

No. A140387

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In the Court of Appeal of the State of California  
First Appellate District, Division One

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**MICHAEL RUBIN, et al.,**

*Plaintiffs and Appellants,*

v.

**DEBRA BOWEN, as Secretary of State, et al.,**

*Defendants and Respondents,*

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

*Interveners and Respondents.*

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**INTERVENER/RESPONDENTS'  
OBJECTION TO THE IMPROPER AMICUS  
BRIEF OF THE GREEN PARTY OF CALIFORNIA**

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From Order of the Superior Court of Alameda County  
The Honorable John Lawrence Appel, Presiding  
Superior Court Case No. RG11605301

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NIELSEN MERKSAMER

PARRINELLO GROSS & LEONI LLP

James R. Parrinello, SBN 63415

Marguerite Mary Leoni, SBN 101696

Christopher E. Skinnell, SBN 227093

2350 Kerner Boulevard, Suite 250

San Rafael, California 94901

Tel: (415) 389-6800; Fax: (415) 388-6874

*Attorneys for Interveners and Respondents*

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

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Intervener-Respondents oppose the request of the Green Party of California, filed on August 6, 2014, to file an amicus brief in this case. That request is wholly improper.

The Green Party of Alameda County is *already an appellant* in this case, and it is—by its own binding admission, as reflected in the Second Amended Complaint—merely “a geographic division of the Green Party of California, which is a qualified political party under the California Elections Code.” (See Appellants’ Appendix, Vol. I, p. 5 [Second Amended Complaint, ¶ 14].) Pursuant to state law, the Green Party of Alameda County acts “under general direction of the state central committee” (*i.e.*, the state party). Elec. Code § 7880.<sup>1</sup>

The amicus brief process is not designed to permit a party to a lawsuit to evade the page-limits on appellate briefing by filing a supplemental brief in the guise of an amicus brief. *Cf. Finnie v. Town of Tiburon*, 199 Cal. App. 3d 1, 16-17 (1988) (imposing sanctions on counsel who filed an improper amicus brief that was really “nothing more than a supplemental appellants’ brief raising a different issue”).<sup>2</sup>

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<sup>1</sup> Elections Code § 7880 falls within a Part of Division 7 of the Elections Code that governs the political party structure of the Peace & Freedom Party. However, as the Green Party of California notes on its website (see <http://www.cagreens.org/ga/2012-05/elections-code>), “[w]hen a political party qualifies for the ballot in California, by state law it must choose to operate under the Elections Code of another ballot qualified party, until it can get its own passed by the legislature. The Code primarily addresses two topics: Presidential Primaries and Party structure. [¶] When the Green Party of California (GPCA) qualified for the ballot in January 1992, it chose the elections code of the Peace & Freedom Party.”


<sup>2</sup> Additionally, the lead Appellant in this appeal—Michael Rubin—is himself “a member of the State Coordinating Committee of the California Green Party[.]” (See Appellants’ Appendix, Vol. I, p. 4 [Second Amended Complaint, ¶ 7].)

If the Court is nevertheless inclined to grant the request, Intervener-Respondents respectfully request that they be given 30 days from the date of the order permitting the brief's filing to file an answer thereto.

August 8, 2014

Respectfully submitted,

NIELSEN MERKSAMER  
PARRINELLO GROSS & LEONI LLP

By:   
Marguerite Mary Leoni  
Christopher E. Skinnell

*Attorneys for Interveners/Respondents*  
CALIFORNIANS TO DEFEND THE OPEN  
PRIMARY, INDEPENDENT VOTER PROJECT,  
ABEL MALDONADO, AND DAVID  
TAKASHIMA

**PROOF OF SERVICE**

I, KERI L. HARMON, 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 2350 Kerner Boulevard, Suite 250, San Rafael, California 94901, and my electronic service address is [kharmon@nmgovlaw.com](mailto:kharmon@nmgovlaw.com).

On August 8, 2014, at approximately 2:30 p.m., I electronically served a copy of the:

- 1. Intervener/Respondents’ Objection To The Improper Amicus Brief Of The Green Party Of California.**

on the parties in this action by filing the document with the First District Court of Appeal’s electronic filing system pursuant to Rule 8.71(f) and First District Court of Appeal Local Rule 16(j). The electronic service addresses for the parties are:

Dan Siegel  
[dan@siegelyee.com](mailto:dan@siegelyee.com); [danmsiegel@gmail.com](mailto:danmsiegel@gmail.com)  
Michael Siegel  
[michael@siegelyee.com](mailto:michael@siegelyee.com)  
SIEGEL & YEE

Kari Krogseng  
[Kari.Krogseng@doj.ca.gov](mailto:Kari.Krogseng@doj.ca.gov)  
Peter Chang  
[Peter.Chang@doj.ca.gov](mailto:Peter.Chang@doj.ca.gov); [pchang@kirkland.com](mailto:pchang@kirkland.com)  
OFFICE OF THE STATE ATTORNEY GENERAL

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And on counsel for proposed amicus Green Party of California by filing the document with the First District Court of Appeal's electronic filing system pursuant to Rule 8.71(f) and First District Court of Appeal Local Rule 16(j). The electronic service address for proposed amicus curiae's counsel is:

Gautam Dutta  
[dutta@businessandelectionlaw.com](mailto:dutta@businessandelectionlaw.com)  
BUSINESS, ENERGY, AND ELECTION LAW, PC

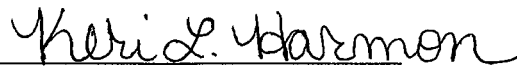
And mailed to:

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Appeals Division  
1225 Fallon Street  
Oakland, California 94612-4293

And an electronic copy sent via the First District Court of Appeal's electronic filing system, pursuant to Rule 8.212(c)(2), to:

Clerk, Supreme Court of California  
350 McAllister Street  
San Francisco, California 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 8, 2014, at San Rafael, California.

  
KERI L. HARMON