

In the California Court of Appeal, First District, Division 3

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

Appellants,

vs.

DEBRA BOWEN, et al.

Respondents,

ABEL MALDONADO, et al.,

Intervenors

CASE NO. A129946

**DECLARATION OF RICHARD
WINGER IN SUPPORT OF
APPELLANTS' OPENING BRIEF
AND REPLY BRIEF**

[Arising from the Oct. 5, 2010
denial of Appellants' Motion for
Preliminary Injunction by Hon.
Charlotte Walter Woolard, Dept. 302,
Superior Court for the County of San
Francisco (Civic Center), 400
McAllister St., San Francisco, CA
94102; 415.551.3723; Case No. CGC-
10-502018]

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Attorney for Appellants ___

I, Richard Winger, declare as follows:

1. I am an Appellant in this case.
2. I graduated from the University of California at Berkeley in 1966 with an undergraduate degree in political science. Since 1985, I have been publisher of the Ballot Access News, a non-partisan newsletter that reports on development in the laws governing ballot access, the regulation of primary and general elections, the participation of political parties, and independent and write-in candidates in elections.
3. I have researched the election laws of all 50 states from 1888 to the present. I have become well versed in how the laws governing primary elections in each state have worked historically.
4. My articles about ballot access and other elections laws have been published in three books: (1) *Multiparty Politics in America*, edited by Paul S. Herrnson (1997: Rowman & Littlefield, Lanham, Md.); (2) *The Encyclopedia of Third Parties in America*, edited by Immanuel Ness and James Ciment (2000: M.E. Sharpe, Inc., Armonk, N.Y.); (3) *The New Populist Reader*, edited by Karl Trautman (1997: Praeger, Westport, Ct.).
5. Other articles of mine have been published in the *Wall Street Journal*, *Cleveland State Law Review*, *American Review of Politics*, *California Journal*, and *Election Law Journal*.
6. I have appeared on national news broadcasts of NBC, ABC, CNN, National Public Radio, and Pacifica Radio,

speaking on ballot access and election law issues. I am on the editorial board of the *Election Law Journal*.

7. On page 2 of her Dec. 6, 2010 Preliminary Opposition, the Secretary of State claimed that California law has never allowed minor-party candidates to state their party's name on the ballot: "[C]andidates who are not members of qualified political parties have *never* been allowed to identify their affiliation with a non-qualified political body on the ballot." (emphasis added).

8. The Secretary of State's claim is factually incorrect.

9. In fact, California's original government-printed ballot legislation (which was passed in 1891) allowed every candidate who qualified for the general-election ballot under the independent candidate procedures to choose *any* party label to be printed beside his or her name on the ballot. That original statute may be found in the 1891 state session laws, chapter 130, page 166. I have attached, as Exhibit 2, a true copy of the session laws from 1891 and 1915 (page 166 appears on the second page).

10. See the Statement of Vote for Nov. 5, 1912, published by the California Secretary of State, for examples of candidates who used the independent petition procedure to get on the ballot, and who were permitted to list a label on the ballot other than "independent". I have attached a true copy of that Statement of Vote as Exhibit 1. On page 14 (page 2 of Exhibit 1), in the First Congressional District, William Kent is

listed with his party label of “Progressive” even though the Progressive Party was not ballot-qualified in California until 1914. Kent was elected during the Nov. 5, 1912 election. Also see page 29 (page 3 of Exhibit 1), which shows that in the 74th Assembly District, L.C. Haller has the ballot label “Socialist-Labor”, even though the Socialist Labor Party was not a ballot-qualified party at any time in California in the twentieth century.

11. In 1915, the State legislature repealed the right to choose a label other than “Independent”. *See* 1915 state session laws, chapter 136, page 274 (appearing on the fourth page of Exhibit 2).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and is based on my personal knowledge, except for matters stated on information and belief; as to those matters, I believe them to be true. If called as a witness, I could competently testify thereto.

Executed on Mar. 23, 2011 in San Francisco, California.

Richard Winger