

ENDORSED
FILED
ALAMEDA COUNTY

FEB 14 2013

CLERK OF THE SUPERIOR COURT

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9 MICHAEL RUBIN, *et al.*

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

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

20 Plaintiffs,

21 v.

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

24 Defendant.

Case No. RG11605301

**SECOND 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

25 Plaintiffs MICHAEL RUBIN, STEVE COLLETT, MARSHA FEINLAND,
26 CHARLES L. HOOPER, KATHERINE TANAKA, C. T. WEBER, CAT WOODS, GREEN
27 PARTY OF ALAMEDA COUNTY, LIBERTARIAN PARTY OF CALIFORNIA, and PEACE
28 AND FREEDOM PARTY OF CALIFORNIA (hereinafter, "Plaintiffs") complain of
defendant DEBRA BOWEN, SECRETARY OF STATE OF CALIFORNIA, and allege:

1 candidates, receiving as much as 18% of the vote, were limited to participation in the
2 June primary. In accord with the stated intent of Prop. 14's drafters, the electoral
3 scheme has favored "moderate" candidates from the two major parties while excluding
4 those who represent minor party perspectives. Because the implementation of Prop. 14
5 was motivated by the discriminatory purpose to exclude minor party political
6 perspectives, and because defendant Bowen's implementation of Prop. 14 has in fact
7 excluded minor party candidates from the general election, even when those candidates
8 receive more than a "modicum of support," plaintiffs' rights under the Equal Protection
9 Clause of the 14th Amendment have been violated.
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12 4. For these reasons, plaintiffs ask this Court to enjoin, preliminarily and
13 permanently, any further enforcement of Prop. 14 and any other California statutes that
14 permit the abridgment of voter and political party rights of association, expression, and
15 equal protection.
16

17 **JURISDICTION AND VENUE**

18 5. Plaintiffs' claims for injunctive and declaratory relief arise under the First and
19 Fourteenth Amendments to the United States Constitution and article I, sections 2, 3,
20 and 7, and article IV, section 16 of the California Constitution. The Court's jurisdiction is
21 invoked under California Code of Civil Procedure sections 410.10, 526, and 1060.
22

23 6. Venue is proper in Alameda County. The present action is brought against a
24 state officer, Secretary of State Debra Bowen, based upon acts done by virtue of her
25 office. Plaintiffs Michael Rubin, Marsha Feinland, and Katherine Tanaka reside in
26 Alameda County and frequently support minor party candidates for office. Plaintiffs
27 Green Party of Alameda County, Libertarian Party of California, and Peace and
28 Freedom Party of California conduct political activities within Alameda County.

1 Plaintiff Feinland was a 2012 candidate for United States Senate representing the State
2 of California, and conducted campaign activities within Alameda County.

3
4 **PARTIES**

5 7. Plaintiff MICHAEL RUBIN is a resident of Oakland, California, and a member of
6 the Green Party of California and the Green Party of Alameda County. Mr. Rubin is also
7 a member of the State Coordinating Committee of the California Green Party and is an
8 alternate member of the Green Party USA, representing California. He is a regular voter
9 and supporter of Green Party candidates.

10 8. Plaintiff STEVE COLLETT is a resident of Venice, California. Mr. Collett is a
11 member of the Libertarian Party of California. He is a regular voter and supporter of
12 Libertarian Party candidates. In 2012, Mr. Collett ran a campaign for United States
13 Congress, 33rd Congressional District, as a candidate of the Libertarian Party.

14 9. Plaintiff MARSHA FEINLAND is a resident of Berkeley, California. Ms. Feinland
15 is a member of the Peace and Freedom Party of California. She is a regular voter and
16 supporter of Peace and Freedom Party candidates. In 2012, Ms. Feinland ran a
17 campaign for United States Senate as a candidate of the Peace and Freedom Party.

18 10. Plaintiff CHARLES L. HOOPER is a resident of Grass Valley, California. Mr.
19 Hooper is a member of the Libertarian Party of California. He is a regular voter and
20 supporter of Libertarian Party candidates. In 2012, Mr. Hooper ran a campaign for
21 California Assembly, District 1, as a candidate of the Libertarian Party.

22 11. Plaintiff KATHERINE TANAKA is a resident of Oakland, California. Ms. Tanaka
23 is a member of the Green Party of California and the Green Party of Alameda County.
24 She is a regular voter and supporter of Green Party candidates.

1 12. Plaintiff C. T. WEBER is a resident of Sacramento, California. Mr. Weber is a
2 member of the Peace and Freedom Party of California and serves as State Chairperson
3 for the Party. He is a regular voter and supporter of Peace and Freedom Party
4 candidates. He ran as a candidate for the California State Assembly, District 9, in 2012.
5

6 13. Plaintiff CAT WOODS is a resident of Novato, California. Ms. Woods is a
7 member of the Peace and Freedom Party of California. She is a regular voter and
8 supporter of Peace and Freedom Party candidates.

9 14. Plaintiff GREEN PARTY OF ALAMEDA COUNTY (GPAC) is a geographic
10 division of the Green Party of California, which is a qualified political party under the
11 California Elections Code. For the 2012 state and federal elections, the GPAC identified
12 and selected candidates to be the official endorsed candidates of the GPAC.
13

14 15. Plaintiff LIBERTARIAN PARTY OF CALIFORNIA is a statewide political party
15 that qualified for the ballot in 2012. For the 2012 state and federal elections, the
16 Libertarian Party identified and selected candidates to be its official endorsed
17 candidates.
18

19 16. Plaintiff PEACE AND FREEDOM PARTY OF CALIFORNIA is a statewide
20 political party that qualified for the ballot in 2012. For the 2012 state and federal
21 elections, the Peace and Freedom Party identified and selected candidates to be its
22 official endorsed candidates.
23

24 17. Defendant DEBRA BOWEN is Secretary of State of California. In her official
25 capacity, Secretary Bowen administered the 2012 primary and general elections in the
26 State of California.
27
28

///

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

5
6 22. In reality, however, the drafters intended to limit the field of political candidates
7 who could appear on the general election ballot. As Abel Maldonado, the self-described
8 legislative author of Prop. 14, declared in a January 24, 2012, sworn statement, the
9 purpose of Prop. 14 is to promote “pragmatic” political perspectives. Maldonado’s intent
10 is affirmed by the published 2010 ballot argument in favor of Prop. 14, in which
11 supporters wrote that “Proposition 14 will help elect more practical office-holders who
12 are more open to compromise.”
13

14 23. On information and belief, the Prop. 14 backers’ use of terms such as
15 “pragmatic” and “practical” were code words demonstrating their intent to eliminate
16 varying political perspectives from the statewide general election, including
17 perspectives advanced by minor political parties including plaintiffs Libertarian Party of
18 California, Peace and Freedom Party of California, and Green Party of Alameda County.
19

20 24. As a result of Prop. 14, candidates representing minor political parties have been,
21 *de facto*, precluded from consideration on the general election ballot.
22

23 25. 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.
28

1 26. In 2012, however, under defendant Bowen's implementation of Prop. 14, the vast
2 majority of the minor party candidates for United States Senate, United States House of
3 Representatives, State Senate, and State Assembly were denied access to the general
4 election ballot. Out of over 150 races governed by the "top two" electoral change, only
5 three minor party candidates advanced to the general election.¹ In other words, after the
6 implementation of Prop. 14, in some 98% of the elections for major state and federal
7 offices, the political parties were denied access to the general election ballot.

8
9 27. Numerous minor party candidates garnered substantial support in races for
10 major state and federal political offices. Nine candidates from the Green, Peace and
11 Freedom, and Libertarian parties received more than 5% of the vote. But none of those
12 nine were permitted to advance to the general election ballot.

13
14 28. Among the minor party candidates for United States Senator, Gail K. Lightfoot of
15 the Libertarian Party garnered 2.1% of the vote, and was the leading vote-getter from
16 her party. Plaintiff Marsha Feinland of the Peace and Freedom Party garnered 1.2% of
17 the vote, and was the leading vote-getter from her party. Neither candidate was
18 permitted to advance to the general election ballot.

19
20 29. Among the minor party candidates for various open seats for United States
21 Representative, several garnered substantial support. Douglas Arthur Tuma
22

23
24 ¹ The minor party candidates who appeared on 2012 general election ballots were: Mary
25 Catherine McIlroy (Peace and Freedom), candidate for State Senator, District 9; Lee H.
26 Chauser (Peace and Freedom), candidate for State Senator, District 33; and Eugene
27 Ruyle (Peace and Freedom), candidate for State Assembly, District 15. In all three
28 circumstances, no Republican candidate and only one Democratic candidate ran in the
primary. McIlroy received 0.6% of the votes in the primary, but nevertheless advanced;
Chauser received only 3 votes out of 35,858 votes cast, but was the second of two
candidates and advanced anyway; and Ruyle received 0.2% of votes but also advanced,
placing second out of two.

1 (Libertarian) earned 3.1% of the vote in the District 7 election. Barry Hermanson
2 (Green) earned 5.4% of the vote in District 12. Carol Brouillet (Green) earned 4.1% of
3 the vote in District 18. Eric Peterson (Green) earned 2.1% of the vote in District 20.
4 Michael W. Powelson (Green) earned 2.1% of the vote in District 30. In District 33,
5 David William Steinman (Green) earned 3.5% of the vote while plaintiff Steve Collett
6 (Libertarian) earned 4.3%. Anthony W. Vieyra (Green) was the leading minor party
7 vote-getter in 2012, earning 18.6% of the vote in District 35. Yet neither Vieyra nor any
8 of the other minor party candidates for U.S. Representative were permitted to advance
9 to the general election.
10

11
12 30. Among the minor party candidates for State Senator, John H. Webster
13 (Libertarian) earned 15.4% of the vote in District 13, but was denied access to the
14 general election ballot.

15
16 31. Several minor party candidates for State Assembly also garnered substantial
17 support, but were denied access to the general election ballot. These include: David
18 Edwards (Green), who earned 6.1% of the vote in District 1; plaintiff Charley Hooper
19 (Libertarian), who earned 5.4% of the vote in District 1; Pamela Elizondo (Green), who
20 earned 8.8% of the vote in District 2; Janice Marlae Bosner (Libertarian), who earned
21 4.3% of the vote in District 8; plaintiff C. T. Weber (Peace and Freedom), who earned
22 3.0% of the vote in District 9; and John Paul Lindblad (Green), who earned 7.6% of the
23 vote in District 39.
24

25
26 32. Because the California general election ballot is the moment of peak participation
27 by voters, media, and the candidates themselves, defendant Bowen's implementation of
28 Prop. 14 excluded voters from minor political parties from effective civic engagement at
the most important stage of the electoral process. California's decision to hold the

1 primary election in June, five months before the general election, accentuates the
2 exclusion of the minor parties from participation at times when voters' interest in the
3 political process is at its highest. Substantially greater numbers of voters participate in
4 the general election as opposed to the primary election.
5

6 33. In 2012, a total of 5,328,296 voters participated in the statewide primary
7 elections held on June 5, 2012. By comparison, a total of 13,202,158 voters participated
8 in the statewide general election held on November 6, 2012.

9 34. Thus, for political parties that previously had access to the general election ballot,
10 Prop. 14 reduced their ability to reach individual voters by nearly 60%. Some eight
11 million voters participated in the general election who did not participate in the primary
12 election; only a tiny fraction of these voters had access to minor party candidates or
13 minor party perspectives when they prepared to cast their ballot in the general election.
14 Furthermore, because Bowen held the primary election in June, a full five months
15 before the November general election, the minor parties' ability to influence the political
16 debate was further diminished, and whatever messages the parties were able to
17 disseminate during their primary election participation had likely dissipated by the time
18 the general election occurred.
19
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21 35. The State of California does not possess regulatory interests that are sufficiently
22 compelling to justify Prop. 14's intrusion on voter, candidate, and minor party rights.
23

24 36. Since Secretary Bowen's implementation of Prop. 14 on January 1, 2011,
25 California voters who support minor political parties, including the individual plaintiffs,
26 have suffered a "chilling effect" on their rights of political association. On information
27 and belief, because candidates of minor political parties no longer have a realistic
28 chance to appear on a general election ballot, fewer individuals have undertaken

1 political campaigns on behalf of the minor parties, and the minor parties themselves
2 suffer a threat of diminution or even destruction. As a result, the minor party voter
3 plaintiffs suffer a substantially diminished ability to effectively participate in the
4 electoral process as members of minor political parties.
5

6 37. In addition, since Bowen's implementation of Prop. 14, California voters from
7 major parties have suffered and will suffer from a marked decrease in candidate
8 viewpoints on general election ballots. Voters no longer have the opportunity to review
9 candidate statements from minor political parties and are denied a free and full
10 exchange of ideas in connection with the electoral issues to be decided.
11

12 38. If defendant's implementation of Prop. 14 is not enjoined, plaintiffs will continue
13 to suffer deprivations of their constitutional rights under the United States and
14 California Constitutions. The declaratory and injunctive relief sought by plaintiffs, on
15 the other hand, will end an electoral scheme that actively deprives minor party voters,
16 minor party candidates, and the minor parties themselves of established rights of
17 political association and equal protection.
18

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

22 39. Plaintiffs reallege and fully incorporate herein paragraphs 1 through 38, above.

23 40. Prop. 14, as applied, has unconstitutionally burdened the rights of minor party
24 voters, minor party candidates, and the minor parties themselves from effective
25 participation in California's general elections, even when those parties and candidates
26 demonstrated substantial support in the primary election. Although plaintiffs still have
27 the opportunity to participate in a primary election, defendant's implementation of
28 Prop. 14 demonstrated that the primary election is an inadequate substitute. In 2012,

1 nearly five months passed between the primary and general elections, and eight million
2 more voters participated in the general election, as compared to the primary. Because
3 Prop. 14 has severely burdened voter, candidate, and party rights without fulfilling a
4 compelling state interest, it should be declared unconstitutional under the First and
5 Fourteenth Amendments to the U.S. Constitution, and article 1, sections 2 and 3 of the
6 California Constitution.
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8
9 **SECOND 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 41. Plaintiffs reallege and fully incorporate herein paragraphs 1 through 40, above.

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

16 43. Defendant's implementation of Prop. 14 withdrew an established right from
17 plaintiffs, namely, the right of minor political parties, their voters, and their candidates
18 to participate in statewide general elections. The drafters of Prop. 14 intended this
19 result: in order to achieve their desire to elect "pragmatic" or "practical" politicians, they
20 have intentionally excluded the standard-bearers from minor political parties from
21 participating in general elections. Because Prop. 14 drafters were motivated by an
22 invidious purpose when they enacted electoral reform, and because Secretary Bowen's
23 implementation of Prop. 14 in 2012 denied numerous well-supported minor party
24 candidates from participating in the general election, plaintiffs' equal protection rights
25 have been violated, and Prop. 14 should be enjoined.
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1 **IRREPARABLE INJURY**

2 44. Plaintiffs are now severely and irreparably injured by Prop. 14, a state law that
3 violates the First Amendment and the Fourteenth Amendment of the United States
4 Constitution as well as article 1, sections 2, 3, and 7 and article IV, section 16 of the
5 California Constitution. In 2012, defendant Bowen denied plaintiff minor party voters
6 Rubin, Collett, Feinland, Hooper, Tanaka, Weber, and Woods the ability to effectively
7 participate as members of their respective political parties in the general election. In
8 2012 Bowen denied plaintiff minor party candidates Collett, Feinland, Hooper, and
9 Weber the ability to communicate their message to general election voters. And in 2012
10 Bowen denied plaintiffs Green Party of Alameda County, Libertarian Party of California,
11 and Peace and Freedom Party of California the right to participate in general elections.
12 Plaintiffs' injuries will be redressed only if this Court declares Prop. 14 unconstitutional
13 and enjoins defendant Bowen from further enforcing it.
14
15

16 45. An actual and judicially cognizable controversy exists between plaintiffs and
17 defendant regarding whether Prop. 14 violates the First Amendment and the Fourteenth
18 Amendment of the United States Constitution and article 1, sections 2, 3, and 7 and
19 article IV, section 16 of the California Constitution. Defendant is presently enforcing
20 this state law to the detriment of plaintiffs.
21
22

23 **PRAYER**

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

- 26 1. A declaratory judgment, pursuant to California Code of Civil Procedure section
27 1060, holding that:
28

1 a. Prop. 14 violates the rights of minor political parties and registered
2 members of minor political parties under the First and Fourteenth
3 Amendments of the United States Constitution, 42 U.S.C. §1983, and article
4 1, sections 2, 3, and 7 and article IV, section 16 of the California Constitution
5 by barring minor political parties and voters registered with such parties
6 from effective participation in general elections;

7
8 b. Prop. 14 violates the rights of plaintiffs under the Equal Protection Clause
9 of the Fourteenth Amendment and the equal protection rights of the
10 California Constitution, by withdrawing established rights and privileges
11 from minor political parties, their candidates, and their supporters. Prop. 14
12 converted plaintiff minor parties into “second class” parties which, unlike the
13 major political parties, are denied the ability to access the voters at the
14 moment of peak political participation, the statewide general election.

- 15
16
17 2. Injunctive relief including a preliminary injunction and a permanent injunction
18 against defendant Bowen enjoining enforcement of Prop. 14 in whole or in part;
- 19 3. Attorneys’ fees;
- 20 4. Costs of suit; and
- 21 5. Such other and further relief as the Court may deem proper.

22 Dated: February 14, 2013

23 SIEGEL & YEE

24
25
26 By 

Dan Siegel
Michael Siegel

27
28 Attorneys for Plaintiffs
MICHAEL RUBIN, *et al.*

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PROOF OF SERVICE

I, BARBRA FRANK, 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 February 14, 2013, I served copies of the following documents:

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

on the parties to this action by mailing the documents 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 February 14, 2013, at Oakland, California.



Barbra Frank