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Attorneys for Intervener-Defendants
INDEPENDENT VOTER PROJECT, DAVID
TAKASHIMA, ABEL MALDONADO &
CALIFORNIANS TO DEFEND THE OPEN
PRIMARY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

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

Plaintiffs,

vs.

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

Defendant.

INDEPENDENT VOTER PROJECT, DAVID
TAKASHIMA, ABEL MALDONADO &
CALIFORNIANS TO DEFEND THE OPEN
PRIMARY,

Intervener-Defendants.

FILED
ALAMEDA COUNTY

JAN 25 2012

CLERK OF THE SUPERIOR COURT
R. B. de Jesus
DEPUTY

Case No.: RG11605301

ASSIGNED FOR ALL
PURPOSES TO JUDGE
LAWRENCE JOHN APPEL

**INTERVENER-
DEFENDANTS'
OBJECTIONS TO
MANWELLER
DECLARATION IN
OPPOSITION TO
PLAINTIFFS' MOTION
FOR PRELIMINARY
INJUNCTION**

DATE: February 7, 2012
TIME: 9:00 a.m.,
DEPT: 16

1 Interveners hereby submit the following Objections to statements in the
2 Declaration of Mathew Manweller in Support of Injunctive Relief.

3 **OBJECTIONS**

4 1. **Entire Declaration of Mathew Manweller.** Inadmissible
5 and irrelevant (Evid. Code § 350); relevant evidence means evidence having any
6 tendency in reason to prove or disprove any disputed fact that is of consequence to
7 the determination of the action. (Evid Code § 210); the opinion stated by
8 Manweller about whether California voters are confused about the status of the
9 candidates listed on the Top Two primary and general election ballots as the
10 nominees of the political parties is based on a flawed study of biased samples of
11 voters in Washington state, not California voters. Also, the Ninth Circuit Court of
12 Appeal in *Washington State Republican Party v. Washington State Grange*, Slip
13 Op., Case No. 11-35122 (Jan. 19, 2012) held that the Washington state Top Two
14 ballot and voter information materials, which are virtually identical to those used
15 in California's Top Two Open Primary, demonstrate an absence of confusion. The
16 ballots used in the Manweller study did not conform to the actual ballots;
17 therefore, Manweller's results are not relevant evidence of whether a "*well*
18 *informed electorate* will interpret a candidate's party-preference designation to
19 mean that the candidate is the party's chosen nominee or representative or that the
20 party associates with or approves of the candidate." Slip op. at 481-487, citing,
21 *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442
22 (2008).

23 **Court's Ruling on Objection #1:**

24 **Sustained:** _____

25 **Overruled:** _____

26
27 2. **Manweller Declaration paragraphs 4, 7, 8 & 9.** Inadmissible
28 and irrelevant (Evid. Code § 350); relevant evidence means evidence having any

1 tendency in reason to prove or disprove any disputed fact that is of consequence to
2 the determination of the action. (Evid Code § 210); the opinion stated by
3 Manweller about whether California voters are confused about the status of the
4 candidates listed on the Top Two primary and general election ballots as the
5 nominees of the political parties is based on a flawed study of biased samples of
6 voters in Washington state, not California voters. Also, the Ninth Circuit Court of
7 Appeal in *Washington State Republican Party v. Washington State Grange*, Slip
8 Op., Case No. 11-35122 (Jan.19, 2012) held that the Washington state Top Two
9 ballot and voter information materials, which are virtually identical to those used
10 in California's Top Two Open Primary, demonstrate an absence of confusion, and
11 the ballots used in the Weller study did not conform to the actual ballots; therefore,
12 Manweller's results are not relevant evidence of whether a "*well informed*
13 *electorate* will interpret a candidate's party-preference designation to mean that
14 the candidate is the party's chosen nominee or representative or that the party
15 associates with or approves of the candidate." Slip op. at 481-487, citing,
16 *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442
17 (2008).

18 **Court's Ruling on Objection #2:**

19 **Sustained:** _____

20 **Overruled:** _____

21
22 **3. Statement: "I believe that it is important to assess the level**
23 **of voter confusion caused by nonpartisan ballots. The spread of**
24 **nonpartisan open primaries would profoundly affect the electoral**
25 **process in the United States. (Manweller Declaration, ¶ 5.)** Inadmissible
26 expert testimony not likely to assist the Court in determining whether California
27 voters maybe confused about the status of the candidates listed on the Top Two
28

1 primary and general election ballots as the nominees, representatives or endorsees
2 of the political parties. Evid. Code § 801.

3 **Court's Ruling on Objection #3:**

4 **Sustained:** _____

5 **Overruled:** _____

6
7 4. **Statement: "One major effect of the nonpartisan open**
8 **primary is on the "brand" of political parties and their selected**
9 **candidates. Research has shown that partisan brands are the single**
10 **most powerful information cue voters have when they cast their**
11 **ballots. In nonpartisan primaries, voters have less information and**
12 **have more difficulty indentifying candidates who hold similar values."**
13 **(Manweller Declaration, ¶ 6.) Irrelevant and inadmissible: the relevance**
14 **depends on the existence of preliminary facts that have not been proffered, such as**
15 **whether voters in California's Top Two system have less information and more**
16 **difficulty identifying candidates with similar values than in a partisan system.**
17 **Evid. Code § 403.**

18 **Court's Ruling on Objection #4:**

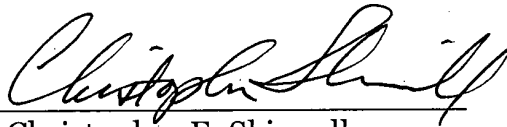
19 **Sustained:** _____

20 **Overruled:** _____

21
22 Respectfully submitted,

23 Dated: January 25, 2012

24 NIELSEN MERKSAMER
25 PARRINELLO GROSS & LEONI LLP

26 By: 
27 Christopher E. Skinnell
28 *Attorneys for Intervener-Defendants*

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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of 18 and not a party to the within cause of action. My business address is, 2350 Kerner Boulevard, Suite 250, San Rafael, California 94901.

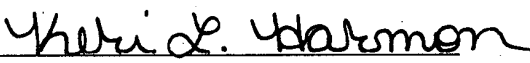
On January 25, 2012, I caused the foregoing document described as **INTERVENER-DEFENDANTS' OBJECTIONS TO MANWELLER DECLARATION IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** to be served on the individuals listed below as follows:

Dan Siegel, Esq. Michael Siegel, Esq. Siegel & Yee 499 14th Street, #220 Oakland, CA 94612 Ph: (510) 839-1200 Email: danmsiegel@gmail.com Email: michaeljwsiegel@gmail.com (Attorneys for Plaintiffs)	Mark Beckington, Esq. Deputy Attorney General Office of the Attorney General 300 South Spring St., Suite 1702 Los Angeles, CA 90013-1230 Ph: (213) 897-1096 Email: mark.beckington@doj.ca.gov (Attorney for Defendant Debra Bowen)
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BY FEDERAL EXPRESS: By following ordinary business practices and placing for pickup by FEDERAL EXPRESS at 2350 Kerner Boulevard, Suite 250, San Rafael, California 94901 on January 25, 2012, copies of the above documents in an envelope or package designated by FEDERAL EXPRESS with delivery fees paid or provided for.

BY ELECTRONIC SERVICE: By transmitting by email to the above party(ies) at the above email addresses.

Executed in San Rafael, California on January 25, 2012. I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.


Keri L. Harmon