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9 MICHAEL RUBIN, MANJA ARGUE, STEVE COLLETT, MARSHA FEINLAND,  
10 CHARLES L. HOOPER, KATHERINE TANAKA, C. T. WEBER, CAT WOODS,  
11 GREEN PARTY OF ALAMEDA COUNTY, LIBERTARIAN PARTY OF CALIFORNIA,  
12 and PEACE AND FREEDOM PARTY OF CALIFORNIA

13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 MICHAEL RUBIN, MANJA ARGUE,  
16 STEVE COLLETT, MARSHA FEINLAND,  
17 CHARLES L. HOOPER, KATHERINE  
18 TANAKA, C. T. WEBER, CAT WOODS,  
19 GREEN PARTY OF ALAMEDA COUNTY,  
20 LIBERTARIAN PARTY OF CALIFORNIA,  
21 and PEACE AND FREEDOM PARTY OF  
22 CALIFORNIA,

23 Plaintiffs,

24 v.

25 DEBRA BOWEN, in her official capacity as  
26 Secretary of State of California,

27 Defendant.

Case No. RG11605301

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
INJUNCTION**

Hearing: February 7, 2012

Time: 9:00 a.m.

Department: 16

Assigned for all Purposes:

Judge: Hon. Lawrence John Appel

Reservation Number R-1246546

Suit filed: November 21, 2011

Trial date: TBD

1 TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 7, 2012, at 9:00 a.m., or as soon  
3 thereafter as this matter may be heard, before the Honorable Lawrence John Appel,  
4 Alameda County Superior Court, Department 16, 1221 Oak Street, Oakland, California,  
5 plaintiffs MICHAEL RUBIN, *et al.* will move this Court for a preliminary injunction.  
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7 Plaintiffs respectfully request a preliminary injunction enjoining defendant  
8 DEBRA BOWEN, Secretary of State, from enforcing the “Top Two Candidates Open  
9 Primary Act,” or Proposition 14, on the grounds that it places severe burdens on  
10 plaintiffs’ constitutionally-protected rights by: (1) denying access to the general election  
11 ballot to candidates from small political parties, thereby depriving small party voters  
12 meaningful participation in the political process; (2) preventing small political parties  
13 from qualifying for subsequent elections; and (3) causing voter confusion by permitting  
14 candidates to self-select a political party “preference.”  
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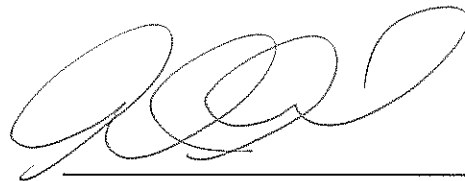
16 Plaintiffs’ motion for a preliminary injunction is made on the grounds that  
17 defendant’s implementation of Proposition 14 violates plaintiffs’ rights of political  
18 association and political expression as guaranteed by the First and Fourteenth  
19 Amendments of the United States Constitution and Article 1, section 2 and 3 of the  
20 California Constitution. Plaintiffs’ motion is also made on the grounds that the Prop. 14  
21 revisions to the California Constitution and Elections Code impermissibly disfavor small  
22 political parties and small party candidates in violation of the Elections Clause of the  
23 United States Constitution.  
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25 Plaintiffs motion for a preliminary injunction is based upon the United States  
26 Supreme Court decisions in *Anderson v. Celebrezze* (1983) 460 U.S. 780, and *Williams*  
27 *v. Rhodes* (1968) 393 U.S. 23, which prohibit a state from placing undue burdens on the  
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1 associational activity of small political parties and their candidates, and is further based  
2 upon Code of Civil Procedure section 526(a); *Citizens United v. Federal Elections Com'n*  
3 (2010) 130 S.Ct. 876; *Washington State Grange v. Washington State Republican Party*  
4 (2008) 552 U.S. 442; *California Democratic Party v. Jones* (2000) 530 U.S. 567;  
5 *Munro v. Socialist Workers Party* (1986) 479 U.S. 189; and such additional and other  
6 authorities as may be cited in plaintiffs' memorandum of points and authorities in  
7 support of this motion, and is based upon the Expert Declaration of Richard Winger, the  
8 Expert Declaration of Matthew Manweller, a Request for Judicial Notice in support of  
9 this motion, and any other evidence and argument that may properly come before this  
10 Court.  
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14 Dated: January 13, 2012

SIEGEL & YEE

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18 Michael Siegel

19 Attorneys for Plaintiffs  
20 MICHAEL RUBIN, *et al.*  
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