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

13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

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

**FIRST AMENDED COMPLAINT
FOR DECLARATORY,
INJUNCTIVE, AND OTHER
RELIEF**

Assigned for all Purposes to the
Hon. Lawrence John Appel
Department 16

Suit filed: November 21, 2011
Trial date: TBD

28 Plaintiffs MICHAEL RUBIN, 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 complain of defendant DEBRA BOWEN,
SECRETARY OF STATE OF CALIFORNIA, and allege:

1
2 **PRELIMINARY STATEMENT**

3 1. The Supreme Court has declared, “The right to vote freely for the candidate of
4 one’s choice is of the essence of a democratic society, and any restrictions on that right
5 strike at the heart of representative government.” *Reynolds v. Sims* (1964) 377 U.S.
6 533, 555. Unfortunately, **beginning in January 1, 2011, defendant Debra Bowen**
7 **began implementation of** Proposition 14, an electoral scheme which prevents
8 general election voters from selecting their candidate of choice. Under Proposition 14,
9 voters in a general election may select from only two candidates for most political
10 offices. Because Prop. 14 **has denied** voters their fundamental right of choice by
11 precluding minor party candidates from the general election ballot, it violates the rights
12 of voters under the First and Fourteenth Amendments of the U.S. Constitution and
13 should be overturned.
14

15 2. To protect voters’ fundamental right of choice, election officials are required to
16 grant access to the general election ballot to minor political parties. See *Munro v.*
17 *Socialist Workers Party* (1986) 479 U.S. 189, 193. Although states may condition a
18 minor party’s access to the general election ballot upon a showing of a “modicum of
19 support,” the threshold may not exceed five percent of the electorate. *Jenness v.*
20 *Fortson* (1971) 403 U.S. 431 (upholding a five percent requirement); *Lee v. Keith* (7th
21 Cir. 2006) 463 F.3d 761 (rejecting a ten percent threshold); *Socialist Labor Party v.*
22 *Rhodes* (S.D. Ohio 1970) 318 F.Supp. 1262 (rejecting a seven percent threshold). Under
23 Prop. 14, however, defendant Bowen can deny ballot access to candidates who receive as
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1 much as 33 percent of the votes cast.¹ **Bowen's implementation of Prop. 14 will**
2 **likely deny ballot access to candidates during the 2012 election cycle, even**
3 **when candidates receive more than the "modicum of support" required by**
4 **Supreme Court jurisprudence.**

5
6 3. By limiting access to the general election ballot, Prop. 14 effectively bars minor
7 political parties, their candidates, and their members from effective political
8 association, precisely at the moment when the highest number of voters are engaged in
9 the electoral process. Thus, like other unconstitutional electoral schema, Prop. 14
10 "denies the disaffected not only a choice of leadership but a choice on the issues as
11 well." *See Anderson v. Celebrezze* (1983) 460 U.S. 780, 792; *Williams v. Rhodes* (1968)
12 393 U.S. 23, 33. Because Prop. 14 **has severely burdened** voter, candidate, and party
13 associational rights, and because Prop. 14 **does not** fulfill any compelling or even
14 significant state interest, Prop. 14 violates voters' rights under the First and Fourteenth
15 Amendments of the U.S. Constitution and Article I, §§ 2 and 3 of the California
16 Constitution.
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19 4. The Supreme Court of the United States has consistently upheld the principle
20 that, "States may not use election regulations to undercut political parties' freedoms of
21 speech or association." *U.S. Term Limits, Inc. v. Thornton* (1995) 514 U.S. 779, 833-
22 834. But today, as a result of the passage of Prop. 14, defendant Bowen **has permitted**
23 candidates for various state and federal offices to self-designate a "preferred" political
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27 ¹ This calculation is based upon a hypothetical scenario, in which three candidates run
28 for a particular office. Under Prop. 14, if Candidate A receives 33.5 percent of the votes
cast in a primary election, and Candidate B receives 33.5 percent of the votes cast,
Candidate C could receive 33 percent of the votes cast and still not advance to the
general election.

1 party on the electoral ballot, without such party's approval. Cal. Const. Art. II. §§ 5, 6.
2 Thus, individual candidates have "appropriate[d] the parties' trademarks . . . at the
3 most crucial stage of election, thereby distorting the parties' messages and impairing
4 their endorsement of candidates." See *Washington State Grange v. Washington State*
5 *Republican Party* (2008) 552 U.S. 442, 471 (Scalia, J., dissenting). As the majority of
6 the U.S. Supreme Court declared in *California Democratic Party v. Jones* (2000) 530
7 U.S. 567:

8
9 [A] corollary of the right to associate is the right not to associate. Freedom of
10 association would prove an empty guarantee if associations could not limit
11 control over their decisions to those who share the interests and persuasions that
12 underlie the association's being. . . . In no area is the political association's right
13 to exclude more important than in the process of selecting its nominee. *Jones*,
14 *supra*, 530 U.S. at 574-575 (citations omitted).

15 By implementing an electoral process that associates the labels of political parties with
16 individual candidates—without the consent of the political party or a concurrent
17 opportunity to respond—defendant **violated** those parties' rights of expression and
18 association as guaranteed by the First Amendment of the United States Constitution
19 and article I, sections 2 and 3 of the California Constitution.

20 5. Furthermore, because Prop. 14 altered the manner of electing U.S. Senators and
21 Representatives in a way that disadvantages smaller political parties and grants further
22 advantage to the two major political parties and their candidates, its implementation
23 violated the rights of plaintiffs Green Party of Alameda County, Libertarian Party of
24 California, and Peace and Freedom Party of California as established by the Elections
25 Clause. See, *Cook v. Gralike* (2001) 531 U.S. 510, 523. As the Supreme Court declared,
26 "The Framers intended the Elections Clause to create procedural regulations, not to
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1 provide States with license to exclude classes of candidates from federal office.” *U.S.*
2 *Term Limits, supra*, 514 U.S. at 822-23.

3 **6. Finally, because Prop. 14 withdrew established rights and privileges**
4 **from minor political parties, their candidates, and their members and**
5 **supporters, it violated the Equal Protection Clause of the Fourteenth**
6 **Amendment of the United States Constitution and the equal protection**
7 **rights of the California Constitution, as set forth in article I, section 7 and**
8 **article IV, section 16. Whereas major political parties continue to enjoy**
9 **access to both the primary and general statewide elections, Prop. 14**
10 **converted plaintiffs Green, Libertarian, and Peace and Freedom parties**
11 **into “second class” parties which, unlike the major political parties, are**
12 **denied the ability to access the voters at the moment of peak political**
13 **participation, the statewide general election.**

14 7. For these reasons, plaintiffs ask this Court to enjoin, preliminarily and
15 permanently, all enforcement of Prop. 14 and any other California statutes that permit
16 the abridgment of voter and political party rights of association, expression, **and equal**
17 **protection**, and that unconstitutionally alter the manner of electing Members of
18 Congress and United States Senators.

19 **JURISDICTION AND VENUE**

20 8. Plaintiffs’ claims for injunctive and declaratory relief arise under the First and
21 Fourteenth Amendments to the United States Constitution, the Elections Clause of the
22 U.S. Constitution, and article I, sections 2, 3, and 7, and article IV, section 16 of the
23 California Constitution. The Court’s jurisdiction is invoked under California Code of
24 Civil Procedure sections 410.10, 526, and 1060 and 42 United States Code section 1983.
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1 9. Venue is proper in Alameda County. The present action is brought against a
2 state officer, Secretary of State Debra Bowen, based upon acts done by virtue of her
3 office. Cal. Civ. Proc. § 393(b). See also, *California State Parks Found. v. Superior Ct.*
4 (App. 4 Dist. 2007) 150 Cal.App.4th 826, 835. Plaintiffs Michael Rubin, Marsha
5 Feinland, and Katherine Tanaka reside in Alameda County and frequently support
6 minor party candidates for office. Plaintiffs Green Party of Alameda County,
7 Libertarian Party of California, and Peace and Freedom Party of California conduct
8 political activities within Alameda County. Plaintiff Feinland intends to be a candidate
9 for United States Senate representing the State of California, and will conduct campaign
10 activities within Alameda County.
11

12 **PARTIES**

13
14 10. Plaintiff MICHAEL RUBIN is a resident of Oakland, California, and a member of
15 the Green Party of California and the Green Party of Alameda County. Mr. Rubin is also
16 a member of the State Coordinating Committee of the California Green Party and is an
17 alternate member of the Green Party USA, representing California. He is a regular voter
18 and supporter of Green Party candidates.
19

20 11. Plaintiff STEVE COLLETT is a resident of Venice, California. Mr. Collett is a
21 member of the Libertarian Party of California. He is a regular voter and supporter of
22 Libertarian Party candidates. In 2012, Mr. Collett **is running** for the United States
23 Congress, 33rd Congressional District, as a candidate of the Libertarian Party.
24

25 12. Plaintiff MARSHA FEINLAND is a resident of Berkeley, California. Ms. Feinland
26 is a member of the Peace and Freedom Party of California. She is a regular voter and
27 supporter of Peace and Freedom Party candidates. In 2012, Ms. Feinland **is running**
28 for the United States Senate as a candidate of the Peace and Freedom Party.

1 13. Plaintiff CHARLES L. HOOPER is a resident of Grass Valley, California. Mr.
2 Hooper is a member of the Libertarian Party of California. He is a regular voter and
3 supporter of Libertarian Party candidates. In 2012, Mr. Hooper intends to run for the
4 California Assembly, District 1, as a candidate of the Libertarian Party.
5

6 14. Plaintiff KATHERINE TANAKA is a resident of Oakland, California. Ms. Tanaka
7 is a member of the Green Party of California and the Green Party of Alameda County.
8 She is a regular voter and supporter of Green Party candidates.

9 15. Plaintiff C. T. WEBER is a resident of Sacramento, California. Mr. Weber is a
10 member of the Peace and Freedom Party of California and serves as State Chairperson
11 for the Party. He is a regular voter and supporter of Peace and Freedom Party
12 candidates. He is a candidate for the California State Assembly, District 9, in 2012.
13

14 16. Plaintiff CAT WOODS is a resident of Novato, California. Ms. Woods is a
15 member of the Peace and Freedom Party of California. She is a regular voter and
16 supporter of Peace and Freedom Party candidates.
17

18 17. Plaintiff GREEN PARTY OF ALAMEDA COUNTY (GPAC) is a geographic
19 division of the Green Party of California, which is a qualified political party under the
20 California Elections Code. Membership in the GPAC is coincident with current
21 registration as a member of the California Green Party and residence in Alameda
22 County. In anticipation of the 2012 state and federal elections, the GPAC **has**
23 **completed** a process to identify and select candidates who will become the official
24 endorsed candidates of the GPAC.
25

26 18. Plaintiff LIBERTARIAN PARTY OF CALIFORNIA is a statewide political party
27 that has qualified for the ballot in 2012. In anticipation of the 2012 state and federal
28

1 elections, the Libertarian Party **has completed** a process to identify and select
2 candidates who will become its official endorsed candidates.

3 19. Plaintiff PEACE AND FREEDOM PARTY OF CALIFORNIA is a statewide
4 political party that has qualified for the ballot in 2012. In anticipation of the 2012 state
5 and federal elections, the Peace and Freedom Party **has completed** a process to
6 identify and select candidates who will become its official endorsed candidates.
7

8 20. Defendant DEBRA BOWEN is Secretary of State of California. In her official
9 capacity, Secretary Bowen is responsible for administering elections in the State of
10 California.
11

12 STATEMENT OF FACTS

13 21. **Prior to January 1, 2011, the State of California utilized an electoral**
14 **system which guaranteed qualified political parties the right to participate**
15 **in general elections. Under this system, candidates for statewide office**
16 **from each recognized party, upon complying with certain requirements,**
17 **were permitted to participate in a primary election held on the first**
18 **Tuesday in June in even-numbered years to determine their party's**
19 **standard-bearer. Following the primary election, the highest vote-getter**
20 **from each party was permitted to participate in a general election held on**
21 **the first Tuesday in November in even-numbered years.**
22

23 22. On June 8, 2010, California voters approved Proposition 14, labeled as the "Top
24 Two Candidates Open Primaries Act." The Act, also known as "Prop. 14," took effect in
25 California on January 1, 2011. **In 2011, the Prop. 14 reforms were utilized in**
26 **several special elections. Prop. 14 will also govern the primary and general**
27
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1 **elections to be held in June and November 2012, respectively, and in June**
2 **and November of subsequent even-numbered years.**

3 23. Prop. 14 initiated amendments to the California Constitution which require that
4 candidates for various state and federal offices run in a single primary election open to
5 all registered voters, with only the top two vote-getters meeting in the general election.
6

7 As the revised Constitution states:

8 A voter-nomination primary election shall be conducted to select the
9 candidates for congressional and state elective offices in California. All
10 voters may vote at a voter-nominated primary election for any candidate
11 for congressional and state elective office without regard to the political
12 party preference disclosed by the candidate or the voter, provided that the
13 voter is otherwise qualified to vote for candidates for the office in question.
14 The candidates who are the top two vote-getters at a voter-nominated
15 primary election for a congressional or state elective office shall, regardless
16 of party preference, compete in the ensuing general election. Cal. Const.
17 Art. II, § 5(a).

18 24. When the California Legislature proposed Prop. 14 as a constitutional
19 amendment, the declared purpose was “to protect and preserve the right of every
20 Californian to vote for the candidate of his or her choice.” Cal. Const. Art. II, §6
21 (historical notes).

22 25. On information and belief, the actual intent of the Prop. 14 initiators was to
23 narrow the field of candidates available to voters during a general election and thus
24 cause voters to elect more “moderate” political representatives.

25 26. On information and belief, the actual result of Prop. 14 has been to deny
26 California voters the ability to vote for minor party candidates during a general election.
27 By the same token, minor political parties and candidates from minor political parties
28 are denied the ability to reach voters during the general election.

1 27. One of the principal mechanisms of Prop. 14 is that registered voters from
2 individual political parties—as well as the parties themselves—are now prohibited from
3 nominating their party’s candidate via a primary election. Voters are even prohibited
4 from declaring their party membership upon registration. Cal. Elec. § 2150.
5

6 28. At the same time, Prop. 14 permits political candidates to designate a “preferred”
7 political party. The political parties themselves have no ability to regulate who
8 designates their party as “preferred.” As the revised Constitution reads:

9 [A] candidate for a congressional or state elective office may have his or
10 her political party preference, or lack of political party preference,
11 indicated upon the ballot for the office in the manner provided by statute.
12 A political party or party central committee shall not nominate a candidate
13 for any congressional or state elective office at the voter-nominated
14 primary. . . . A political party or party central committee shall not have the
15 right to have its preferred candidate participate in the general election for
16 a voter-nominated office other than a candidate who is one of the two
17 highest vote-getters at the primary election, as provided in subdivision (a).
18 Cal. Const. Art. II, § 5(b).

19 29. Prop. 14 permits multiple candidates for a single political office to designate the
20 same political party as their “preferred” party. This statement of party connection
21 constitutes the sole information listed next to candidate names on the ballot.
22

23 30. Thus, on the face of the ballot, voters are not able to distinguish between
24 candidates who are the official standard-bearers of a political party and those who may
25 not actually represent a party’s interests. The political parties themselves are precluded
26 from using the ballot to reject the claimed association – or to identify the genuine
27 candidate of their choice.
28

31. The revised Election Code implemented by defendant Bowen reinforces the false
impression that candidates represent a particular political party by requiring that, on

1 the face of the electoral ballot, all candidates that declare the same party “preference”
2 must be grouped together. Cal. Elec. § 19301.

3 32. As one Supreme Court Justice has written of a similar statute implemented in
4 Washington State, “This does not merely place the ballot off limits for party building; it
5 makes the ballot an instrument by which party building is impeded, permitting
6 un rebutted associations that the party does not itself approve.” *Washington State*
7 *Grange, supra*, 552 U.S. at 464 (Scalia, J., dissenting). “[T]hrusting an unwelcome,
8 self-proclaimed association upon the party on the election ballot itself is amply
9 destructive of the party’s associational rights.” *Id.* at 466. “Not only is the party’s
10 message distorted, but its goodwill is hijacked.” *Id.*

13 33. For parties such as plaintiffs Peace and Freedom Party of California, Libertarian
14 Party of California, and Green Party of Alameda County, the potential for dilution of the
15 party’s “brand” or identity is even more pernicious, as the parties already possess
16 relatively limited membership and face potential elimination from the ballot if their
17 support diminishes.

19 34. Also as a result of Prop. 14, candidates representing minor political parties **have**
20 **been**, *de facto*, precluded from consideration on the general election ballot. *See* Cal.
21 Const. Art. II, § 5(b).

23 35. Prior to defendant’s implementation of Prop. 14, a political party could expect its
24 candidates to appear on a general election ballot so long as it either (1) obtained total
25 registrations equal to one percent of the total vote in the state at the most recent
26 gubernatorial election or (2) polled two percent in any statewide race during the
27 previous gubernatorial election. Cal. Elec. §§ 5100 *et seq.* Now, a party’s candidate
28

1 could conceivably poll as high as 33 percent in the primary election and still fail to
2 appear on the general election ballot.

3 36. As the Supreme Court has declared:
4

5 The right to vote is 'heavily burdened' if that vote may be cast only for
6 major-party candidates. The exclusion of candidates also burdens voters'
7 freedom of association, because an election campaign is an effective
8 platform for the expression of views on the issues of the day, and a
9 candidate serves as a rallying-point for like-minded citizens. *Anderson v.*
10 *Celebreeze* (1983) 460 U.S. 780, 787-788.

11 37. Because the California general election ballot is the moment of peak participation
12 by voters, media, and the candidates themselves, Prop. 14 operates to preclude voters
13 from minor political parties from effective civic engagement at the most important stage
14 of the electoral process. **Substantially greater numbers of voters participate in**
15 **the general election as opposed to the primary election. For example,**
16 **according to the published reports of the California Secretary of State,**
17 **10,300,392 voters participated in the 2010 statewide general election in**
18 **California, while 5,654,813 voters participated in the 2010 statewide**
19 **primary election.**

20 38. Because of Prop. 14, the parties themselves are precluded from reaching the
21 populace at the height of the voters' engagement, the general election, **when**
22 **substantially greater numbers of voters participate in the electoral process,**
23 **as compared with the primary election.** Because of this preclusion, parties are
24 denied the opportunity to garner two percent of votes for a particular statewide office,
25 which is one of two ways that a political party can qualify for a subsequent ballot. *See*
26 *Cal. Elec. §§ 5100 et seq.* The result is that minor political parties suffer from an
27 increased burden in their quest to qualify for subsequent ballots.
28

1 39. The State of California does not possess regulatory interests that are sufficiently
2 compelling to justify Prop. 14's intrusion on voter, candidate, and minor party rights.

3 40. Since the implementation of Prop. 14 on January 1, 2011, California voters who
4 support minor political parties, including the individual plaintiffs in this action, have
5 suffered a "chilling effect" on their rights of political association. On information and
6 belief, because candidates of minor political parties no longer have a realistic chance to
7 appear on a general election ballot, fewer individuals have undertaken political
8 campaigns on behalf of the minor parties, and the minor parties themselves suffer a
9 threat of diminution or even destruction. As a result, the minor party voter plaintiffs
10 suffer a substantially diminished ability to effectively participate in the electoral process
11 as members of minor political parties.
12
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14 41. In addition, since Prop. 14's implementation, California voters from major
15 parties have suffered and will suffer from a marked decrease in candidate viewpoints on
16 general election ballots. Voters no longer have the opportunity to review candidate
17 statements from minor political parties and are denied a free and full exchange of ideas
18 in connection with the electoral issues to be decided.
19

20 42. Also since January 1, 2011, minor political parties in California—including party
21 plaintiffs Green Party of Alameda County, Libertarian Party of California, and Peace and
22 Freedom Party of California—have suffered a chilling effect on their rights of
23 association. On information and belief, California voters who participate in primary
24 elections are likely confused when they attempt to determine whether a particular
25 candidate is endorsed by a particular political party, due to the Prop. 14 changes which
26 permit a candidate to self-designate a "preferred" party. As a result, the minor party
27 plaintiffs are subject to a deprivation of their rights of association.
28

1 43. If defendant's implementation of Prop. 14 is not enjoined, plaintiffs will continue
2 to suffer deprivations of their constitutional rights under the United States and
3 California Constitutions. The declaratory and injunctive relief sought by plaintiffs, on
4 the other hand, will end an electoral scheme that actively deprives minor party voters,
5 minor party candidates, and the minor parties themselves of established rights of
6 political association.
7

8 **FIRST CLAIM FOR RELIEF: BALLOT ACCESS**
9 (United States Constitution, Amendments 1 and 14;
10 California Constitution, Article 1, sections 2 and 3)

11 44. Plaintiffs reallege and fully incorporate herein paragraphs 1 through 43, above.

12 45. Prop. 14, **as applied, has excluded and will continue to exclude** minor
13 party voters, minor party candidates, and the minor parties themselves from
14 participation in California's general elections. Specifically, plaintiff minor party voters
15 Rubin, Collett, Feinland, Hooper, Tanaka, Weber, and Woods **have been precluded**
16 from supporting their candidates of choice. Plaintiff minor party candidates Collett,
17 Feinland, Hooper, and Weber **have been** denied the ability to communicate their
18 message to general election voters. And plaintiff minor parties Green Party of Alameda
19 County, Libertarian Party of California, and Peace and Freedom Party of California
20 **have been** denied the ability to reach general election voters.
21

22 46. Given that the general elections represent the moment of peak public
23 participation in the electoral process, Prop. 14 has "**denie[d]** the disaffected not only a
24 choice of leadership but a choice on the issues as well." *See Anderson v. Celebrezze*
25 (1983) 460 U.S. 780, 792; *Williams v. Rhodes* (1968) 393 U.S. 23, 33. Because Prop. 14
26 **has severely burdened** voter, candidate, and party rights without fulfilling a
27 compelling or even significant state interest, it should be declared unconstitutional
28

1 under the First and Fourteenth Amendments to the U.S. Constitution, and article 1,
2 sections 2 and 3 of the California Constitution.

3 **SECOND CLAIM FOR RELIEF: VIOLATION OF RIGHTS**
4 **TO FREEDOM OF SPEECH AND ASSOCIATION**
5 (United States Constitution, Amendments 1 and 14;
6 California Constitution, Article 1, sections 2 and 3)

7 47. Plaintiffs reallege and fully incorporate herein paragraphs 1 through 46, above.

8 48. **Prop. 14, as applied, permits** candidates for various state and federal offices
9 to self-designate a “preferred” political party on the electoral ballot, without such party’s
10 approval. Individual candidates **have thus “appropriate[d]** the parties’ trademarks .
11 . . . at the most crucial stage of election, thereby distorting the parties’ messages and
12 impairing their endorsement of candidates.” *See Washington State Grange, supra*, 552
13 U.S. at 471 (Scalia, J., dissenting). Defendant’s treatment of political parties under
14 Prop. 14 has had a chilling effect on those parties’ rights of expression and association
15 as guaranteed by the First Amendment of the United States Constitution and Article 1,
16 sections 2 and 3 of the California Constitution. *See Citizens United v. Federal Elections*
17 *Com’n* (2010) 130 S.Ct. 876, 895 (“As additional rules are created for regulating political
18 speech, any speech arguably within their reach is chilled”).
19
20

21 **THIRD CLAIM FOR RELIEF: ELECTIONS CLAUSE**
22 (United States Constitution, Elections Clause)

23 49. Plaintiffs reallege and fully incorporate herein paragraphs 1 through 48, above.

24 50. As described by the Supreme Court of the United States:

25 [T]he Framers understood the Elections Clause as a grant of authority to
26 issue procedural regulations, and not as a source of power to dictate
27 electoral outcomes, to favor or disfavor a class of candidates, or to evade
28 important constitutional restraints. *Cook v. Gralike* (2001) 531 U.S. 510,
523.

1 **51. Prop. 14, as applied,** violates the rights of minor parties and minor party
2 candidates under the Elections Clause of the United States Constitution by
3 implementing an elections policy that disadvantages smaller political parties and grants
4 further advantage to wealthy parties and candidates. Specifically, Prop. 14 **has**
5 unconstitutionally **precluded** minor party candidates for federal office—including,
6 **most likely,** plaintiffs Feinland and Collett—from participating in the moments of
7 greatest public interest in the electoral process, the general elections.

9 **FOURTH CLAIM FOR RELIEF: EQUAL PROTECTION CLAUSE**
10 **(United States Constitution, 14th Amendment;**
11 **California Constitution, article I, section 7 and article IV, section 16)**

12 **52. Plaintiffs reallege and fully incorporate herein paragraphs 1**
13 **through 51, above.**

14 **53. Prop. 14 violates the Equal Protection Clause of the Fourteenth**
15 **Amendment and the equal protection rights of the California Constitution,**
16 **article I, section 7 and article IV, section 16, both on its face and as applied**
17 **to plaintiffs.**

18 **54. Prop. 14 withdraws an established right to participate in**
19 **statewide general elections from qualified minor political parties, their**
20 **candidates, and their supporters. Thus, under Prop. 14, California law**
21 **treats minor political parties and major political parties differently, by**
22 **providing a top two electoral system which, as applied, permits major**
23 **political parties to access the voters at the moment of peak political**
24 **participation—the general election—while denying that right to minor**
25 **parties. Instead, Prop. 14 affords minor parties and minor party**
26 **candidates only the inferior right to participate in primary elections.**
27
28

1 Because the primary election does not provide the same benefits and
2 privileges as the general election, minor parties are therefore
3 disadvantaged under the letter of the law, and their candidates and
4 members are denied the same respect as the candidates and members of
5 major political parties. By purposefully denying the right to participate in
6 general elections to minor political parties, Prop. 14 discriminates on the
7 basis of political association. *See Perry v. Brown* (9th Cir. Feb. 7, 2012) 671
8 F.3d 1052 (equal protection is violated by withdrawing an established right
9 from a discrete and insular minority).
10

11
12 55. The disadvantage Prop. 14 imposes upon minor political parties
13 is the result of disapproval or animus against politically unpopular groups.
14 The history of the enactment of Prop. 14 demonstrates that it was an assault
15 on unpopular political opinions espoused by minor political parties,
16 including plaintiffs Peace and Freedom, Green, and Libertarian parties,
17 that stripped the parties of rights previously conferred upon them by
18 California law. As such, Prop. 14 withdrew from minor political parties,
19 but not others, specific rights and privileges afforded them by California
20 law, and imposed a special disability upon those parties alone.
21 Accordingly, Prop. 14 violates the Equal Protection Clause of the
22 Fourteenth Amendment and the equal protection rights of the California
23 Constitution because it singles out minor parties, minor party candidates,
24 and minor party voters for a disfavored legal status, thereby creating a
25 category of “second-class” parties, candidates, and voters.
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IRREPARABLE INJURY

56. Plaintiffs are now severely and irreparably injured by Prop. 14, a state law that violates the First Amendment, **the Fourteenth Amendment**, and the Elections Clause of the United States Constitution as well as **article 1, sections 2, 3, and 7 and article IV, section 16 of the California Constitution**. Plaintiff minor party voters Rubin, Collett, Feinland, Hooper, Tanaka, Weber, and Woods are denied the ability to effectively participate as members of their respective political parties. Plaintiff minor party candidates Collett, Feinland, Hooper, and Weber are denied the ability to communicate their message to general election voters. And plaintiffs Green Party of Alameda County, Libertarian Party of California, and Peace and Freedom Party of California are denied the ability to participate in general elections, and are also denied the ability to disassociate themselves from political candidates who make false claims of political association on the very ballot itself. Plaintiffs' injuries will be redressed only if this Court declares Prop. 14 unconstitutional and enjoins defendant Bowen from enforcing it.

57. An actual and judicially cognizable controversy exists between plaintiffs and defendant regarding whether Prop. 14 violates the First Amendment, **the Fourteenth Amendment**, and the Elections Clause of the United States Constitution and **article 1, sections 2, 3, and 7 and article IV, section 16 of the California Constitution**. Defendant is presently enforcing this state law to the detriment of plaintiffs.

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PRAYER

WHEREFORE, plaintiffs pray for judgment against defendant Debra Bowen on each of the aforementioned claims. Plaintiffs request this Court grant them relief as follows:

1. A declaratory judgment, pursuant to California Code of Civil Procedure section 1060, holding that:

a. Prop. 14 violates the rights of minor political parties and registered members of minor political parties under the First and Fourteenth Amendments of the United States Constitution, 42 U.S.C. §1983, and **article 1, sections 2, 3, and 7 and article IV, section 16 of the California Constitution** by barring minor political parties and voters registered with such parties from effective participation in general elections;

b. Prop. 14 violates the rights of minor party candidates for Congress under the Elections Clause of the United States Constitution by substantively altering the manner by which California voters elect representatives to the House of Representatives and the Senate, such that the two major political parties and their candidates are impermissibly advantaged at the expense of minor political parties and their candidates and supporters; and

c. Prop. 14 violates the rights of minor political parties under the First and Fourteenth Amendments of the United States Constitution, 42 U.S.C. § 1983, and Article I, sections 2 and 3 of the California Constitution by permitting candidates for various state and federal offices to self-designate a “preferred” political party on the electoral ballot, without such party’s approval.

1 d. Prop. 14 violates the rights of plaintiffs under the Equal
2 Protection Clause of the Fourteenth Amendment and the equal
3 protection rights of the California Constitution, by withdrawing
4 established rights and privileges from minor political parties,
5 their candidates, and their supporters. Prop. 14 converted
6 plaintiffs Green, Peace and Freedom, and Libertarian parties into
7 “second class” parties which, unlike the major political parties,
8 are denied the ability to access the voters at the moment of peak
9 political participation, the statewide general election.
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- 11
- 12 2. Injunctive relief including a preliminary injunction and a permanent injunction
 - 13 against defendant Bowen enjoining enforcement of Prop. 14 in whole or in part;
 - 14 3. Attorneys’ fees;
 - 15 4. Costs of suit; and
 - 16 5. Such other and further relief as the Court may deem proper.
- 17

18 Dated: May 10, 2012

19 SIEGEL & YEE

20
21 By 

22 Dan Siegel
23 Michael Siegel

24 Attorneys for Plaintiffs
25 MICHAEL RUBIN, STEVE COLLETT,
26 MARSHA FEINLAND, CHARLES L. HOOPER,
27 KATHERINE TANAKA, C. T. WEBER, CAT
28 WOODS, GREEN PARTY OF ALAMEDA
COUNTY, LIBERTARIAN PARTY OF
CALIFORNIA, and PEACE AND FREEDOM
PARTY OF CALIFORNIA

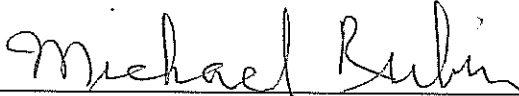
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VERIFICATION

I, MICHAEL RUBIN, declare as follows:

I am a plaintiff in this action. I have read the foregoing First Amended Complaint for Declaratory, Injunctive, and Other Relief and know the contents thereof. The same is true of my personal knowledge except where stated on information and belief and, as to such matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 10, 2012, at Oakland, California.


Michael Rubin

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PROOF OF SERVICE

I, MICHAEL SIEGEL, declare as follows:

I am over eighteen years of age and a citizen of the State of California. I am not a party to the within action. My business address is 499 14th Street, Suite 300, Oakland, CA 94612.

On May 10, 2012, I served copies of the following documents:

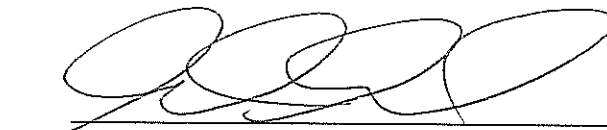
1. FIRST AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF

on the parties to this action by U.S. Mail to the offices of the attorneys for defendant and the defendant-interveners:

Mark R. Beckington
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

Christopher Skinnell
Nielsen Merksamer Parrinello Gross & Leoni
2350 Kerner Boulevard, Suite 250
San Rafael, CA 94901

I declare under penalty of perjury that the foregoing is true and correct. Executed May 10, 2012, at Oakland, California.


Michael Siegel