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9

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

12 CALIFORNIA JUSTICE COMMITTEE, et
13 al.,

14 Plaintiffs,

15 vs.

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

18 Defendant.

) Case No. CV12-3956 PA (AGRx)

) The Honorable Percy Anderson

) **PLAINTIFFS' TRIAL BRIEF**

) Trial Date: October 16, 2012

) Time: 9 a.m.

) Courtroom: 15

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1 **I. INTRODUCTION**

2 Plaintiffs California Justice Committee, the Constitution Party of California,
3 Jeff Norman, Charles Michel Deemer, and John Gabree (collectively “Plaintiffs”)
4 filed this action on May 7, 2012, against California Secretary of State Debra Bowen
5 challenging the constitutionality of California Elections Code § 5100. Section 5100
6 establishes requirements for formal recognition as a political party in California,
7 including a numerical requirement for how many voters must either file voter
8 registration affidavits reflecting their affiliation with the party or sign a petition
9 supporting formal recognition of the party *and* a timing requirement for when those
10 numerical requirements must be met, which fell in January 2012 for the current
11 election cycle. Plaintiffs challenge only the application of § 5100’s timing
12 requirement to political bodies that seek to qualify as recognized political parties so
13 that their candidates for President and Vice President may appear on California’s
14 general election ballot in Presidential election years. *See* Minute Order of 7/23/12 at 2
15 (Dkt. No. 26); Jt. Status Rpt. Pursuant to Fed. R. Civ. P. Rule 26(f) at 3 (Dkt. No. 23).

16 On May 21, 2012, this Court issued a preliminary injunction that prohibited
17 Defendant Bowen “from enforcing against Plaintiffs the requirement in California
18 Elections Code sections 5100(b) and 5100(c) that Plaintiffs must satisfy the party-
19 qualification requirements at least 135 days prior to the primary election.” Order
20 Granting Prelim. Inj. (“P.I. Order”) at 5 (Dkt. No. 19). Specifically, this Court found
21 that Plaintiffs were likely to prevail on their claim that the early deadline “violates
22 their First and Fourteenth Amendment rights” and that “Plaintiffs have met their
23 burden to show that they will suffer irreparable harm in the absence of preliminary
24 relief, that the balance of equities tips in their favor, and that an injunction is in the
25 public interest.” *Id.*

26 Pursuant to this Court’s scheduling order, *see* Minute Order of 7/23/12 (Dkt.
27 No. 26), the parties are proceeding on the factual record from the preliminary
28 injunction, supplemented by additional stipulated facts that the parties submitted on

1 August 20, 2012, *see* Joint Stipulated Facts (“Stip.”) (Dkt. No. 29). The stipulated
2 facts conclusively establish that the State’s legitimate administrative needs would be
3 amply satisfied by a party-qualification deadline in July, *i.e.*, that State election
4 officials would be able to certify qualified parties and ensure that ballots are printed in
5 time for the November Presidential election with a deadline approximately six months
6 later than the deadline mandated by Elections Code § 5100. This confirms this
7 Court’s finding at the preliminary injunction stage that “the Secretary of State has not
8 proffered a sufficient or credible justification for section 5100’s timing requirement.”
9 P.I. Order at 5.

10 In short, there is nothing in the record that provides any basis for revisiting this
11 Court’s conclusion that the State of California cannot justify applying a January party-
12 qualification deadline to the November Presidential election given the “severe
13 restriction” that the timing requirement in Elections Code § 5100 imposes on First and
14 Fourteenth Amendment rights. P.I. Order at 5. Plaintiffs therefore respectfully
15 request that this Court: (a) declare that the timing requirement in Elections Code §
16 5100 is unconstitutional when applied to political bodies seeking formal recognition
17 as political parties so their candidates for President and Vice President can appear on
18 the November General Election ballot with their party affiliation listed; and (b)
19 permanently enjoin the California Secretary of State from enforcing the timing
20 requirements in Elections Code § 5100 against political bodies seeking formal
21 recognition as political parties so their candidates for President and Vice President can
22 appear on the November General Election ballot with their party affiliation listed.

23 **II. LEGAL STANDARD**

24 Plaintiffs seeking a permanent injunction must demonstrate: (1) that they have
25 suffered an irreparable injury; (2) that remedies available at law, such as monetary
26 damages, are inadequate to compensate for that injury; (3) that, considering the
27 balance of hardships between the plaintiffs and defendant, a remedy in equity is
28 warranted; and (4) that the public interest would not be disserved by a permanent

1 injunction. *See Sierra Forest Legacy v. Sherman*, 646 F.3d 1161, 1184 (9th Cir.
2 2011) (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S. Ct.
3 1837, 164 L. Ed. 2d 641 (2006)).

4 **III. BACKGROUND**

5 The California Justice Party and Plaintiff Constitution Party of California are
6 political bodies attempting to qualify for the 2012 general election and desire to list
7 their nominees for President and Vice President with their party affiliations on the
8 November Presidential Election ballot. *See* Decl. of Jeff Norman (“Norman Decl.”)
9 ¶¶ 2, 11, 15 (Dkt. No. 6); Decl. of Charles Michel Deemer (“Deemer Decl.”) ¶¶ 11-12,
10 17 (Dkt. No. 8). Plaintiff California Justice Committee is a general purpose
11 committee under California law formed to support the efforts of the California Justice
12 Party to qualify as a recognized political party in California. *See* Norman Decl. ¶ 2.
13 Plaintiffs Jeff Norman and John Gabree are registered voters with the California
14 Justice Party and wish to vote for their party’s candidates for President and Vice
15 President. *See* Norman Decl. ¶¶ 6, 11, 14-15; Decl. of John Gabree ¶¶ 3, 6 (Dkt. No.
16 4). Plaintiff Charles Michel Deemer is a registered voter with the Constitution Party
17 of California and wishes to vote for his party’s candidates for President and Vice
18 President. *See* Deemer Decl. ¶¶ 12, 15.

19 **A. Overview of California’s Party-Qualification Scheme**

20 The California Elections Code defines a political “party” as “a political party or
21 organization that has qualified for participation in any primary election.” Cal. Elec.
22 Code § 338. California law provides only three avenues by which political parties can
23 attain formal recognition: (1) by receiving two percent of the statewide vote in the
24 preceding gubernatorial election (past performance of existing parties); (2) by having
25 one percent of the vote from the last gubernatorial election declare their intent to
26 affiliate with the party by filing voter registration affidavits affiliating with the party
27 (voter registration); or (3) by collecting signatures of voters, equal to ten percent of
28

1 the vote from the last gubernatorial election, supporting recognition of the political
2 body as a political party (petition). *See* Cal. Elec. Code § 5100.¹

3 For the current election cycle, if a political body sought to qualify through the
4 voter registration option under § 5100(b), a minimum of 103,004 voters needed to
5 declare their intention to affiliate with that party. *See* Stip. ¶ 3. The Secretary of State
6 must certify the parties eligible to participate in the primary election 135 days prior to
7 the primary election, *see* Cal. Elec. Code § 5100; Request for Judicial Notice (“RJN”)
8 at 6 (Dkt. No. 3), so the certification deadline for the 2012 election cycle fell on
9 January 23, 2012, *see* Cal. Elec. Code § 5100; RJN at 6-7, 10 & 16. Because the
10 Secretary of State’s certification is based on voter registration affidavits submitted to
11 each county’s registrar by 154 days before the primary, *see* Cal. Elec. Code §
12 2187(d)(1); RJN at 10, this year’s deadline for voters to submit voter registration
13 affidavits that would count toward the Secretary of State’s certification of recognized
14 parties under § 5100(b) fell on January 3, 2012, *see* RJN at 6, 10 & 16.²

15 ¹ Elections Code § 5100 provides, in relevant part:

16 A party is qualified to participate in any primary election under any of
17 the following conditions:

- 18 (a) If at the last preceding gubernatorial election there was polled
19 for any one of its candidates for any office voted on throughout
20 the state, at least 2 percent of the entire vote of the state.
- 21 (b) If on or before the 135th day before any primary election, it
22 appears to the Secretary of State, as a result of examining and
23 totaling the statement of voters and their political affiliations
24 transmitted to him or her by the county elections officials, that
25 voters equal in number to at least 1 percent of the entire vote of
26 the state at the last preceding gubernatorial election have
27 declared their intention to affiliate with that party.
- 28 (c) If on or before the 135th day before any primary election, there
is filed with the Secretary of State a petition signed by voters,
equal in number to at least 10 percent of the entire vote of the
state at the last preceding gubernatorial election, declaring that
they represent a proposed party, the name of which shall be
stated in the petition, which proposed party those voters desire
to have participate in that primary election. . . .

28 Cal. Elec. Code § 5100.

² For political bodies seeking to qualify by petition under Elections Code § 5100(c), the requirements are more onerous, both numerically and with respect to the

1 Only political bodies that fulfill California's party-qualification requirements
2 are entitled to place their nominees for President and Vice President on the November
3 Presidential ballot with their party affiliations listed. *See* Cal. Elec. Code §§ 6901 &
4 13105; *Field v. Bowen*, 199 Cal. App. 4th 346, 350, 131 Cal. Rptr. 3d 721 (2011).
5 Under California law, however, candidates for President and Vice President do not
6 need to participate in the primary to participate in the general election. *See* Cal.
7 Const., art. 2, § 5(a-b); Cal. Elec. Code § 359.5; RJN at 52. Accordingly, political
8 bodies proceeding under California Elections Code § 5100(b) were required to have
9 met the 103,004 numeric threshold for voter registrations by January 3, 2012 so that
10 their candidates for President and Vice President could appear on the November 6,
11 2012 ballot with their party affiliations listed.

12 **B. Plaintiffs' Experiences with California's Early Party-Qualification**
13 **Scheme**

14 On or about November 30, 2011, Rocky Anderson, the former mayor of Salt
15 Lake City, announced the formation of the Justice Party and his intention to seek its
16 nomination for President in 2012, and, on or about December 15, 2011, a group of
17 California voters submitted a notice of intent to qualify the California Justice Party as
18 a political party in California. Norman Decl. ¶¶ 4-5. As a new party with limited
19 funds, its supporters elected to pursue the voter registration option for qualifying as a
20 political party in California. *Id.* ¶ 10.

21 The Constitution Party was founded by Howard Phillips as a national political
22 party in 1992. Deemer Decl. ¶ 5. In 1992, the American Independent Party (AIP),
23 which has been continuously recognized as a political party by California since 1968,
24 formally affiliated with the Constitution Party, so the Constitution Party's nominees
25 for President and Vice President appeared on California's November Presidential
26

27 effective deadlines. For the current election cycle, a minimum of 1,030,040 voters
28 needed to have signed a petition supporting recognition of that political body as a
political party, *see* RJN at 7, and the petition packet had to be submitted no later no
later than November 10, 2011 to ensure verification of signatures by the January 23,
2012 certification deadline, *see* Cal. Elec. Code §§ 5100(c), 9030, 9031; RJN at 7.

1 ballot as AIP's candidate between 1992 and 2004. *Id.* ¶¶ 3, 8. The AIP declined to
2 affiliate with the Constitution Party in 2008 and again in 2010, which prompted
3 supporters of the Constitution Party who resided in California to file, on or about
4 August 9, 2010, a notice of intent to qualify the Constitution Party of California as a
5 political party. *Id.* ¶¶ 9-11. Because the Constitution Party of California has limited
6 funds, its supporters elected to pursue the voter registration option for qualifying as a
7 political party in California. *Id.* ¶ 14.

8 As of January 23, 2012, insufficient voters had affiliated with the California
9 Justice Party or the Constitution Party of California to enable either party to qualify as
10 a political party under Elections Code § 5100(b). *See* Stip. ¶ 2. On or about January
11 31, 2012, Defendant Debra Bowen announced that the California Justice Party and
12 Constitution Party of California had failed to qualify as recognized political parties.
13 *See* RJN at 4. After the announcement that the groups had not qualified as recognized
14 political parties, supporters of the California Justice Party and Constitution Party of
15 California continued their efforts to fundraise, educate voters, and register supporters
16 through the internet, conferences, and grassroots campaigning. *See* Norman Decl. ¶
17 12; Deemer Decl. ¶ 17.

18 **C. California's Early Party-Qualification Deadline Imposes Severe**
19 **Burdens on First and Fourteenth Amendment Rights**

20 The Secretary of State's determination in January 2012 that the California
21 Justice Party and Constitution Party of California failed to qualify as political parties
22 in California severely hampered Plaintiffs' campaign activity because they cannot
23 promote the goal of qualifying as a recognized political party and thereby placing their
24 candidates on California's 2012 Presidential ballot, which removes a critical
25 organizing tool for engaging voters during the heart of the electoral cycle. *See*
26 Norman Decl. ¶ 12; Deemer Decl. ¶¶ 17, 18. This impact on Plaintiffs' efforts is
27 hardly surprising. Early qualification deadlines, when coupled with high numeric
28 voter registration or signature requirements, disadvantage minor parties and

1 independent candidates in several ways and can therefore severely impede their ability
2 to gain access to the ballot. *See* Declaration of Richard Winger (“Winger Decl.”) ¶¶
3 12-14 (Dkt. No. 5).

4 First, events that occur during the spring of election years are sometimes
5 completely unexpected, and of great importance, but early deadlines prevent minor
6 parties from responding to and capitalizing on these developments. *See id.* ¶ 13. By
7 preventing political bodies from responding to developments late in the election cycle
8 so they cannot be as flexible as the established political parties, early deadlines place
9 new political parties at a competitive disadvantage for engaging with voters and
10 building support. *See id.* Two historical examples underscore the importance of
11 flexibility: both the Republican Party in 1854 and the Progressive Party in 1912
12 formed late in the election cycle in response to political developments and ultimately
13 garnered substantial support and won several important races. *See id.* But an early
14 qualification deadline like California’s would have prevented either party from
15 achieving that level of support. *See id.*

16 Additionally, early qualification deadlines that require political bodies to
17 organize in the year preceding the election hamper organizing efforts because new
18 parties seldom have enough public support that early in the election season to meet
19 high numeric thresholds and there is seldom as much interest in politics that far before
20 the heart of the election cycle in the summer and fall. *See id.* ¶ 14. When the primary
21 is remote, and the general election is even more remote, it is difficult for political
22 bodies to organize: recruiting and retaining volunteers is more difficult, media interest
23 is harder to generate, contributions are more difficult to secure, and voters are
24 generally less interested in the campaign. *See id.* This is particularly true of new
25 parties, like the Justice Party (which formed in December 2011), which not only have
26 to organize but also make the public familiar with their platform. *See id.*

27 The historical record regarding minor parties’ ability to satisfy California’s
28 party-qualification standards confirms that California’s statutory scheme has been a

1 severe barrier for political bodies seeking to qualify as recognized political parties.
2 *See id.* ¶ 15. Since 1953, when California set the party-qualification deadline 135
3 days before the primary election, only seven new political parties have attained formal
4 recognition under California’s party-qualification scheme. *See* Stip. ¶ 6; Winger Decl.
5 ¶¶ 16-22. Moreover, since 1995, only one new political body, the Americans Elect
6 Party in 2011, has qualified as a recognized political party. *See* Stip. ¶ 7; Winger
7 Decl. ¶¶ 21-22; RJN at 4-5.³

8 **D. California’s Early Deadline Is Not Necessary to Meet California’s**
9 **Legitimate Administrative Interests**

10 To have sufficient time to prepare the ballots for the Presidential election,
11 counties in California require notification by the Secretary of State that a party has
12 qualified for the ballot no more than 98 days before the election. *See* Stip. ¶10. For
13 the current election cycle, 98 days before the general election is July 31, 2012.
14 Counties in California therefore would have sufficient time to prepare ballots for the
15 general election if they knew the identities of the political parties that have qualified
16 for the November 6, 2012 Presidential election by July 31, 2012.

17 For the Secretary of State to determine whether a political party has qualified 98
18 days prior to a Presidential election, each county would need to report the registration
19 totals for each political body no more than 110 days before the election, which this
20 year would have fallen on July 19, 2012. *See* Stip. ¶ 11; RJN at 38 (listing July 19,
21 2012 as 110 days before the November general election). The Secretary of State
22 therefore has no administrative need to know the registration totals of political bodies
23 attempting to qualify for the November 6, 2012 Presidential Election in California
24 from the counties prior to July 19, 2012.

25 _____
26 ³ The small number of new political parties that have succeeded in satisfying
27 California’s onerous scheme is not for lack of attempts or dissatisfaction by many
28 citizens with the agendas of the two major parties. Since 2000, 61 groups that have
registered with the Secretary of State as political bodies have failed to qualify as
recognized political parties in California, with 11 of these having registered and failed
to qualify more than once. *See* Stip. ¶ 8. In the 2012 election cycle, 21 groups that
registered with the Secretary of State as political bodies failed to qualify as recognized
political parties, and one political body succeeded. *See* Stip. ¶ 9.

1 The counties in turn would require time to collect and verify the registration
2 totals before submitting them to the Secretary of State. *See* Stip. ¶ 11. At different
3 points in the election cycle, California counties are able to collect and verify voter
4 affidavits for submission to the Secretary of State in 7, 10 or 19 days, *see* Cal. Elec.
5 Code § 2187(d), so California counties require no more than 19 days to collect and
6 verify voter affidavits for submission to the Secretary of State, *see* Stip. ¶ 12. In sum,
7 elections officials in California have no administrative need to set a deadline for
8 political bodies seeking to qualify for the November Presidential election any earlier
9 than June 30, 2012 (19 days after the latest date by which the Secretary of State would
10 need to receive voter registration totals to make her determination).⁴

11 **IV. ARGUMENT**

12 Consonant with this Court's findings at the preliminary injunction stage and as
13 demonstrated below, Plaintiffs readily meet the standard for granting permanent
14 injunctive relief because: (1) California's early party-qualification deadline is
15 unconstitutional and the loss of First and Fourteenth Amendment freedoms irreparably
16 harms Plaintiffs and other political bodies and voters; (2) no remedy at law is adequate
17 to redress this deprivation of First and Fourteenth Amendment rights; (3) the balance
18 of equities tips sharply in Plaintiffs' favor because prohibiting Defendant Bowen from
19 enforcing the unconstitutional early party-qualification deadline will not harm
20 Defendant Bowen or the State of California in any meaningful way; and (4) injunctive
21 relief is in the public interest given the impact that the early-qualification deadline has
22 on constitutional rights and national Presidential elections.

24 ⁴ Other aspects of California's ballot-qualification scheme confirm that
25 California election officials have no administrative need to have a party-qualification
26 deadline that is more than ten months before the relevant election. *See* Winger Decl. ¶
27 32. For example, independent candidates for President may qualify for California's
28 November Presidential ballot by submitting a petition with a sufficient number of
signatures by 88 days before the election. *See* Winger Decl. ¶ 32; RJN at 35 & 39.
For the November 2012 election, the number of signatures required for an
independent Presidential candidate was 172,859, and the deadline for submitting the
petition for verification of signatures was August 10, 2012. *See* Winger Decl. ¶ 32;
RJN at 39. The Secretary of State and the counties are able to assure that eligible
independent candidates are included on the November ballot based on this deadline.

1 Simply put, there has been no showing or change in the factual record that
2 justifies revisiting this Court’s findings at the preliminary injunction stage. *See*
3 *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 546 n.12, 107 S. Ct. 1396, 94
4 L. Ed. 2d 542 (1987) (“The standard for a preliminary injunction is essentially the
5 same as for a permanent injunction with the exception that the plaintiff must show a
6 likelihood of success on the merits rather than actual success.”), *cited in Winter v.*
7 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 32, 129 S. Ct. 365, 172 L. Ed. 2d 249
8 (2008) (explaining that considerations governing whether to issue preliminary
9 injunction are similar to those for permanent injunction).

10 **A. California’s Party-Qualification Deadline Has Resulted and Will**
11 **Continue to Result in Irreparable Injury to Plaintiffs and Other**
12 **Voters and Political Bodies**

13 **1. The Party-Qualification Deadline Is Unconstitutional**

14 Because California has no compelling interest in excluding political parties
15 from fielding candidates for the November Presidential election unless they are able to
16 reach the numeric thresholds for formal recognition as political parties at least ten
17 months before the Presidential election, California’s party-qualification scheme is
18 unconstitutional as applied to political bodies seeking to place their candidates for
19 President and Vice President on the November General Election ballot.

20 Courts have consistently recognized that state ballot-access restrictions
21 implicate two First Amendment guarantees, “the right of individuals to associate for
22 the advancement of political beliefs” and “the right of qualified voters, regardless of
23 their political persuasion, to cast their votes effectively,” both of which “rank among
24 our most precious freedoms.” *Anderson v. Celebrezze*, 460 U.S. 780, 787-88, 103 S.
25 Ct. 1564, 75 L. Ed. 2d 547 (1983) (quoting *Williams v. Rhodes*, 393 U.S. 23, 30-31,
26 89 S. Ct. 5, 10, 21 L. Ed. 2d 24 (1968)). Under the balancing test laid out in *Anderson*
27 and clarified in *Burdick v. Takushi*, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245
28 (1992), courts weigh “the character and magnitude of the asserted injury to the rights

1 protected by the First and Fourteenth Amendments” against “the precise interests put
2 forward by the State as justifications for the burden imposed by its rule,” considering
3 “the extent to which those interests make it necessary to burden the plaintiff’s rights.”
4 *Anderson*, 460 U.S. at 789. If the combined effect of a State’s laws places “severe”
5 restrictions upon these rights, then courts apply strict scrutiny, but if the laws impose
6 only “reasonable, nondiscriminatory restrictions,” then courts apply rational basis
7 review. *Burdick*, 504 U.S. at 434 (internal quotation marks omitted).

8 As this Court recognized at the preliminary injunction stage, *see* P.I. Order at 4,
9 courts applying this balancing test have applied strict scrutiny and struck down early-
10 qualification deadlines that are much later than California’s deadline. For example, in
11 *Nader v. Brewer*, 531 F.3d 1028 (9th. Cir. 2008), the Ninth Circuit applied strict
12 scrutiny to Arizona’s early filing deadline for independent Presidential candidates,
13 which fell 90 days before the primary and 146 days before the general election, *see id.*
14 at 1031, and held it was unconstitutional because the “burdens [on First and
15 Fourteenth Amendment rights] are serious and the restrictions are not sufficiently
16 narrowly tailored to serve the state’s compelling interests,” *id.* at 1040. *See also*
17 *Anderson*, 460 U.S. at 782-84 & n.1 (applying strict scrutiny and striking down Ohio’s
18 early qualification deadline for independent Presidential candidates, which was 75
19 days before the primary election and 229 days before the general election);
20 *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 582-83 (6th Cir. 2006)
21 (applying strict scrutiny and striking down Ohio law requiring minor parties to submit
22 petition signatures 120 days before the primary election, in which all parties were
23 required to participate).⁵

24 The severe burden that California’s scheme imposes on Plaintiffs and other
25 political bodies and voters is borne out by the historical record. *See id.* at 587

26 _____
27 ⁵ Notably, California’s deadline, as it relates to the November Presidential
28 ballot, is “earlier than almost every early qualification deadline that has been struck
down by courts.” Winger Decl. ¶¶ 27-28 & Ex. B, p. 4. Additionally, “[o]nly two
deadlines [that have been struck down] were earlier in the calendar year: the Arkansas
deadline struck down in 1996 (January 2) and the Ohio deadline struck down [in
Blackwell] in 2006 (November 3 of the year preceding the election).” *Id.*

1 (holding “evidence of the real impact the restriction has on the process” informs the
2 magnitude of the burden imposed by a state’s election laws). Only seven new
3 political parties have satisfied California’s party qualification scheme in the nearly 60
4 years since the legislature set the filing deadline 135 days before the primary, *see* Stip.
5 ¶ 6; Winger Decl. ¶ 22, and only one new party has qualified since 1995, *see* Stip. ¶ 7;
6 Winger Decl. ¶ 22.

7 There is nothing in the record that should alter this Court’s finding at the
8 preliminary injunction stage that “the Secretary of State has not proffered a sufficient
9 or credible justification for section 5100’s timing requirement, let alone evidence that
10 the timing requirement is ‘narrowly drawn’ to justify the severe restriction it places on
11 Plaintiffs.” P.I. Order at 5 (quoting *Burdick*, 504 U.S. at 434).⁶ In fact, although “the
12 Secretary of State and county election officials obviously require a reasonable amount
13 of time in advance of an election to certify that a candidate or party have satisfied the
14 eligibility requirements for inclusion on the ballot and to prepare election materials,”
15 P.I. Order at 4-5, the Joint Stipulated Facts confirm that this legitimate administrative
16 consideration would be amply accommodated by a deadline that is *six months later*
17 than the current deadline, *see* Stip. ¶¶ 10-12.⁷

18 **2. The Party-Qualification Deadline Causes Irreparable Harm**

19 The loss of First Amendment freedoms “for even minimal periods of time,
20 unquestionably constitutes irreparable injury” because “[t]he timeliness of political
21 speech is particularly important.” *Elrod v. Burns*, 427 U.S. 347, 373, 374 n.29, 96 S.
22 Ct. 2673, 49 L. Ed. 2d 547 (1976). Thus, California’s unconstitutional party-

23 ⁶ As this Court correctly recognized at the preliminary injunction stage, any
24 asserted interest in protecting the integrity of the ballot and preventing voter confusion
25 are not relevant to § 5100’s timing requirement, and instead are adequately served by
26 § 5100’s numeric threshold requirement. P.I. Order at 4.

26 ⁷ Plaintiffs do not concede that a June 30, 2012, deadline would pass
27 constitutional muster. *See generally* Pls. Reply Br. in Support of Prelim. Inj. at 12
28 (Dkt. No. 17). As explained in Section V, *infra*, however, Plaintiffs agree with
29 Defendant Bowen that establishing a new deadline is appropriately left up to the
30 Secretary of State and the California Legislature in the first instance. The factual
31 stipulation thus provides a more than adequate basis to rule in Plaintiffs’ favor on their
32 request for a permanent injunction prohibiting the Secretary of State from enforcing
33 the current January 2012 deadline.

1 qualification deadline has caused, and will continue to cause, irreparable harm to
2 political bodies and to voters seeking to cast their votes and to engage in the electoral
3 process effectively in this and future Presidential elections.

4 **B. Remedies at Law Are Inadequate, the Balance of Hardships Tips**
5 **Sharply in Favor of Granting a Permanent Injunction, and**
6 **Permanent Injunctive Relief Serves the Public Interest**

7 The remaining factors clearly favor entry of a permanent injunction here. *First*,
8 the nature of the injuries caused by the constitutional violations here underscores the
9 inadequacy of legal remedies. *See Elrod*, 427 U.S. at 373, 374 n.29. “[M]onetary
10 damages or other legal remedies will not compensate the plaintiffs” for their exclusion
11 from the political process and the limitation on their political speech and associational
12 rights because “[t]here is no way to calculate the value of such a constitutional
13 deprivation.” *Walters v. Reno*, 145 F.3d 1032, 1048 (9th Cir. 1998); *see also Allee v.*
14 *Medrano*, 416 U.S. 802, 814-15 94 S. Ct. 2191, 40 L. Ed. 2d 566 (1974) (holding
15 “[n]o remedy at law would be adequate to provide [adequate] protection” where
16 plaintiffs challenged conduct that infringed “constitutionally protected rights of free
17 expression, assembly, and association”).

18 *Second*, the severe burden on the First and Fourteenth Amendment rights of
19 Plaintiffs and other political bodies and voters supporting those groups greatly
20 outweighs whatever minimal burden the State will sustain by creating a later,
21 constitutionally compliant deadline for political bodies seeking recognition so their
22 candidates for President and Vice President may appear on the November Presidential
23 Election ballot with the party affiliation listed that comports with constitutional
24 requirements. *See generally Anderson*, 460 U.S. at 806 (“If the State has open to it a
25 less drastic way of satisfying its legitimate interests, it may not choose a legislative
26 scheme that broadly stifles the exercise of fundamental personal liberties.” (internal
27 quotation marks omitted)).

28 *Finally*, “[t]he ability of a political party to appear on the general election ballot

1 affects not only the party’s rights, but also the First Amendment right of voters.”
2 *Blackwell*, 462 F.3d at 588. As the Supreme Court recognized, “[h]istorically,
3 political figures outside the two major parties have been fertile sources of new ideas
4 and new programs; many of their challenges to the status quo have in time made their
5 way into the political mainstream.” *Anderson*, 460 U.S. at 794. Accordingly, “the
6 primary values protected by the First Amendment . . . are served when election
7 campaigns are not monopolized by the existing political parties.” *Id.* An order
8 prohibiting the State from denying political bodies the opportunity to participate
9 meaningfully in the current and future Presidential Election cycles therefore greatly
10 benefits the public by enriching the political process and protecting the constitutional
11 rights of the electorate. *See also Sammartano v. First Judicial Dist. Court*, 303 F.3d
12 959, 974 (9th Cir. 2002) (recognizing “the significant public interest in upholding
13 First Amendment principles”).

14 **V. PLAINTIFFS SEEK ONLY PROHIBITORY INJUNCTIVE RELIEF**

15 At the preliminary injunction stage, this Court declined “to impose an
16 alternative deadline in advance of the November general election.” P.I. Order at 5.
17 Plaintiffs’ counsel understands that Defendant Bowen will argue in her opening trial
18 brief that the Court should follow the same approach should it enter a permanent
19 injunction. In their Complaint, Plaintiffs sought a permanent injunction prohibiting
20 Defendant Bowen from enforcing the timing requirements in § 5100. *See* Complaint
21 at 16 (Dkt. No. 1). Plaintiffs agree that, given the record and procedural posture,
22 establishing a new deadline is appropriately left up to the Secretary of State and the
23 California Legislature in the first instance. *See, e.g., Nader*, 531 F.3d at 1030, 1040
24 (directing district court to enter summary judgment on Plaintiffs claims that the
25 challenged ballot-qualification deadlines were unconstitutional in favor of plaintiffs
26 and not specifying an alternate deadline).

27 **VI. CONCLUSION**

28 For the foregoing reasons, Plaintiffs respectfully request that the Court: (a)

1 enter a declaratory judgment, pursuant to Federal Rule of Civil Procedure 57, that the
2 requirements in California Elections Code § 5100 (b) & (c) that political bodies satisfy
3 the numeric requirements in California Elections Code §5100 (b) & (c) at least 135
4 days before the primary election are unconstitutional when applied to political bodies
5 seeking to become qualified political parties so their nominees for President and Vice
6 President can appear on California’s November Presidential ballot with their party
7 affiliation listed; and (b) enter a permanent injunction prohibiting Defendant Debra
8 Bowen, in her official capacity as California’s Secretary of State, from enforcing the
9 requirements in California Elections Code § 5100 (b) & (c) that political bodies
10 seeking to become qualified political parties satisfy the numeric requirements in
11 California Elections Code §5100 (b) & (c) at least 135 days before the primary
12 election against political bodies seeking to become qualified political parties so their
13 nominees for President and Vice President can appear on California’s November
14 Presidential ballot with their party affiliation listed.

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Respectfully Submitted,

By: /s/ David B. Sapp

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