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7 *California Justice Committee, the*
Constitution Party of California,
8 *Jeff Norman, Charles Michel Deemer,*
and John Gabree

9 **IN THE UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 CALIFORNIA JUSTICE COMMITTEE,
THE CONSTITUTION PARTY OF
13 CALIFORNIA, JEFF NORMAN, CHARLES
MICHEL DEEMER, and JOHN GABREE,

14 Plaintiffs,

15 vs.

16 DEBRA BOWEN, California Secretary of
17 State, in her official capacity,

18 Defendant.

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Case No. **CV12-3956PA (ABRx)**

PLAINTIFFS' UNOPPOSED *EX PARTE* APPLICATION FOR ORDER SHORTENING TIME [FRCP 6(C)(1)(C)] ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION; [PROPOSED] ORDER

Date: Ex Parte
Time: Ex Parte
Room: TBD

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BY 
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
2012 MAY -7 PM 1:37

FILED

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 Pursuant to FRCP 6(c)(1)(C), Local Rules 6-1, 7-19 and 7-19.1, and the Court's
3 inherent power to manage its docket, Plaintiffs apply on an *ex parte* basis for an Order
4 Shortening Time for Plaintiffs' Motion for Preliminary Injunction, filed herewith,
5 currently noticed to be heard by this Court on May 21, 2012 at 10 a.m. or as soon
6 thereafter as may be possible. This application is based on the accompanying
7 Memorandum of Points and Authorities; the Declarations of Jeff Norman, John
8 Gabree, Charles Michel Deemer, Richard Winger, and David Sapp, which are being
9 filed concurrently; and Plaintiffs' Request for Judicial Notice.

10 Plaintiffs' request that their Motion for Preliminary Injunction be heard on
11 shortened time is appropriate because Plaintiffs are racing against the clock toward the
12 2012 Presidential Election and require immediate injunctive relief to protect their First
13 Amendment rights and to continue registration, campaigning, and fund-raising efforts.
14 Accordingly, Plaintiffs respectfully request that the Court set the hearing on their
15 Motion for Preliminary Injunction on May 21, 2012, or as soon thereafter as may be
16 possible, and propose the following briefing schedule:

- 17 • Plaintiffs' motion filed on May 7, 2012
- 18 • Defendant's opposition due on May 14, 2012
- 19 • Plaintiffs' reply due on May 17, 2012

20 Monday, May 28, 2012, is a federal holiday, so Plaintiffs cannot schedule their
21 hearing on the next available motion day.

22 This *ex parte* application is unopposed. Counsel for Defendant Bowen notified
23 Plaintiffs' counsel that Defendant Bowen does not oppose this application or the
24 briefing schedule proposed above.

25 Should the Court deny this unopposed *ex parte* application, Plaintiffs
26 respectfully request that the Court treat the accompanying Motion for Preliminary
27 Injunction as having been noticed for June 4, 2012, which is the earliest date on which
28 the motion could be heard under Local Rule 6-1.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs' action seeks to enjoin Defendants from enforcing California's overly burdensome party-qualification requirements, which violate Plaintiffs' First and Fourteenth Amendment rights. In California, groups seeking recognition as political parties (known as "political bodies") cannot place their candidates for President and Vice President on the November Presidential Election ballot with the party's designation unless they accumulate more than 103,000 voter registration affidavits or gather more than 1,030,000 petition signatures, and the deadlines for meeting these numeric thresholds are more than 10 months before the November Presidential election. *See* CAL. ELEC. CODE §§ 5100, 2187(d)(1).

California's statutory requirements for party qualification are more burdensome than many other ballot restriction statutes struck down by courts in other states. They also are more burdensome than the statutes applied to California's major parties and independent candidates. *See* Cal. Elec. Code § 8403(a) (deadline for independent candidates is 88 days before general election); Cal. Elec. Code § 7110(a)(2) (deadline for Democratic candidates is 61 days prior to the election); Cal. Elec. Code § 8148(a) (all other parties, the deadline is 68 days prior to general election); *see also* Declaration of Richard Winger ¶¶ 4,10,11. As argued at length in Plaintiffs' Motion for Preliminary Injunction, filed concurrently with this application, the combined effect of California's party-qualification scheme, which mandates both an unnecessarily and unjustifiably early deadline and a high number of voter affidavits, unconstitutionally burdens the California electorate's right to freedom of association, right to political expression through voting for candidates of their choice, and right to cast their votes effectively.

The Justice Party and Plaintiff Constitution Party of California, political bodies attempting to qualify for the 2012 general election, desire to list their nominees for President and Vice President with their party affiliations on the California Presidential

1 Election ballot. Declaration of Jeff Norman ¶¶ 2, 11, 15; Declaration of Charles
2 Michel Deemer ¶¶ 11-12, 17. Plaintiff California Justice Committee is a general
3 purpose committee under California law formed to support the efforts of the Justice
4 Party to Qualify as a recognized political party in California. Norman Decl. ¶ 2.
5 Plaintiffs Jeff Norman, Charles Michel Deemer, and John Gabree (“Individual
6 Plaintiffs”), registered voters with either the Justice Party or the Constitution Party of
7 California, wish to vote for their parties’ candidates and the parties with which they
8 align. Norman Decl. ¶¶ 6, 11; Deemer Decl. ¶¶ 12, 15; Declaration of John Gabree ¶¶
9 3, 6.

10 As the clock ticks toward the 2012 Presidential Election, California’s early
11 qualification deadline violates Plaintiffs’ First Amendment rights, stifles Plaintiffs’
12 participation in the ever-changing political landscape, and inhibits Plaintiffs’
13 campaigning activities. Plaintiffs’ require urgent injunctive relief to protect these
14 fundamental rights from irreparable harm and have filed a Motion for Preliminary
15 Injunction seeking interim relief during the pendency of this action. However, given
16 the irreparable harm that Plaintiffs will suffer even as their Motion for Preliminary
17 Injunction is pending, they seek through this application an order shortening time for
18 the hearing on their Motion. Given the irreparable injury Plaintiffs suffer and the
19 importance to the public interest of this issue, which implicates the upcoming
20 Presidential election, an order shortening time on Plaintiffs’ Motion is both necessary
21 and appropriate here.

22 **II. BACKGROUND**

23 On April 9, 2012 Plaintiffs’ counsel sent a letter via facsimile and Fed-Ex to
24 Defendant Debra Bowen and her chief legal counsel, informing them of Plaintiffs’
25 intent to seek preliminary and permanent injunctive relief. Declaration of David Sapp
26 ¶ 2 & Exhibit A. On April 18, Plaintiffs’ counsel spoke with counsel for Defendant
27 Bowen and informed him that Plaintiffs planned to file a complaint, motion for
28 preliminary injunction, and an *ex parte* application to shorten time on the preliminary

1 injunction hearing on April 24, 2012. Sapp Decl. ¶ 4. Plaintiffs' counsel also raised
2 the possibility of settlement and whether Defendant Bowen would stipulate to shorten
3 the time to have the motion for preliminary injunction heard before this Court, to the
4 extent that settlement was not viable. Sapp Decl. ¶ 5. Defendant's counsel declined
5 to stipulate to an order shortening time on the Preliminary Injunction motion, asserting
6 that hearing Plaintiffs' Motion on 28-day notice would be adequate. Sapp Decl. ¶ 5.

7 During the course of the April 18 conversation, Plaintiffs' counsel and
8 Defendant's counsel identified an avenue through which Defendant Bowen might be
9 able to establish a later party-qualification deadline through emergency and permanent
10 regulations, which would provide the relief Plaintiffs seek in this suit without the need
11 for protracted litigation, and the parties agreed to discuss that possibility further. Sapp
12 Decl. ¶ 7. On April 19, Plaintiffs' counsel sent Defendant Bowen's counsel a
13 proposal for how Defendant Bowen could address the constitutional defect in the
14 current statutory scheme through regulations. Sapp Decl. ¶ 8. Counsel for the parties
15 spoke several times on April 20, and ultimately reached an agreement under which
16 Plaintiffs would delay filing the complaint, preliminary injunction, and application to
17 shorten time until at least May 3 so that Defendant Bowen could research and develop
18 a draft emergency regulation. Sapp Decl. ¶ 9. Because counsel for Defendant Bowen
19 could not commit definitively to that Defendant Bowen would promulgate the
20 emergency regulation, the parties further agreed that, if Defendant Bowen did not
21 promulgate an emergency regulation on or before Thursday, May 3, Defendant Bowen
22 would not oppose a request to have Plaintiffs' preliminary injunction motion heard on
23 shortened time. Sapp Decl. ¶ 9. On April 23, Plaintiffs' counsel sent counsel for
24 Defendant Bowen a letter memorializing the agreement. Sapp Decl. ¶ 10 & Exhibit B.

25 On May 3, counsel for Defendant Bowen notified Plaintiffs' counsel that
26 Defendant Bowen would not promulgate an emergency regulation and confirmed that
27 Defendant Bowen would not oppose a reasonable motion to shorten time on a motion
28 for preliminary injunction. Sapp Decl. ¶ 11. On May 4, Plaintiffs' counsel advised

1 counsel for Defendant Bowen via email and a voice message that Plaintiffs would file
2 the complaint, preliminary injunction motion, and motion to shorten time on Monday,
3 May 7, explained the proposed briefing schedule identified in the notice of this *ex*
4 *parte* application, and asked for confirmation regarding whether Defendant Bowen
5 would oppose the application. Sapp Decl. ¶ 12. On the same day, counsel for
6 Defendant Bowen confirmed that Defendant Bowen did not oppose the planned *ex*
7 *parte* application. Sapp Decl. ¶ 13.

8 III. ARGUMENT

9 Under FRCP 6(c)(1)(C), the Court may, for good cause and on an *ex parte*
10 basis, issue an order shortening the time under which a motion will be heard. The
11 Central District of California has held that “legitimate *ex parte* applications” are
12 appropriate “where the other side actually is served” seeking “a routine order,” such as
13 an order shortening time. *In re Intermagnetics Am., Inc.*, 101 B.R. 191, 193-194
14 (C.D. Cal. 1989). *Ex parte* relief in the form of an order shortening time is justified
15 when the movant establishes that: (1) its cause will be irreparably prejudiced if the
16 underlying motion is heard according to regular noticed motion procedures; and (2)
17 the moving party is without fault in creating the crisis that requires *ex parte* relief.
18 *Mission Power Eng’g Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal.
19 1995).

20 A. Plaintiffs Will Be Irreparably Harmed without Immediate Injunctive 21 Relief

22 Calendaring Plaintiffs’ Motion in the usual manner causes Plaintiffs irreparable
23 harm in several ways. First, California’s party qualification scheme infringes
24 Plaintiffs’ First Amendment rights, which is intolerable even for short periods of time.
25 Second, without the prospect of qualifying for the California Presidential Election
26 ballot, the Justice Party and Constitution Party of California are severely
27 disadvantaged in their ability to recruit members and build financial support and
28 organizational capacity, effectively barring them from meaningfully being able to

1 participate this and future elections. Finally, the exclusion from the current political
2 playing field is occurring during the heart of the national Presidential campaign,
3 which is a unique opportunity to engage voters and galvanize support.

4 California's early qualification deadline burdens "rights of individuals to
5 associate for the advancement of political beliefs, and the right of qualified voters,
6 regardless of their persuasion, to cast their votes effectively." *Williams v. Rhodes*, 383
7 U.S. 23, 30-31 (1968); *see also N.A.A.C.P. v. Alabama*, 357 U.S. 449, 460
8 ("[F]reedom to engage in association for the advance of beliefs and ideas is
9 inseparable aspect of the 'liberty' assured by the Due Process Clause of the First
10 Amendment, which embraces freedom of speech."). Loss of Plaintiffs' First
11 Amendment freedoms "for even minimal periods of time, unquestionably constitutes
12 irreparable injury" because "[t]he timeliness of political speech is particularly
13 important." *Elrod v. Burns*, 472 U.S. 347, 373 (1976); *Thalheimer v. City of San*
14 *Diego*, 645 F. 3d 1109, 1128 (9th Cir. 2011) ("[H]arm is particularly irreparable
15 where, as here, a plaintiff seeks to engage in political speech, as timing is of the
16 essence in politics and a delay of even a day or two may be intolerable."). Without a
17 shortened hearing on Plaintiffs' Motion, Plaintiffs' will suffer immediate and
18 irreversible harm, as California's early qualification deadline severely burdens
19 Plaintiffs' First Amendment voting and associational rights.

20 Second, Plaintiffs will lose the opportunity, during the most fertile period of the
21 election cycle, to engage meaningfully with voters and to build their membership
22 base. Winger Decl. ¶ 14 (stating that interest in politics in the odd year before a
23 Presidential election "is not nearly as strong as it becomes in the spring and summer
24 and fall of the election year itself"). On or about January 31, 2012, the Secretary of
25 State determined that the Justice Party and Constitution Party of California failed to
26 meet California's party-qualification requirements, and Plaintiffs' effective exclusion
27 from the Presidential election cycle a full ten months before the election handicaps
28 their ability to grow their voter or financial base. RJN, Exhibit 1. Without the goal of

1 qualifying as recognized political parties and placing their candidates on the
2 November Presidential election ballot, the Justice Party and Constitution Party of
3 California are severely disadvantaged in their efforts to register new members, raise
4 funds, or garner attention. *See Libertarian Party of Ohio v. Blackwell*, 462 F. 3d 579,
5 591 (6th Cir. 2006) (recognizing that “[t]he requirement that a fledgling political party
6 rally support” far in advance of an election “is an exceedingly difficult task,” which
7 “easily could mute the party’s message and limit its ability to recruit new members”).
8 Thus, an order shortening time to resolve Plaintiffs’ preliminary injunction motion is
9 appropriate because Plaintiffs continue to suffer short-term and long-term
10 disadvantages every day that they are not able to campaign effectively.

11 Third, the deprivation is particularly harmful at this particular point in the
12 election cycle. Minor political parties attempting to qualify, like the Justice Party and
13 Constitution Party of California, cannot respond flexibly to positions of other major
14 parties under California’s early qualification deadline, denying voters “not only a
15 choice of leadership but a choice on the issues as well.” *Williams*, 383 U.S. at 33; *see*
16 *also Anderson v. Celebrezze*, 460 U.S. 780, 792 (1983) (“[A] late-emerging
17 Presidential candidate outside the major parties, whose positions on the issues could
18 command widespread community support, is excluded from the [] general election
19 ballot.”). Given the high interest in the current Presidential campaign, resolving
20 Plaintiffs’ preliminary injunction motion at the earliest possible date is appropriate to
21 ensure that Plaintiffs do not miss out on the opportunity to engage with voters around
22 that particular campaign, which is now virtually impossible because they have been
23 excluded from running their candidates for President and Vice President.

24 Finally, Defendant Bowen does not oppose this motion and, in fact, suffers no
25 prejudice by a shortened hearing on Plaintiffs’ Motion. Defendant Bowen has had
26 notice of Plaintiffs’ intent to seek preliminary injunctive relief, and the legal basis for
27 seeking such relief, since April 9, 2012. Additionally, in the absence of this *ex parte*
28 application to shorten time, Plaintiffs’ preliminary injunction would be noticed for

1 Monday, June 4 (28 days after it is filed), and, under Local Rule 7-9, the opposition
2 would be due on May 14.

3 **B. Plaintiffs Are Not at Fault in Creating Urgent Need for Injunctive Relief**

4 When registration deadlines are set far in advance of an election, “the obstacles
5 facing [minor parties’] organizing efforts are compounded” because “volunteers are
6 more difficult to recruit and retain, media publicity and campaign contributions are
7 more difficult to secure, and voters are less interested in the campaign.” *Anderson*,
8 460 U.S. at 792. That Plaintiff Parties could not gather more than 100,000 voter
9 registrations, nor more than 1,000,000 petition signatures, nearly a year before the
10 general election is no fault of their own. In the case of the Justice Party, the deadline
11 for qualification through voter registration, January 3, 2012, fell just over one month
12 after the national party’s founding, and the deadline for submitting petitions to the
13 Secretary of State had already passed when the national party was founded. *See*
14 *Norman Decl.* ¶¶ 4-5.

15 Defendant Bowen did not formally announce that the Justice Party and the
16 Constitution Party of California had not satisfied the party-qualification requirements
17 until January 31, 2012. *See* RJN, Exhibit 1. Plaintiffs notified Defendant Bowen on
18 April 9, 2012 of their intent to file this suit and a motion for preliminary injunction
19 and, as a result of pre-filing discussions with Defendant Bowen’s counsel, ultimately
20 agreed to delay the filing to allow Defendant Bowen to research and prepare a draft
21 emergency regulation, which likely would have provided the relief that Plaintiffs seek
22 in their preliminary injunction. *Sapp Decl.* ¶¶ 2-3, 7. In exchange, for agreeing to
23 delay the filing, Defendant Bowen agreed not to oppose a motion to shorten time if
24 she did not ultimately promulgate the emergency regulation. *Sapp Decl.* ¶¶ 9-10 &
25 Exhibit B. Accordingly, the *ex parte* application to shorten time is necessary here
26 because the parties made a good faith effort to reach a pre-filing agreement that would
27 have obviated the need for a contested preliminary injunction.

28 //

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs request, pursuant to FRCP 6(c)(1)(C), that
3 the Court issue an Order Shortening Time for Plaintiffs' Motion for Preliminary
4 Injunction.

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6 Dated: May 5, 2012

By: 
David B. Sapp
ACLU Foundation of Southern California
Attorneys for Plaintiffs

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