No. A140387

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

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.

INTERVENER/RESPONDENTS' RESPONSE TO THE AMICUS BRIEF OF THE CALIFORNIA GREEN PARTY

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

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL AUTHORITIES

STATUTES

OTHER AUTHORITIES

I.

INTRODUCTION.

The amicus brief of the Green Party of California adds virtually nothing to the briefing of the Plaintiffs—certainly nothing that would change the fact that the Top Two Candidate Open Primary system enacted by Proposition 14 is entirely constitutional.

II.

AMICUS GREEN PARTY OFFERS NO ARGUMENT AT ALL TO SUPPORT PLAINTIFFS' EQUAL PROTECTION CLAIM.

As an initial matter, it is worth noting that while Plaintiffs advance two claims in this appeal—a First Amendment claim relating to the parties' ballot access rights and a claim under the equal protection clause—Amicus Green Party of California focuses its attention solely on the first of these, making no effort at all to argue that there is merit to the equal protection claim.

III.

AMICUS GREEN PARTY DOES NOTHING TO ADVANCE PLAINTIFFS' BALLOT ACCESS CLAIM EITHER.

A. Amicus Green Party Is Just Plain Wrong—Proposition 14 Is Not A "Partisan" Electoral System.

Amicus Green Party spills considerable ink in a futile effort to deny the obvious proposition recently articulated by the Ninth Circuit, and implicitly conceded by Plaintiffs, that Proposition 14 has "fundamentally changed the California election system by eliminating party primaries and general elections with party-

nominated candidates, *and substituting a nonpartisan primary and a two-candidate runoff*." *Chamness v. Bowen*, 722 F.3d 1110, 1112 (9th Cir. 2013) (emphasis added).

This fact is crucial, because political parties have no right to access a nonpartisan ballot. "[I]n a non-partisan election the party system is not an integral part of the elective machinery and the individual's right of suffrage is in no way impaired by the fact that he cannot exercise his right through a party organization." *Communist Party of United States v. Peek*, 20 Cal. 2d 536, 543-44 (1942). Plaintiffs have never cited any case to the contrary, nor does Amicus Green Party.

Apparently recognizing the importance of this implicit concession by Plaintiffs, Amicus Green Party does attempt to dispute the premise that Proposition 14's system is nonpartisan, but its arguments are wholly unavailing. In support of its position that Proposition 14's Top Two system is, in fact, a partisan system, Amicus Green Party notes the three following facts:

1. Candidates may choose to identify the qualified political party that they prefer on the ballot;
2. In many "nonpartisan" systems in California, candidates who receive 50% of the vote in the first round of voting are elected, without the need for a second round of voting; and
3. Proposition 14 prohibits the casting of write-in votes at the general election (though it permits write-in votes at the primary).

Regarding the first of these points, the fact that the candidates may choose to share their political party "preference" with the voters does not render Proposition 14 a "partisan" system. Proposition 14 is

modeled closely on the "nonpartisan blanket primary" that the Supreme Court described—and assumed to be constitutional—in *Cal. Democratic Party v. Jones*, 530 U.S. 567, 585-86 (2002). And while the hypothetical system described in *Jones* did not feature an option for candidates to disclose their party "preference," in *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008) ("*Washington I*"), the Supreme Court considered a Top Two system that—like California's—did authorize candidates to list their "party preference" on the ballot. In *Washington I*, the Court expressly rejected the notion that this was a distinction of constitutional significance.

The *Jones* and *Washington I* Courts held that the crucial distinction between a "partisan" blanket primary and a nonpartisan blanket primary was the fact in the latter case that "[p]rimary voters [were] not choosing a party's nominee." *Washington I*, 552 U.S. at 585-86. That is just as true under Proposition 14 as it is under Washington's system. Article II, § 5(b), of the California Constitution expressly provides that "A political party or party central committee *shall not nominate* a candidate for any congressional or state elective office at the voter-nominated primary." *See also* Elec. Code §§ 334 & 359.5.

Amicus objects that in California, candidates may only disclose a "preference" for a qualified party, but—again—that does not change the fact that no party has a right of access to the ballot (primary or general), and that the function of the primaries is no longer to choose parties' nominees. "The party preference designated

by the candidate is shown for the information of the voters only..." Elec. Code § 8002.5(c).[1]

As to the second point, it is true that in California the need for a runoff for many non-partisan offices is avoided if a candidate gets 50% of the vote at the primary. But Amicus itself acknowledges the reason that this is not the case under Proposition 14—federal law prohibits elections for federal offices from being decided prior to the election date specified in the United States Code, which is the first Tuesday after the first Monday in November of even years. *Foster v. Love*, 522 U.S. 67 (1997).

Moreover, the fact that such an "optional runoff" approach is a *common* feature of nonpartisan elections does not mean that it is an *essential* feature of nonpartisan elections.[2] Again, the essence of nonpartisan elections under California law—as is true of nonpartisan elections generally—is that no party may nominate a candidate for the ballot. This is as true of "voter-nominated" offices under Proposition 14 as it is for those offices formally designated "nonpartisan" by the Elections Code.

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[1] In this respect, it is like the provisions of the Elections Code permitting candidates to identify their occupation on the ballot. *See* Elec. Code § 13107. But the fact that a candidate may identify himself as a "lawyer" on the ballot does not mean that the legal profession has access to the ballot, or that candidates engaged in all other professions must therefore be given access to the general election ballot if they obtain 5% of the vote at the primary.

[2] *See, e.g., Siefert v. Alexander*, 608 F.3d 974, 978 (7th Cir. 2010) (describing Wisconsin's nonpartisan method of electing judicial officers, which features both a primary and a runoff); *Minn. Voters Alliance v. City of Minneapolis*, 766 N.W.2d 683, 685 (2009) (describing Minneapolis's former municipal election system, which "used a nonpartisan primary and general election format. For a single-seat election, all qualifying candidates ran in the same nonpartisan primary, and the top two vote-getters in the primary election qualified to be on the general election ballot.").

Third, Amicus Green Party makes much of the fact that write-in votes are prohibited at the general election, and Amicus Green Party clearly disagrees with that policy. (Notably, Amicus Green Party is represented by the same counsel who has twice before challenged—unsuccessfully—Proposition 14's restriction on write-in voting at the general election, in *Field v. Bowen*, 199 Cal. App. 4th 346 (2011), and *Chamness v. Bowen*, 722 F.3d 1110 (9th Cir. 2013).) However, Amicus never adequately explains how that fact renders Proposition 14 a "partisan" electoral system. There is, in fact, a recent precedent of the California Supreme Court upholding such an approach in indisputably nonpartisan systems. *Edelstein v. City & County of San Francisco*, 29 Cal. 4th 164 (2002) (rejecting challenge to San Francisco's former ban on write-in voting at the runoff for nonpartisan municipal elections against constitutional challenge).

Finally, Amicus makes the point an advocacy group called FairVote has urged a "Top Four" election system using Ranked Choice (*i.e.*, "Instant Runoff") Voting. The significance of this fact is also not explained. Though FairVote is, of course, free to advocate any election system it wishes, that fact has no bearing on the constitutionality of the actual system that California's voters have chosen—particularly when that actual system is one that the United States Supreme Court has determined to be constitutional. With all due respect to FairVote, its policy views carry less weight with respect to the constitutionality of Proposition 14 than do the pronouncements of the Supreme Court.

B. Amicus Green Party's Claim That Proposition 14 Has Prohibitively Increased Candidates' Costs Is A Red Herring.

Amicus Green Party also attempts to argue that under Proposition 14 the costs of participating in elections have become prohibitive for "minor" parties, due to the combination of (1) supposedly onerous filing fees, (2) helping candidates publish a statement in the voter guide, and (3) a desire for the party to support the grassroots campaigns of its preferred candidates.

This argument is wholly without merit.

First of all, the normal rule of appellate briefing is that the courts will not consider new issues—like this one—that are raised for the first time by *amicus curiae*. Plaintiffs herein have never challenged any of the cost statutes that the Green Party objects to.

But even leaving that aside, most of the costs that the Green Party complains of are not attributable to Proposition 14 at all, and therefore have no bearing on the constitutionality of that measure.

Additionally, local offices are subject to costs that are comparable to most of those complained of, as much as to the "voter-nominated" offices governed by Proposition 14, yet those costs have apparently not prevented Green Party candidates from establishing what is, by its own characterization, a "[p]roven [r]ecord of [e]lectoral [s]uccess" at the local level. (Amicus Brief, p. 1.)

Third, with respect to changes to the option to file signatures in lieu of paying a filing fee, those signature thresholds have previously been upheld against constitutional attack. Moreover, the Green Party's real complaint is that it is no longer able to take advantage of a special rule that applied only to minor parties, but it never explains why—in view of Proposition 14's abolition of a partisan system—it should be exempt from generally applicable rules

that have long governed ballot access for (1) major party candidates for partisan offices, (2) independent candidates for partisan office, and (3) candidates for nonpartisan offices.

1. These issues, which were never previously raised by Plaintiffs, are not properly raised for the first time by *amicus curiae*.

Before addressing the merits of the Green Party's contentions on this point, it is worth noting that Plaintiffs herein have *never* challenged—in either the trial court or in this Court—the filing fee statutes, the candidate statement statutes, or the in-lieu petitioning statutes. "[The] rule is universally recognized that an appellate court will consider only those questions properly raised by the appealing parties. *Amicus curiae* must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by *amicus curiae* will not be considered [citations]." *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 711 (1984) (quoting *Younger v. State of Cal.*, 137 Cal. App. 3d 806, 813-14 (1982)) (internal quotation marks omitted).

2. Most of the costs complained of are not attributable to Proposition 14, and therefore have no bearing on questions of that measure's constitutionality.

Additionally, of the costs that the Amicus Green Party identifies as burdensome, the most expensive (as least based on the numbers the Green Party's amicus letter provide) are the cost of publishing a candidate statement in the ballot—purportedly as much as $9,729.74 for the office of Governor. The Green Party urges that

these costs "rais[e] potential constitutional issues." (Amicus Brief, p. 5.)[3]

But the Green Party conveniently glosses over a crucial—indeed, dispositive—fact: that *the methodology for determining and charging the cost of candidate statements was exactly the same under the pre-Proposition 14 partisan system*. Neither Proposition 14 nor its implementing legislation made *any* change to the statutes governing the State's ability to charge such costs. There is no connection whatsoever between Proposition 14 and these costs. Consequently, those costs have no bearing on the question of whether the voters' adoption of Proposition 14 has impaired the rights of the "minor" parties or their supporters in the electorate.[4]

Similarly, neither Proposition 14 nor its implementing legislation made any change to the candidate filing fee statutes. Those fees, and the statutes prescribing them, pre-date Proposition 14 by decades.

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[3] This insinuation of unconstitutionality is merely empty rhetoric. The courts have *repeatedly* upheld the right of the State to charge candidates a fee for including their candidate statement in the ballot pamphlet, concluding that there is "no fundamental right to have candidates' campaigns publicly funded."*NAACP v. Jones*, 131 F.3d 1317, 1323 (9th Cir. 1997), *cert. denied*, 525 U.S. 813 (1998); *Kaplan v. County of Los Angeles*, 894 F.2d 1076 (9th Cir. 1990), *cert. denied*, 496 U.S. 907 (1990); *Mackey v. Panish*, 106 Cal. App. 3d 7 (1980).

[4] *See Rubin v. City of Santa Monica*, 308 F.3d 1008, 1019-20 (9th Cir. 2002), *cert. denied*, 540 U.S. 875 (2003) (plaintiff could not seek to enjoin Secretary of State's regulations regarding contents of voter pamphlet when "[plaintiff] cannot establish that [the Secretary's] conduct *caused* the constitutional injury he claims."); *Swanson v. Worley*, 490 F.3d 894, 903 n.10 (7th Cir. 2007) (candidates whose alleged injury was not "fairly traceable" to the challenged ballot access rule lacked standing to maintain that challenge).

And finally, with respect to the Party's desire to spend funds to help its candidates, the costs of private campaign activity cannot be attributed to the State for purposes of this constitutional analysis. *See NAACP v. Jones*, 131 F.3d at 1323 ("We refuse to attribute societal differences in income or the high cost of running a judicial campaign to the State."). Nor does the State have a constitutional obligation to refrain from charging its reasonable costs so as to effectively subsidize private political parties' campaign activities. *See id.* (the fact that voters' relative lack of wealth made them less able to contribute financially to support their preferred candidates did not impose a constitutional obligation on the State to print candidates' ballot statements for free).

3. The Green Party makes no effort to explain why these costs are supposedly prohibitive when comparable costs, applicable to local candidates, have not prevented it from establishing an "impressive track record on the local level."

The State charges local, nonpartisan candidates a fee to place their statements in the voter pamphlet, just as it does "voter-nominated" candidates under Proposition 14. *See* Elec. Code § 13307(c). And candidates for many local offices, such as county supervisors, are also required to pay substantial filing fees. Elec. Code § 8104. So are candidates for municipal offices in many charter cities.

For example, when Green Party-supported candidate Gayle McLaughlin was re-elected Mayor of Richmond in 2010 (a victory that Amicus Green Party touts as a sign of its electoral strength, *see* Amicus Brief, p. 4), she was required to pay a filing fee of 2% of the salary of the office of Mayor, or $930.00. *See* Richmond Charter art.

V, § 2.[5] This is virtually identical to the fee required to run for State Senate or Assembly ($952.91, *see* Amicus Brief, p. 4.) Alternatively, a candidate for Mayor could—if he or she certified that he or she was financially unable to pay the filing fee—submit 3,720 signatures in lieu thereof. By way of comparison, candidates for the State Senate and U.S. House of Representatives need only submit 3,000 signatures (approximately 20% fewer), and candidates for the State Assembly need only submit 1,500 (fewer than half). Elec. Code § 8106. And, like the State of California, the City of Richmond charges municipal candidates a fee to publish their candidate statement in the sample ballot. *See* Richmond Muni. Code § 2.16.080.

Likewise, as the Justices on this panel are surely aware, candidates for the California Supreme Court, the courts of appeal, and the superior courts—none of which are governed by Proposition 14—must also pay such fees. *See* Elec. Code §§ 8103(a)(1) & (2), 8104 and 13307(f). For example, in 2014, a candidate for the Alameda County Superior Court (*i.e.*, the court in which this very case was brought) was required to pay a filing fee of $1,813, or submit 7,252 signatures "in lieu" to run for office.[6] And if that candidate wished to publish a candidate qualification statement in

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[5] Since 2007, the annual salary of Richmond's Mayor is $46,500 ($3875/month). *See* City of Richmond, *Mayor and Council Salary Schedule: Effective 2007, available online at* http://www.ci.richmond.ca.us/DocumentCenter/Home/View/6197 (last visited Aug. 18, 2014). Two percent of that amount is $930.

[6] *See* County of Alameda Registrar of Voters, *Candidate Guide: June 3, 2014 Direct Primary Election, available online at* http://www.acgov.org/rov/documents/CandidateGuide2014-06-03v4.pdf (last visited Aug. 18, 2014), p. 28.

the sample ballot, he or she would have to pay an additional cost of several thousands of dollars.[7]

Despite these facts, Amicus Green Party has made no effort to explain why such filing fees and "candidate statement" costs are unconstitutionally prohibitive in the context of statewide and legislative offices, though comparable fees do not prevent the Green Party from successfully supporting hundreds of candidates at the local level, having "a success rate [in 2011 and 2013] of 65 percent." (Amicus Brief, p. 2 [underline in original].)

4. The "minor" parties have no constitutional entitlement to a special dispensation that exempts them from petitioning requirements that are applicable to all other candidates, and which have previously been upheld against constitutional challenge.

The real objection of Amicus Green Party is their loss of a special privilege. Until 2012, "minor" parties were given a special indulgence that allowed to them avoid generally-applicable filing fees with respect to state (but not local or nonpartisan) offices. That privilege was repealed in 2012. Notably, the Plaintiffs herein have never challenged the statute (Assembly Bill 1413)[8] that repealed that exception.

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[7] The exact cost charged by the Alameda County Registrar does not appear to be available online, but neighboring Contra Costa County charged Superior Court candidates $5,310 to publish a candidate statement in the June 3, 2014 sample ballot. *See* Elec. Staff of the Contra Costa County Clerk-Recorder, Registrar of Voters, *Contra Costa County Candidate Guide (2014), available online at* http://www.cocovote.us/wp-content/uploads/2014_Candidate Guide_op.pdf (last visited Aug. 18, 2014), p. D-1.

[8] *See* Assem. Bill 1413 (2011-2012 Reg. Sess.), *codifed at* Stats. 2012, ch. 3, § 18.

Candidates for all offices—state and local—have long had the option of reducing their filing fees by filing signatures from specified numbers of voters "in lieu" of the filing fee. *See* Elec. Code § 8106. Major party and independent candidates for partisan offices, and all local candidates, such as candidates for nonpartisan offices like county supervisor and judicial offices, were subject to the same "in lieu" signature requirements. Those signature thresholds, including the most onerous—the 10,000 signature requirement for statewide office—have been repeatedly upheld against constitutional attack in challenges brought by independent candidates. *Andress v. Reed*, 880 F.2d 239 (9th Cir. 1989); *Cross v. Fong Eu*, 430 F. Supp. 1036, 1040 (N.D. Cal. 1977) (granting motion to dismiss with prejudice).

The same "in lieu" thresholds applicable to all other candidates now apply to the Green Party, but they wish to retain their special accommodation.

Prior to 2012, state law cut the minor parties a break, allowing their candidates to qualify for the ballot for partisan elections (but not local elections or nonpartisan state elections) by meeting a reduced signature threshold. Former Elections Code § 8106(a)(6) provided,

> Notwithstanding any other provision of this section, a candidate seeking the nomination of a qualified party with whom he or she is registered, the registered voters of which who were eligible to vote at the last statewide election constituted less than 5 percent of all registered voters eligible to vote at the last statewide election, may submit a petition containing signatures of 10 percent of the registered voters of that party in the district in which he or she seeks nomination, or 150 signatures, whichever is less.

Again, that special rule was repealed in 2012.

Leaving aside that it was not Proposition 14 or even Senate Bill 6—the Proposition's initial implementing legislation—that made this change, there was nothing improper about it.

First of all, Section 8106(a)(6) only made sense under the former partisan system, where candidates *were* "seeking the nomination of a qualified party with whom he or she is registered"—as they no longer are.

Moreover, Amicus Green Party fails to explain why the minor parties are entitled to special treatment on this score. The Green Party objects that it lacks the fundraising power of the "major" parties, to help its candidates pay the filing fees, but *independent* candidates have always been subject to the signature requirements that the Party objects to, and—as noted above—the application of those signature thresholds to independent candidates has been repeatedly upheld against constitutional attack.

Indeed, given that under Proposition 14 all candidates are subject to the same rules for accessing the primary (and general) ballot—regardless of their political party, or lack thereof—continuing to giving "minor" party candidates special treatment on this score would, itself, raise serious constitutional questions as a matter of equal protection. It would, functionally, serve as a subsidy to those parties' preferred candidates, which is not available to major party candidates and those candidates declining to identify a preferred political party.

And finally, Plaintiffs herein have acknowledged all along that the State has a legitimate interest in requiring would-be candidates to demonstrate a "modicum of support" to appear on the ballot. As recognized by the courts in *Andress* and *Cross*, which upheld these requirements, this interest is served by the signature requirements

that the Green Party complains of. After all, there are more than 17 million registered voters in the State of California, so a 10,000 signature requirement for a statewide office is only 0.056% of the registered Statewide voters.[9]

C. The Green Party's "Legal Analysis" Offers Nothing New Or Different From Plaintiffs' Arguments.

Finally, the Green Party's legal analysis really just parrots that already offered by Plaintiffs. *Wash. State Republican Party v. Wash. State Grange*, 676 F.3d 784 (9th Cir.), *cert. denied*, 133 S. Ct. 110 (U.S. 2012) ("*Washington II*"), rejected a virtually identical ballot access claim *as a matter of law*. Like Plaintiffs, the Green Party implicitly seeks to distinguish *Washington II* on the same familiar grounds: that turnout at the primary is lower than turnout at the general election, and that the primary takes place sooner in California (early June) than in Washington (a mere two months later, in early August). Intervener/Respondents have already addressed these points, and more importantly the courts have already dispensed with them.[10] Accordingly, Interveners will not engage in an extended repetition of their prior arguments.

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[9] *See* Cal. Sec'y of State, *May 19, 2014 – Report of Registration, online at* http://www.sos.ca.gov/elections/ror/ror-pages/15day-primary-2014/ (last visited August 13, 2014).

[10] *See, e.g., Munro v. Socialist Workers Party*, 479 U.S. 189, 198 (1986) (statutory scheme that permitted easy access to the primary election, but restricted access to the general election ballot, was not made unconstitutional by the fact that turnout was substantially lower at the primary than at the general did not create constitutional injury); *Lawrence v. Blackwell*, 430 F.3d 368, 373-75 (6th Cir. 2005), *cert. denied*, 547 U.S. 1178 (2006) (upheld Ohio's *March* filing deadline *as a matter of law*, where all candidates were subject to the same deadline, and holding it to be a "vital distinction" that the deadline in *Anderson v. Celebrezze*, 460 U.S. 780 (1983),

The Green Party also contends that—due to the restriction on write-in voting (which has been repeatedly upheld against constitutional challenge) and the "increased costs" addressed above—Proposition 14 "limit[s] the field of candidates from which a voter might choose," and based on this they urge that strict scrutiny applies. That is simply not the case.

Even accepting the Green Party's claims at face value, the Supreme Court has held that "Election laws will invariably impose some burden upon individual voters." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). "[T]o subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest . . . would tie the hands of States seeking to assure that elections are operated equitably and efficiently." *Id.* "Accordingly, the mere fact that a State's system 'creates barriers . . . tending to limit the field of candidates from which voters might choose . . . does not of itself compel close scrutiny.'" *Id.* (quoting *Bullock v. Carter*, 405 U.S. 134, 143 (1972)). Rather, "a more flexible standard applies." *Id.* at 434 (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983)).

When considering a constitutional challenge to a state election law, courts must "weigh the character and magnitude" of the burden the State's rule imposes on the rights at issue against the interests the State contends justify that burden, "taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Id.*; *Rubin*, 308 F.3d at 1014.

It was by applying this very balancing test that the Ninth Circuit concluded, in *Washington II*, that (1) the burdens of

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applied only to independent candidates, whereas party candidates had an additional five months to file papers).

Washington's top-two system—on which California's is so closely modeled—imposes "slight" burdens on minor parties' ballot access rights; that (2) strict scrutiny was therefore not applicable; and (3) that such systems are constitutional as a matter of law. The same result is warranted here, and the Green Party does not establish otherwise.

IV.

CONCLUSION.

For the foregoing reasons, the judgment in this action should be AFFIRMED.

Respectfully submitted,

August 18, 2014

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CERTIFICATION OF BRIEF LENGTH

Christopher E. Skinnell, Esq., declares:

1. I am licensed to practice law in the State of California, and am one of the attorneys of record for Intervener/Defendants and Respondents CALIFORNIANS TO DEFEND THE OPEN PRIMARY, INDEPENDENT VOTER PROJECT, ABEL MALDONADO, AND DAVID TAKASHIMA in this action. I make this declaration to certify the word length of the Intervener/Respondents' Response to the Amicus Brief of the California Green Party.

2. I am familiar with the word count function within the Microsoft Word software program by which this Answering Brief was prepared. Applying the word count function to the Answering Brief, I determined and hereby certify pursuant to California Rules of Court, Rule 8.204, that this Answering Brief contains 4,223 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and of my own personal knowledge except for those matters stated on information and belief and, as to those matters, I believe them to be true. If called as a witness, I could competently testify thereto.

Executed on August 18, 2014, at San Rafael, California.

Christopher E. Skinnell, Declarant

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.

On August 18, 2014, at approximately 4:00 p.m., I electronically served a copy of the:

1. **Intervener-Respondents' Answering Brief Response to the Amicus Brief of the California Green Party.**

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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:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 18, 2014, at San Rafael, California.

Keri L. Harmon
KERI L. HARMON