

1 KAMALA D. HARRIS  
Attorney General of California  
2 PETER A. KRAUSE  
Supervising Deputy Attorney General  
3 MARK R. BECKINGTON  
Deputy Attorney General  
4 State Bar No. 126009  
300 South Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-1096  
6 Fax: (213) 897-1071  
E-mail: Mark.Beckington@doj.ca.gov  
7 *Attorneys for Defendant Secretary of State*  
*Debra Bowen*

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11  
12

13 **MICHAEL RUBIN, MANJA ARGUE,**  
**STEVE COLLETT, MARSHA FEINLAND,**  
14 **CHARLES L. HOOPER, KATHERINE**  
**TANAKA, C. T. WEBER, CAT WOODS,**  
15 **GREEN PARTY OF ALAMEDA**  
**COUNTY, LIBERTARIAN PARTY OF**  
16 **CALIFORNIA, and PEACE AND**  
**FREEDOM PARTY OF CALIFORNIA,**

17 Plaintiffs,

18 v.  
19

20 **DEBRA BOWEN, in her official capacity as**  
**Secretary of State of California,**

21 Defendant.  
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Case No. RG11605301

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF DEMURRER TO  
VERIFIED COMPLAINT**

Date: March 20, 2012  
Reservation No: 1247750  
Time: 9:00 a.m.  
Dept: 16  
Judge: Hon. Lawrence J. Appel  
Trial Date: None Set  
Action Filed: November 21, 2011

1 In support of the demurrer to plaintiffs' verified complaint, Defendant Debra Bowen, as  
2 California Secretary of State, hereby requests, pursuant to California Rule of Court 3.1306(c), that  
3 the Court take judicial notice of the following materials, copies of which are attached hereto:

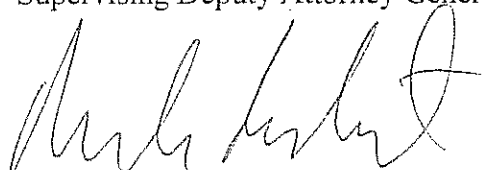
4 Exhibit 1: Senate Constitutional Amendment No. 4 ("SCA 4"), stats. 2009 (2009-2010 4th  
5 Ex. Sess.) res. ch. 2. The attached copy was obtained from the official website for California  
6 legislative information maintained by the Legislative Counsel of California. (See  
7 [http://www.leginfo.ca.gov/cgi-bin/postquery?bill\\_number=sca\\_4&sess=PREV&house](http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sca_4&sess=PREV&house)  
8 [=B&author=maldonado.](#)) As constitutional and statutory law of the state, SCA 4 is subject to  
9 judicial notice. (Evid. Code, § 451, subd. (a) ["Judicial notice shall be taken of . . . [t]he  
10 decisional, constitutional, and public statutory law of this state . . ."].)

11 Exhibit 2: Official Voter Information Guide for California primary election held June 8,  
12 2010; title, summary, analysis and arguments for Proposition 14. The attached copy was obtained  
13 from the website of the California Secretary of State. (See <http://voterguide.sos.ca.gov/past/2010/primary/pdf/english/>.) As an official publication of the Secretary of State, the Voter Information  
14 Guide is subject to judicial notice. (Evid. Code, § 451, subd. (c) [Judicial notice may be taken of .  
15 . . . [o]fficial acts of the legislative, executive and judicial departments of the United States or of  
16 any state of the United States."])

17  
18 Dated: December 21, 2011

Respectfully Submitted,

19 KAMALA D. HARRIS  
20 Attorney General of California  
21 PETER A. KRAUSE  
22 Supervising Deputy Attorney General

23   
24 MARK R. BECKINGTON  
25 Deputy Attorney General  
26 *Attorneys for Defendant Secretary of State*  
27 *Debra Bowen*

28 SA2011103315

# EXHIBIT 1

## Senate Constitutional Amendment No. 4

### RESOLUTION CHAPTER 2

Senate Constitutional Amendment No. 4—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 5 and 6 of Article II thereof, relating to elections.

[Filed with Secretary of State February 19, 2009.]

#### LEGISLATIVE COUNSEL'S DIGEST

SCA 4, Maldonado. Elections: open primaries.

Existing provisions of the California Constitution require the Legislature to provide for primary elections for partisan offices, including an open presidential primary election, as specified. The California Constitution also provides that all judicial, school, county, and city offices are nonpartisan offices, and a political party or party central committee is prohibited from endorsing, supporting, or opposing a candidate for such an office.

This measure, which would be known as the "Top Two Primaries Act," would provide for a "voter-nominated primary election" for each state elective office and congressional office in California, in which a voter may vote at the primary election for any candidate for a congressional or state elective office without regard to the political party preference disclosed by the candidate or the voter. The measure would further provide that a candidate for a congressional or state elective office generally may choose whether to have his or her political party preference indicated upon the ballot for that office in the manner to be provided by statute. The measure would prohibit a political party or party central committee from nominating a candidate for a congressional or state elective office at the primary, but the measure would permit a political party or party central committee to endorse, support, or oppose a candidate for congressional or state elective office. The 2 candidates receiving the 2 highest vote totals for each office at a primary election, regardless of party preference, would then compete for the office at the ensuing general election. This measure would require the Legislature to provide for partisan elections for presidential candidates, political party committees, and party central steering committees.

This measure would designate the Superintendent of Public Instruction as a nonpartisan office.

If the measure is approved by the voters, it would become operative on January 1, 2011.

*Resolved by the Senate, the Assembly concurring,* That the Legislature of the State of California at its 2009–10 Regular Session commencing on the first day of December 2008, two-thirds of the membership of each house

concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—This measure shall be known and maybe cited as the “Top Two Candidates Open Primary Act.”

Second—The People of the State of California hereby find and declare all of the following:

(a) Purpose. The Top Two Candidates Open Primary Act is hereby adopted by the People of California to protect and preserve the right of every Californian to vote for the candidate of his or her choice. This act, along with legislation already enacted by the Legislature to implement this act, are intended to implement an open primary system in California as set forth below.

(b) Top Two Candidate Open Primary. All registered voters otherwise qualified to vote shall be guaranteed the unrestricted right to vote for the candidate of their choice in all state and congressional elections. All candidates for a given state or congressional office shall be listed on a single primary ballot. The top two candidates, as determined by the voters in an open primary, shall advance to a general election in which the winner shall be the candidate receiving the greatest number of votes cast in an open general election.

(c) Open Voter Registration. At the time they register, all voters shall have the freedom to choose whether or not to disclose their party preference. No voter shall be denied the right to vote for the candidate of his or her choice in either a primary or a general election for statewide constitutional office, the State Legislature, or the Congress of the United States based upon his or her disclosure or nondisclosure of party preference. Existing voter registrations, which specify a political party affiliation, shall be deemed to have disclosed that party as the voter’s political party preference unless a new affidavit of registration is filed.

(d) Open Candidate Disclosure. At the time they file to run for public office, all candidates shall have the choice to declare a party preference. The preference chosen shall accompany the candidate’s name on both the primary and general election ballots. The names of candidates who choose not to declare a party preference shall be accompanied by the designation “No Party Preference” on both the primary and general election ballots. Selection of a party preference by a candidate for state or congressional office shall not constitute or imply endorsement of the candidate by the party designated, and no candidate for that office shall be deemed the official candidate of any party by virtue of his or her selection in the primary.

(e) Freedom of Political Parties. Nothing in this act shall restrict the right of individuals to join or organize into political parties or in any way restrict the right of private association of political parties. Nothing in this measure shall restrict the parties’ right to contribute to, endorse, or otherwise support a candidate for state elective or congressional office. Political parties may establish such procedures as they see fit to endorse or support candidates or otherwise participate in all elections, and they may informally “nominate” candidates for election to voter-nominated offices at a party convention or

by whatever lawful mechanism they so choose, other than at state-conducted primary elections. Political parties may also adopt such rules as they see fit for the selection of party officials (including central committee members, presidential electors, and party officers). This may include restricting participation in elections for party officials to those who disclose a party preference for that party at the time of registration.

(f) Presidential Primaries. This act makes no change in current law as it relates to presidential primaries. This act conforms to the ruling of the United States Supreme Court in *Washington State Grange v. Washington State Republican Party* (2008) 128 S.Ct. 1184. Each political party retains the right either to close its presidential primaries to those voters who disclose their party preference for that party at the time of registration or to open its presidential primary to include those voters who register without disclosing a political party preference.

Third—That Section 5 of Article II thereof is amended to read:

SEC. 5. (a) A voter-nomination primary election shall be conducted to select the candidates for congressional and state elective offices in California. All voters may vote at a voter-nominated primary election for any candidate for congressional and state elective office without regard to the political party preference disclosed by the candidate or the voter, provided that the voter is otherwise qualified to vote for candidates for the office in question. The candidates who are the top two vote-getters at a voter-nominated primary election for a congressional or state elective office shall, regardless of party preference, compete in the ensuing general election.

(b) Except as otherwise provided by Section 6, a candidate for a congressional or state elective office may have his or her political party preference, or lack of political party preference, indicated upon the ballot for the office in the manner provided by statute. A political party or party central committee shall not nominate a candidate for any congressional or state elective office at the voter-nominated primary. This subdivision shall not be interpreted to prohibit a political party or party central committee from endorsing, supporting, or opposing any candidate for a congressional or state elective office. A political party or party central committee shall not have the right to have its preferred candidate participate in the general election for a voter-nominated office other than a candidate who is one of the two highest vote-getters at the primary election, as provided in subdivision (a).

(c) The Legislature shall provide for partisan elections for presidential candidates, and political party and party central committees, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

(d) A political party that participated in a primary election for a partisan office pursuant to subdivision (c) has the right to participate in the general

election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party's candidates.

Fourth—That Section 6 of Article II thereof is amended to read:

SEC. 6. (a) All judicial, school, county, and city offices, including the Superintendent of Public Instruction, shall be nonpartisan.

(b) A political party or party central committee shall not nominate a candidate for nonpartisan office, and the candidate's party preference shall not be included on the ballot for the nonpartisan office.

Fifth—This measure shall become operative on January 1, 2011.

# EXHIBIT 2



CALIFORNIA STATEWIDE DIRECT  
**PRIMARY**  
**ELECTION**  
TUESDAY, JUNE 8, 2010

★ OFFICIAL VOTER INFORMATION GUIDE ★

*Certificate of Correctness*

I, Debra Bowen, Secretary of State of the State of California, hereby certify that the measures included herein will be submitted to the electors at the Statewide Direct Primary Election to be held on June 8, 2010, and that this guide has been prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 18th day of March, 2010.

*Debra Bowen*



Debra Bowen  
*Secretary of State*

# ELECTIONS. INCREASES RIGHT TO PARTICIPATE IN PRIMARY ELECTIONS.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

## ELECTIONS. INCREASES RIGHT TO PARTICIPATE IN PRIMARY ELECTIONS.

- Encourages increased participation in elections for congressional, legislative, and statewide offices by changing the procedure by which candidates are selected in primary elections.
- Gives voters increased options in the primary by allowing all voters to choose any candidate regardless of the candidate's or voter's political party preference.
- Provides that candidates may choose not to have a political party preference indicated on the primary ballot.
- Provides that only the two candidates receiving the greatest number of votes in the primary will appear on the general election ballot regardless of party preference.
- Does not change primary elections for President, party committee offices and nonpartisan offices.

### Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- No significant net change in state and local government costs to administer elections.

### FINAL VOTES CAST BY THE LEGISLATURE ON SCA 4 (PROPOSITION 14)

(Resolution Chapter 2, Statutes of 2009)

Senate:	Ayes 27	Noes 12
Assembly:	Ayes 54	Noes 20

## ANALYSIS BY THE LEGISLATIVE ANALYST

### BACKGROUND

**Primary and General Elections.** California generally holds two statewide elections in even-numbered years to elect candidates to state and federal offices—a primary election (in June) and a general election (in November). These elections (such as those for Governor and Members of Congress) are partisan, which means that most candidates are associated with a political party. For these partisan offices, the results of a primary election determine each party's nominee for the office. The candidate receiving the most votes in a party primary election is that party's nominee for the general election. In the general election, voters choose among all of the parties' nominees, as well as any independent candidates. (Independent

candidates—those not associated with a party—do not participate in primary elections.) The winner of the general election then serves a term in that office.

**Ballot Materials Under Current Primary System.** For every primary election, each county prepares a ballot and related materials for each political party. Those voters affiliated with political parties receive their party's ballot. These party ballots include partisan offices, nonpartisan offices, and propositions. Voters with no party affiliation receive ballots related only to nonpartisan offices and propositions. Parties, however, may allow voters with no party affiliation to receive their party's ballot.

**Partisan Statewide Elections in California.** Partisan elections for state office include those for the Governor, Lieutenant Governor, Controller, Secretary of State, Treasurer, Insurance Commissioner, Attorney General, the 120 members of the Legislature, and four members of the State Board of Equalization. (The Superintendent of Public Instruction is a nonpartisan state office.) Partisan elections also are held for federal offices including President, Vice President, and Members of Congress.

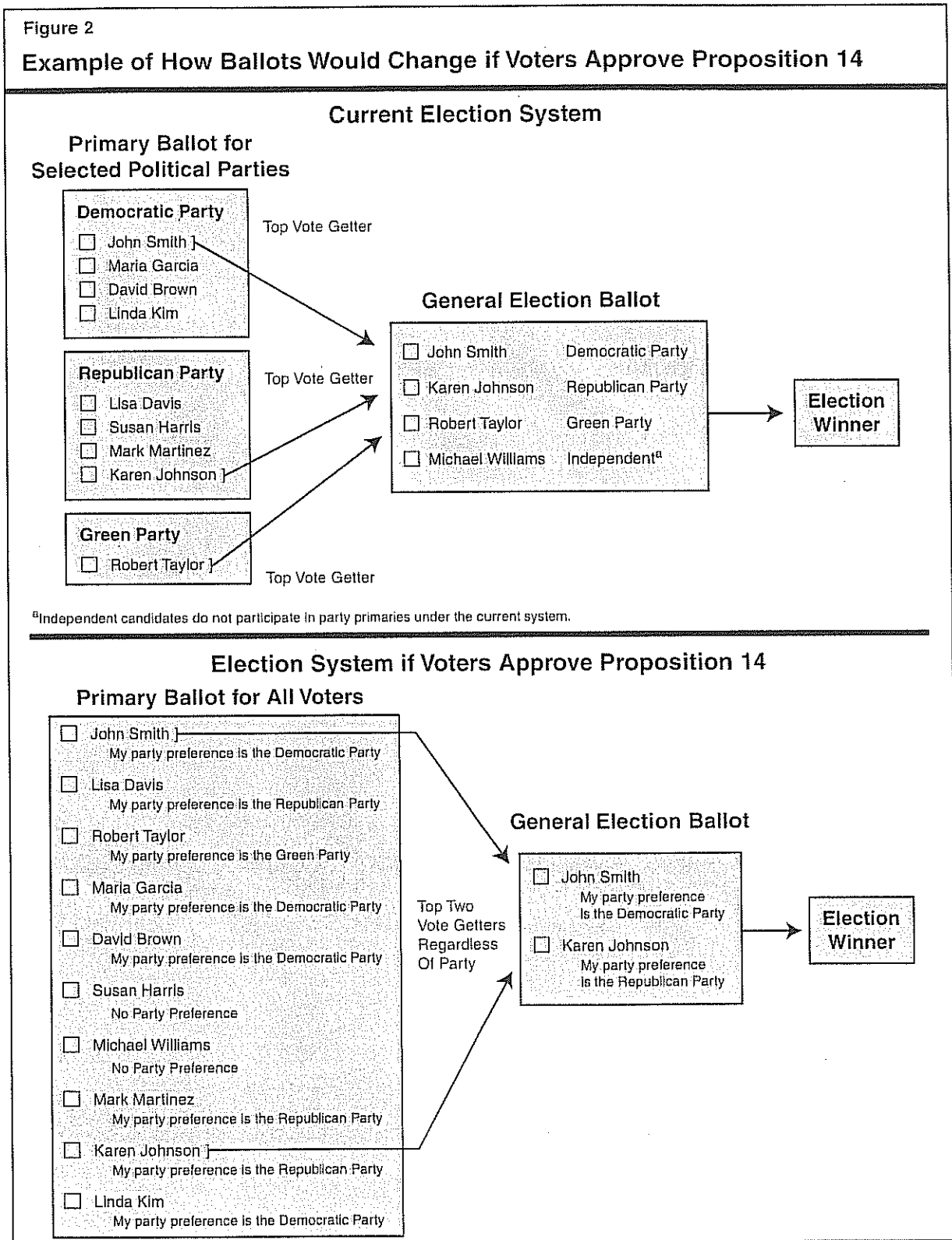
**PROPOSAL**

This measure, which amends the State Constitution, changes the election process for most state and federal offices. Its provisions and related legislation would take effect for elections after January 1, 2011.

**Creates a Top-Two Primary Election.** This measure creates a single ballot for primary elections for those congressional and state elective offices shown in Figure 1. Candidates would indicate for the ballot either their political party (the party chosen on their voter registration) or no party preference. All candidates would be listed—including independent candidates, who now would appear on the primary ballot. Each voter would cast his or her vote using this single primary ballot. A voter registered with the Republican Party, for example, would be able to vote in the primary election for a candidate registered as a Democrat, a candidate registered as a Republican, or any other candidate. The two candidates with the highest number of votes in the primary election—regardless of their party preference—would advance to compete in the general election. In fact, the two candidates in the general election could have the same party preference.

<b>Figure 1 Offices Affected by Proposition 14</b>
<p><b>Statewide Officials</b>                      Governor                      Lieutenant Governor                      Secretary of State                      Treasurer                      Controller                      Insurance Commissioner                      Attorney General</p> <p><b>Other State Officials</b>                      State Senators                      State Assembly Members                      State Board of Equalization Members</p> <p><b>Congressional Officials</b>                      United States Senators                      Members of the U.S. House of Representatives</p>

Figure 2 illustrates how a ballot for an office might appear if voters approve this measure and shows how this is different from the current system.



*Does Not Affect Presidential Elections and Political Party Leadership Positions.* Under this measure, there would still be partisan primary elections for presidential candidates and political party offices (including party central committees, party officials, and presidential delegates).

## FISCAL EFFECTS

*Minor Costs and Savings.* This measure would change how elections officials prepare, print, and mail ballot materials. In some cases, these changes could increase these state and county costs. For instance, under this measure, all candidates—regardless of their party preference—would be listed on each primary election ballot. This would make these ballots longer. In other cases, the measure would reduce election costs. For example, by eliminating in some instances the need to prepare different primary ballots for each political

party, counties sometimes would realize savings. For general election ballots, the measure would reduce the number of candidates (by only having the two candidates who received the most votes from the primary election on the ballot). This would make these ballots shorter. The direct costs and savings resulting from this measure would be relatively minor and would tend to offset each other. Accordingly, we estimate that the measure's fiscal effects would not be significant for state and local governments.

*Indirect Fiscal Effects Impossible to Estimate.* In some cases, this measure would result in different individuals being elected to offices than under current law. Different officeholders would make different decisions about state and local government spending and revenues. These indirect fiscal effects of the measure are unknown and impossible to estimate.

# PROP 14 ELECTIONS. INCREASES RIGHT TO PARTICIPATE IN PRIMARY ELECTIONS.

## ★ ARGUMENT IN FAVOR OF PROPOSITION 14 ★

Our economy is in crisis.

Unemployment in California is over 12%.

The Legislature, whose members were all elected under the current rules, repeatedly fails to pass the state budget on time, or close the state's gaping \$20+ billion fiscal deficit.

Our state government is broken.

But the politicians would rather stick to their rigid partisan positions and appease the special interests than work together to solve California's problems.

In order to change government we need to change the kind of people we send to the Capitol to represent us.

**IT'S TIME TO END THE BICKERING AND GRIDLOCK AND FIX THE SYSTEM**

The politicians won't do it, but Proposition 14 will.

- Proposition 14 will open up primary elections. You will be able to vote for any candidate you wish for state and congressional offices, regardless of political party preference. It will reduce the gridlock by electing the best candidates.

- Proposition 14 will give independent voters an equal voice in primary elections.

- Proposition 14 will help elect more practical office-holders who are more open to compromise.

"The best part of the open primary is that it would lessen the influence of the major parties, which are now under control of the special interests." (*Fresno Bee*, 2/22/09.)

**PARTISANSHIP IS RUNNING OUR STATE INTO THE GROUND**

Non-partisan measures like Proposition 14 will push our elected officials to begin working together for the common good.

Join AARP, the California Alliance for Jobs, the California Chamber of Commerce and many Democrats, Republicans, and independent voters who want to fix our broken government. Vote YES on Proposition 14.

Vote Yes on 14—for elected representatives who are **LESS PARTISAN** and **MORE PRACTICAL**.

[www.YESON14OPENPRIMARY.com](http://www.YESON14OPENPRIMARY.com)

**JEANNINE ENGLISH**, AARP

California State President

**JAMES EARP**, Executive Director

California Alliance for Jobs

**ALLAN ZAREMBERG**, President

California Chamber of Commerce

## ★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 14 ★

Politicians wrote Proposition 14 to change the law so they can conceal their party affiliation on the election ballot. Voters won't know whether they are choosing a Democrat, Republican, Libertarian, or Green Party candidate.

The proponents claim their measure will stop partisan politics. But how is allowing politicians to hide their party affiliation going to fix partisanship? Proposition 14 is politicians trying to trick voters into thinking they are "independent."

What the proponents don't tell you is that special interests are raising hundreds of thousands of dollars to pass Proposition 14, including money from health insurance corporations, developers and financial institutions, because Proposition 14 will make it easier for them to elect candidates they "choose." But you won't know which political party the candidate belongs to.

Proposition 14 will decrease voter choice. It prohibits write-in candidates in general elections. Only the top two vote getters advance to the general election regardless of political party. Special interests with money will have the advantage in electing candidates they support.

Currently, only two states use "top-two" elections. In 2008, Washington State had 139 races and only ONE incumbent lost a primary. Proposition 14 will protect incumbents.

California Nurses, Firefighters and Teachers have joined with groups like the Howard Jarvis Taxpayers Association to oppose Proposition 14. These organizations don't usually agree on political issues. But this time they do.

Candidates who ask for your vote shouldn't be allowed to conceal their political party.

Stop the special interest tricks. No on Proposition 14.

**ED COSTANTINI**, Professor Emeritus of Political Science  
University of California, Davis

**NANCY J. BRASMER**, President  
California Alliance of Retired Americans

**STEVE CHESSIN**, President  
Californians for Electoral Reform

★ ARGUMENT AGAINST PROPOSITION 14 ★

Proposition 14 was written in the middle of the night and put on the ballot by a couple of politicians and Arnold Schwarzenegger. They added their own self-serving little twist.

They call it an "open primary" but CANDIDATES WILL BE ALLOWED TO CONCEAL THEIR PARTY AFFILIATION FROM VOTERS. The current requirement that candidates list their party on the ballot is abolished.

Proposition 14 will also decrease voter choice and make elections more expensive:

- The general election will not allow write-in candidates.
- Elections will cost more money at a time when necessary services like firefighters, police and education are being cut. County election officials predict an increased cost of 30 percent.
- Voter choice will be reduced because the top two vote getters advance to the general election regardless of political party.
- This means voters may be forced to choose between two candidates from the same political party. Democrats could be forced to choose between two Republicans, or not vote at all. Republicans could be forced to choose between two Democrats, or not vote at all.

• Independent and smaller political parties like Greens and Libertarians will be forced off the ballot, further reducing choice.

Can't politicians ever do anything without scheming something that's in their self-interest?

Here's the zinger they stuck in Proposition 14 . . .

"Open Candidate Disclosure. At the time they file to run for public office, all candidates shall have the choice to declare a party preference. The names of candidates who choose not to declare a party preference shall be accompanied by the designation 'No Party Preference' on both the primary and general election ballots."

Very clever! They're making it look like they are "independents" while actually remaining in their political party. *Business as usual disguised as "reform."*

POLITICIANS ARE CHANGING THE LEGAL REQUIREMENT THAT MAKES THEM DISCLOSE THEIR POLITICAL PARTY.

Democrats will end up voting for Republican imposters. Republicans will end up voting for Democratic imposters.

Will you be voting for a member of the Peace and Freedom Party? The Green Party? The Libertarian Party? You won't really know.

Special interest groups will pump money into trick candidates . . . imposters with hidden agendas we can't see.

Currently, when a rogue candidate captures a nomination, voters have the ability to write-in the candidate of their choice in the general election. But a hidden provision PROHIBITS WRITE-IN VOTES from being counted in general elections if Prop. 14 passes.

That means if one of the "top two" primary winners is convicted of a crime or discovered to be a member of an extremist group, voters are out of luck because Prop. 14 ends write-in voting.

Firefighters have joined with teachers, nurses and the Howard Jarvis Taxpayers Association opposing this initiative.

"The politicians behind Prop. 14 want to raise taxes without being held accountable. Vote NO."—Jon Coupal,

President Howard Jarvis Taxpayers Association

We need "Open Primaries" to be "Open." That means full disclosure on the ballot and no tricks. No on Proposition 14.

KEVIN R. NIDA, President  
California State Firefighters' Association

ALLAN CLARK, President  
California School Employees Association

KATHY J. SACKMAN, RN, President  
United Nurses Associations of California /  
Union of Health Care Professionals

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 14 ★

Proposition 14 is supported by people like you who are sick of the mess in Sacramento and Washington D.C. and want to do something about it.

The opponents of Proposition 14 are primarily special interests who helped create this mess and benefit from the way things are.

Their claims are deceptive and absurd.

FACT: If Proposition 14 passes, every candidate's party registration for the past decade will be posted publicly. This means no candidate will be able to mislead voters about their party registration history. And it's more disclosure than is required of candidates today.

FACT: Proposition 14 will have no significant financial impacts whatsoever.

Why do opponents of reform make these false charges? Because they benefit from a system that is broken.

Vote yes on 14 to:

- Reduce gridlock by electing the best candidates to state office and Congress, regardless of political party;
- Give independent voters an equal voice in primary elections; and
- Elect more practical individuals who can work together for the common good.

Vote Yes on 14. We've had enough.

[www.YESON14OPENPRIMARY.com](http://www.YESON14OPENPRIMARY.com)

JEANNINE ENGLISH, AARP  
California State President

CARL GUARDINO, President  
Silicon Valley Leadership Group

ALLAN ZAREMBERG, President  
California Chamber of Commerce

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Rubin, Michael, et al. v. Debra Bowen**

Case No.: **RG11605301**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 21, 2011, I served the attached **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER TO VERIFIED COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Michael Siegel  
Siegel & Yee  
499 14th Street, Suite 220  
Oakland, CA 94612  
*Attorney for Plaintiffs*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 21, 2011, at Los Angeles, California.

\_\_\_\_\_  
Angela Artiga  
Declarant

\_\_\_\_\_  
  
Signature