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6 CHESSIN, JENNIFER WOZNIAK, JEFF MACKLER, and  
RODNEY MARTIN

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8 CALIFORNIA SUPERIOR COURT  
9 COUNTY OF SAN FRANCISCO

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

14 *Plaintiffs,*

15 vs.

16 DEBRA BOWEN, in only her official  
capacity as California Secretary of State;  
17 JOHN ARNTZ, in only his official  
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  
County of Alameda; JESSE DURAZO, in  
19 only his official capacity as Registrar of  
Voters of the County of Santa Clara;  
20 DEAN LOGAN, in only his official  
capacity as Registrar-Recorder / County  
21 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.

**VERIFIED COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

HEARING DATE: Aug. 24, 2010

HEARING TIME: 9:30 am

JUDGE: Hon. \_\_\_\_\_

DEPARTMENT: 30\_\_

1 **INTRODUCTION**

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.  
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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.<sup>1</sup> SB 6 was signed by the Governor  
12 the next day.  
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14 4. The amended version of SB 6 contained a raft of amendments to the Elections  
15 Code.<sup>2</sup> A true copy of SB 6 has been attached as Exhibit 1.<sup>3</sup>

16 5. SB 6 explicitly bans the counting of any vote cast for a write-in candidate in the  
17 general election for any of the following offices: Governor, Lieutenant Governor, Secretary of  
18 State, State Treasurer, State Controller, State Insurance Commissioner, Member of the Board of  
19 Equalization, Attorney General, State Senator, Member of the State Assembly, United States  
20

21 <sup>1</sup> “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](http://articles.sfgate.com/2009-02-19/news/17190540_1_budget-plan-state-income-tax-gop-vote) (last visited on July  
14, 2010).

23 <sup>2</sup> 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\\_y98.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sb_6_bill_20090219_amended_sen_y98.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 <sup>3</sup> *Id.* at 1-3, *codified at* Ch. 1, Stats. 2009.

1 Senator, Member of the United States House of Representatives.<sup>4</sup>

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.<sup>5</sup>

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; (b) at least 1 percent of registered voters have affiliated with that party  
19 or organization; or (c) at least 10 percent of registered voters have signed a petition.<sup>6</sup>

20 12. For ease of reference, any party or organization that does not have qualified status  
21 will be called “non-qualified.”

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25 <sup>4</sup> *Id.* §7 Pt. 359.5(a).

26 <sup>5</sup> 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](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 <sup>6</sup> Elections Code §5100.



1 Act.”<sup>9</sup> A true copy of that Senate Bill Analysis has been attached as Exhibit 3.

2 20. SCA 4, also authored by Maldonado, consisted of a proposed state constitutional  
3 amendment to eliminate qualified-party primaries. A true copy of SCA 4 has been attached as  
4 Exhibit 2.<sup>10</sup>

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

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

10 23. On June 8, 2010, SCA 4 appeared on the statewide ballot as Proposition 14 (“Prop  
11 14”).

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

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

18 26. On June 8, 2010, a narrow majority of California voters approved Prop 14.

#### 22 Prop 14: An Overview

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24 <sup>9</sup> 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](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 <sup>10</sup> 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](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 <sup>11</sup> *Id.* at 3:4-6.

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



1 which SB 6 does not amend – states: “Each voter is entitled to write the name of any public  
2 office ... on the ballot of any election.”<sup>20</sup>

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

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

#### 11 12 13 14 SB 6: Write-In Votes Don’t Count

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

16 Nothing in this section shall be construed as preventing or prohibiting any  
17 qualified voter of this state from casting a ballot for any person by writing  
18 the name of that person on the ballot, or from having that ballot counted  
19 and tabulated, nor shall any provision of this section be construed as

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22 died of cancer two weeks earlier. Since 1990, there has been at least one special election every year, except for 2002-  
04. “Just How ‘Special’ Are Special Elections?”, Apr. 12, 2010, Secretary of State Debra Bowen’s website,  
available at <http://www.sos.ca.gov/admin/press-releases/2010/db10-048.pdf> (last visited July 23, 2010).

23 <sup>20</sup> Elections Code §15340 (emphases added), available at [http://info.sen.ca.gov/cgi-](http://info.sen.ca.gov/cgi-bin/displaycode?section=elec&group=15001-16000&file=15340-15342)  
24 [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).

25 <sup>21</sup> CAL. CONST. art. II §2.5 (emphases added), available at [http://www.leginfo.ca.gov/const/article\\_2](http://www.leginfo.ca.gov/const/article_2) (last  
visited July 18, 2010).

26 <sup>22</sup> Elections Code §15342 (emphases added), available at [http://www.leginfo.ca.gov/cgi-](http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=6549796982+0+0+0&WAIAction=retrieve)  
27 [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  
28 §15341 sets forth the requirements for a write-in candidate to be deemed “qualified”. Elections Code §15341,  
available at <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=6549796982+0+0+0&WAIAction=retrieve>  
(last visited July 20, 2010).

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preventing or prohibiting any person from standing or campaigning for any elective office by means of a “write-in” campaign.<sup>23</sup>

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

There shall be printed on the ballot ... [t]he names of candidates with sufficient blank spaces to allow the voters to write in names not printed on the ballot.<sup>24</sup>

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

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

SB 6: No Party Label for Non-Qualified Party Candidates

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

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

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

42. Under Section 9 of SB 6, voters may include the name of the “political party he or

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<sup>23</sup> SB 6, *supra* note 2, §1 Pt. 13(b).  
<sup>24</sup> *Id.* §50 Pt. 13207(a)(2).  
<sup>25</sup> *Id.* §35 Pt. 8606 (emphases added).  
<sup>26</sup> 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 she prefers” on his or her voter registration card.<sup>27</sup>

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

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

9 45. SB 6 gives candidates the option of whether or not to disclose any “party  
10 preference” to the voters.<sup>30</sup>

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

13 47. SB 6 bans a candidate from stating his or her party preference on his declaration of  
14 candidacy, unless he or she stated a “party preference” for that party on his or her “most recent  
15 statement of [voter] registration.”<sup>32</sup> Thus, all candidates whose voter registrations state a  
16 preference for a non-qualified political party will be banned from stating their desired party  
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20 <sup>27</sup> SB 6, *supra* note 2, §9 Pt. 2151(a).

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

22 <sup>29</sup> *Id.* §11 Pt. 2154(b).

23 <sup>30</sup> *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 <sup>31</sup> *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 <sup>32</sup> *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 on their declarations of candidacy.

2 48. SB 6 bans a candidate from stating his or her party preference on the ballot, unless  
3 he or she has been permitted to state a “party preference” on his or her statement of candidacy.<sup>33</sup>  
4 Thus, candidates stating a preference for non-qualified parties (i.e., those who have already been  
5 banned from stating their party preference on their declarations of candidacy) will be banned  
6 from stating their desired party preference on the ballot.  
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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.<sup>34</sup>  
13

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

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

19 52. In summary, SB 6 bans candidates from stating their desired party preference on  
20 the ballot – unless they have stated a preference for a qualified (state-recognized) political party.  
21

## 22 **VENUE and JURISDICTION**

23 53. The Superior Court of the County of San Francisco (the “Court”) is a proper venue  
24 for this action pursuant to California Rule of Civil Procedure §393(b). Defendant John Arntz,

25 <sup>33</sup> *Id.* §46 Pt. 13105 (a).

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

27 <sup>35</sup> *Id.* §46 Pt. 13105 (a).

28 <sup>36</sup> *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 Director of Elections of the City and County of San Francisco, performs the duties of his office  
2 within the County of San Francisco. The Court has original jurisdiction to hear Plaintiffs' claims  
3 brought under the California Constitution. The Court has concurrent jurisdiction to hear  
4 Plaintiffs' claims brought under the United States Constitution.  
5

#### 6 **PARTIES**

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

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

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

1 vote be counted, in future elections for candidates whose names might not appear on the ballot.

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

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

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

22 61. Defendant Debra Bowen, in her official capacity as California Secretary of State,  
23 serves as the State’s chief elections officer; and administers and enforces the provisions of the  
24 Elections Code with respect to elections for the Offices at Issue.<sup>37</sup>  
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26 <sup>37</sup> Elections Code §12172.5. On June 16, 2010, Plaintiffs’ Counsel sent Defendant Bowen a letter, which was  
27 delivered the next morning to Defendant Bowen’s office (signed for on June 17, 2010 by “D. Kuhlman”). In that  
28 letter, Counsel alerted Defendant Bowen to the constitutional infirmities of SB 6’s statutory scheme, and invited her  
to discuss how those infirmities might be remedied. As of the time of this action’s filing, Counsel had received no  
response from Defendant Bowen.

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  
23 through 20, and therefore sue those Defendants by fictitious names. Based on their information  
24 and belief, Plaintiffs allege that each of the fictitiously named Defendants is in some manner

1 responsible for the actions described in this Complaint. When the true identities and capacities of  
2 those fictitiously named Defendants are determined, Plaintiffs will seek leave to amend this  
3 Complaint to insert those identities and capacities.

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

5 *Violation of the California Constitution*  
6 (Article II, Section 2.5)

7 By Write-In Plaintiffs Against Write-In Defendants

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

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

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

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

25 **SECOND CLAIM FOR RELIEF (Write-In Voting)**

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

28 By Write-In Plaintiffs Against Write-In Defendants

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

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

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

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

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

20                                   *Violation of the United States Constitution*  
21                                   (1<sup>st</sup> Amendment and 42 U.S.C. § 1983)

22                                   By Write-In Plaintiffs Against Write-In Defendants

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

24           79.    The conduct of Write-In Defendants threatens to violate Write-In Plaintiffs' right,  
25 under United States Constitution (1<sup>st</sup> Amendment) and 42 U.S.C. § 1983, to have votes cast for  
26 eligible write-in candidates be counted in all future special or regularly scheduled elections.

27           80.    Write-In Plaintiffs will be irreparably harmed if Defendants infringe on their  
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1 constitutional rights, and they have no speedy or adequate remedy at law. Unless Write-In  
2 Defendants are enjoined, Write-In Plaintiffs will suffer imminent and irreparable harm, while  
3 Write-In Defendants will illegally spend public funds to implement SB 6. Consequently, they are  
4 entitled to preliminary and permanent injunctive relief to restrain all Defendants from  
5 implementing SB 6 for all future elections.  
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7 81. An actual controversy now exists between Write-In Plaintiffs and Write-In  
8 Defendants as to whether Write-In Defendants' actions threaten to violate their rights under and  
9 the United States Constitution (1<sup>st</sup> Amendment) and 42 U.S.C. §1983. The parties therefore need  
10 a declaration from the Court regarding whether Write-In Defendants' ongoing and imminent  
11 actions, as alleged in this Complaint, violate the United States Constitution (1<sup>st</sup> Amendment) and  
12 42 U.S.C. § 1983.  
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14 **FOURTH CLAIM FOR RELIEF (Write-In Voting)**

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

16 By Write-In Plaintiffs Against Write-In Defendants

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

18 83. The conduct of Write-In Defendants threatens to violate Write-In Plaintiffs' right,  
19 under the United States Constitution (Elections Clause, Article I, Section 4, Clause 1) and 42  
20 U.S.C. § 1983, to have votes cast for eligible write-in candidates for federal office be counted in  
21 all future special or regularly scheduled elections.  
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23 84. Write-In Plaintiffs will be irreparably harmed if Defendants infringe on their  
24 constitutional rights, and they have no speedy or adequate remedy at law. Unless Write-In  
25 Defendants are enjoined, Write-In Plaintiffs will suffer imminent and irreparable harm, while  
26 Write-In Defendants will illegally spend public funds to implement SB 6. Consequently, they are  
27 entitled to preliminary and permanent injunctive relief to restrain Write-In Defendants from  
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1 implementing SB 6 for all future elections for United States Senator and United States Member of  
2 Congress.

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

11 *Violation of United States Constitution*  
12 (Due Process Clause, 14<sup>th</sup> Amendment and 42 U.S.C. § 1983)

13 By Write-In Plaintiffs Against Write-In Defendants

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

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

19 88. Write-In Plaintiffs will be irreparably harmed if Defendants infringe on their  
20 constitutional rights, and they have no speedy or adequate remedy at law. Unless Write-In  
21 Defendants are enjoined, Write-In Plaintiffs will suffer imminent and irreparable harm, while  
22 Write-In Defendants will illegally spend public funds to implement SB 6. Consequently, they are  
23 entitled to preliminary and permanent injunctive relief to restrain Write-In Defendants from  
24 implementing SB 6 for all future elections.  
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26 89. An actual controversy now exists between Write-In Plaintiffs and Write-In  
27 Defendants as to whether Write-In Defendants' actions threaten to violate their rights under the  
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1 Due Process Clause of the United States Constitution (14<sup>th</sup> Amendment) and 42 U.S.C. §1983.  
2 The parties therefore need a declaration from the Court regarding whether Write-In Defendants'  
3 ongoing and imminent actions, as alleged in this Complaint, violate 42 U.S.C. § 1983 and the  
4 Due Process Clause of the United States Constitution (14<sup>th</sup> Amendment).

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6 **SIXTH CLAIM FOR RELIEF (Write-In Voting)**

7 *Violation of the California Constitution*  
8 (Due Process Clause, Article I, Section 7)

9 By Write-In Plaintiffs Against Write-In Defendants

10 90. The allegations of paragraphs 1 through 69 are hereby incorporated by reference.

11 91. The conduct of Write-In Defendants threatens to violate Write-In Plaintiffs' right,  
12 under the Due Process Clause of the California Constitution (Article I, Section 7), to have votes  
13 cast for eligible write-in candidates be counted in all future special or regularly scheduled  
14 elections.

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

22 93. An actual controversy now exists between Write-In Plaintiffs and Write-In  
23 Defendants as to whether Write-In Defendants' actions threaten to violate their rights under the  
24 Due Process Clause of the California Constitution (Article I, Section 7). The parties therefore  
25 need a declaration from the Court regarding whether Write-In Defendants' ongoing and imminent  
26 actions, as alleged in this Complaint, violate the Due Process Clause of the California  
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1 Constitution (Article I, Section 7).

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

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

5 By Party-Preference Plaintiffs Against Party-Preference Defendants

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

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

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

25 **EIGHTH CLAIM FOR RELIEF (Party Preference)**

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

28 By Party-Preference Plaintiffs Against Party-Preference Defendants

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

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

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

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

**PRAYER FOR RELIEF**

Plaintiffs request the following relief from the Court:

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

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

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

8           D.       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 (Free Speech Clause, Article I,  
11 Section 2(a)).

12           E.       That the Court, pursuant to California Code of Civil Procedure §§525 & 526(a),  
13 declare that Write-In Defendants' ongoing and imminent actions will impermissibly infringe on  
14 Write-In Plaintiffs' rights under the United States Constitution (First Amendment) and 42 U.S.C.  
15 §1983.

16           F.       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 (Elections Clause, Article I,  
19 Section 4, Clause 1) and 42 U.S.C. §1983.

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

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

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

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

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

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

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

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

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

21 P. That the Court award Plaintiffs reasonable costs and expenses, including attorney's  
22 fees, pursuant to California Code of Civil Procedure §1021.5.

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

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

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DATED: July 28, 2010

Respectfully submitted,

By: \_\_\_\_\_  
GAUTAM DUTTA, ESQ.

Attorney for Plaintiffs

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