs' rights under the California Constitution (Article II, Section 2.5).

11 D. That the Court, pursuant to California Code of Civil Procedure §§525 & 526(a),
12 declare that Write-In Defendants' ongoing and imminent actions will impermissibly infringe on
13 Write-In Plaintiffs' rights under the California Constitution (Free Speech Clause, Article I,
14 Section 2(a)).
15

16 E. That the Court, pursuant to California Code of Civil Procedure §§525 & 526(a),
17 declare that Write-In Defendants' ongoing and imminent actions will impermissibly infringe on
18 Write-In Plaintiffs' rights under the United States Constitution (First Amendment) and 42 U.S.C.
19 §1983.
20

21 F. That the Court, pursuant to California Code of Civil Procedure §§525 & 526(a),
22 declare that Write-In Defendants' ongoing and imminent actions will impermissibly infringe on
23 Write-In Plaintiffs' rights under the United States Constitution (Elections Clause, Article I,
24 Section 4, Clause 1) and 42 U.S.C. §1983.

25 G. That the Court, pursuant to California Code of Civil Procedure §§525 & 526(a),
26 declare that Write-In Defendants' ongoing and imminent actions will impermissibly infringe on
27 Write-In Plaintiffs' rights under the United States Constitution (Due Process Clause, 14th
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1 Amendment) and 42 U.S.C. §1983.

2 H. That the Court, pursuant to California Code of Civil Procedure §§525 & 526(a),
3 declare that Write-In Defendants' ongoing and imminent actions will impermissibly infringe on
4 Write-In Plaintiffs' rights under the California Constitution (Due Process Clause, Article I,
5 Section 7).

6 I. That the Court, pursuant to California Code of Civil Procedure §§525 & 526(a),
7 declare that Party-Preference Defendants' ongoing and imminent actions will impermissibly
8 infringe on Party-Preference Plaintiffs' rights under the California Constitution (Equal Protection
9 Clause, Article I, Section 7).

10 J. That the Court, pursuant to California Code of Civil Procedure §§525 & 526(a),
11 declare that Party-Preference Defendants' ongoing and imminent actions will impermissibly
12 infringe on Party-Preference Plaintiffs' rights under the United States Constitution (Elections
13 Clause, Article I, Section 4, Clause 1) and 42 U.S.C. §1983.

14 K. That the Court declare that SB 6 is unenforceable, because it violates the
15 California Constitution.

16 L. That the Court declare that SB 6 is unenforceable, because it violates the United
17 States Constitution.

18 M. That the Court declare that Proposition 14 is not self-executing.

19 N. That the Court declare that Proposition 14 is inoperative, because its implementing
20 legislation has been declared unenforceable.

21 O. That the Court declare that Proposition 14 shall not become operative unless and
22 until lawful implementing legislation has been enacted and has become operative.

23 P. That the Court award Plaintiffs reasonable costs and expenses, including attorney's
24 fees, pursuant to California Code of Civil Procedure §1021.5.
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Q. That the Court award Plaintiffs reasonable costs and expenses, including attorney's fees, pursuant to 42 U.S.C. §1988(b).

R. For all other relief that the Court deems just and equitable.

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DATED: August 16, 2010

Respectfully submitted,

By: _____
GAUTAM DUTTA, ESQ.

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