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

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 (AGR<sub>x</sub>)

)  
) The Honorable Percy Anderson

) **PLAINTIFFS' RESPONSE TO**  
) **THE SECRETARY OF STATE'S**  
) **PROPOSED FINDINGS OF FACT**  
) **AND CONCLUSIONS OF LAW**

) Trial Date: October 16, 2012

) Time: 9 a.m.

) Courtroom: 15

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1 Plaintiffs California Justice Committee, the Constitution Party of California,  
2 Jeff Norman, Charles Michel Deemer, and John Gabree respectfully submit their  
3 Response to the Secretary of State’s Proposed Findings of Fact and Conclusions of  
4 Law (Dkt. No. 35). Attached hereto as Exhibit A is a copy of the Secretary of State’s  
5 proposed findings, highlighted to reflect Plaintiffs’ position on each proposed finding  
6 and conclusion of law consistent with this Court’s minute order of July 23, 2012.

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8  
9 Dated: October 1, 2012 Respectfully Submitted,

10  
11 By: /s/ David B. Sapp

12 David B. Sapp  
13 ACLU Foundation of Southern California  
14 *Attorneys for Plaintiffs*  
15 *California Justice Committee, Constitution*  
16 *Party of California, Jeff Norman, Charles*  
17 *Michel Deemer, and John Gabree*  
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**EXHIBIT A**

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9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
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13  
14 **CALIFORNIA JUSTICE**  
**COMMITTEE, THE**  
15 **CONSTITUTION PARTY OF**  
16 **CALIFORNIA, JEFF NORMAN,**  
**CHARLES MICHEL DEEMER, and**  
17 **JOHN GABREE,**

Plaintiffs,

18 v.

19 **DEBRA BOWEN, California**  
**Secretary of State, in her official**  
20 **capacity,**

21 Defendant.  
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CV 12-3956 PA (AGRx)

**THE SECRETARY OF STATE'S  
PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

Date: October 16, 2012  
Time: 9:00 a.m.  
Courtroom: 15  
Judge: The Honorable Percy  
Anderson  
Trial Date: October 16, 2012  
Action Filed: May 7, 2012

1 Defendant California Secretary of State Debra Bowen hereby submits the  
2 following proposed findings of facts and conclusions of law:

3 **FINDINGS OF FACT**

4 1. Plaintiff California Justice Committee is a general purpose political  
5 committee, formed to support the efforts of the Justice Party to qualify as a  
6 recognized political party in California. (Compl. for Injunctive and Declaratory  
7 Relief (“Compl.”) ¶ 11, ECF No. 1; Decl. of Jeff Norman in Support of Pls.’ Mot.  
8 for Preliminary Inj. (“Norman Decl.”) ¶ 2, ECF No. 6.)

9 2. The Justice Party, which is not a party to this action, is a political body  
10 under the laws of California. (Compl. ¶ 11; Norman Decl. ¶ 2.)

11 3. Plaintiffs Jeff Norman and John Gabree are members of the Justice Party  
12 and officers of the Justice Committee. (Compl. ¶¶ 13-14; Norman Decl. ¶ 2; Decl.  
13 of John Gabree in Support of Pls.’ Mot. for Preliminary Inj. (“Gabree Decl.”) ¶ 2,  
14 ECF No. 4.)

15 4. Plaintiff Constitution Party of California is a political body under the  
16 laws of California. (Compl. ¶ 12; Decl. of Charles Michel Deemer in Support of  
17 Pls.’ Mot. for Preliminary Inj. (“Deemer Decl.”) ¶ 11, ECF No. 8.)

18 5. Plaintiff Charles Michel Deemer is a member and officer of the  
19 Constitution Party of California. (Compl. ¶ 15; Deemer Decl. ¶ 2.)

20 6. The Constitution Party and the Justice Party sought to qualify as  
21 political parties in the 2012 election cycle, in order to place candidates for President  
22 and Vice President on the November 6, 2012 general election ballot. (Compl. ¶ 22;  
23 Norman Decl. ¶ 15; Deemer Decl. ¶ 20.)

24 7. Neither the Constitution Party nor the Justice Party wanted to participate  
25 in the June 5, 2012 primary election. (Compl. ¶ 22; Norman Decl. ¶ 16; Deemer  
26 Decl. ¶ 20.)

27 8. As of January 23, 2012, insufficient voters had affiliated with plaintiff  
28 Constitution Party of California to enable it to qualify as a political party under

1 Elections Code section 5100, subdivision (b). (Joint Stipulated Facts (“JSF”)  
2 No. 1.)

3 9. As of January 23, 2012, insufficient voters had affiliated with the  
4 California Justice Party to enable it to qualify as a political party under Elections  
5 Code section 5100, subdivision (b). (JSF No. 2.)

6 10. As of January 23, 2012, if a political body sought to qualify as a  
7 political party under Elections Code section 5100, subdivision (b), a minimum of  
8 103,004 voters needed to have declared their intention to affiliate with that party.  
9 (JSF No. 3.)

10 11. Seven political parties qualified to participate in the June 5, 2012  
11 primary election: American Independent, Americans Elect, Democratic, Green,  
12 Libertarian, Peace and Freedom, and Republican. (JSF No. 4.)

13 12. The Americans Elect Party qualified as a political party on December  
14 19, 2011. (JSF No. 5.)

15 13. Since 1953, when California set the party-qualification deadline 135  
16 days before the primary election, seven new political parties have attained formal  
17 recognition under California’s party-qualification scheme. (JSF No. 6.)

18 14. Since 1995, one new political body, the Americans Elect Party in 2011,  
19 has qualified as a recognized political party. (JSF No. 7.)

20 15. In the 2012 election cycle, 21 groups that registered with the Secretary  
21 of State as political bodies failed to qualify as recognized political parties, and one  
22 political body succeeded. (JSF No. 9.)

23 16. In order to provide counties with sufficient time to prepare ballots, the  
24 California Secretary of State would need to announce whether a political body has  
25 qualified for the ballot at least 98 days before the election. (JSF No. 10.)

26 17. To enable the California Secretary of State to have made the  
27 determination as to whether a political party had qualified prior to this year’s  
28 presidential election, each county would have needed to report the registration

1 totals for each political body by no later than July 19, 2012, and the counties in turn  
2 would have required additional time to collect and verify information provided to  
3 them. (JSF No. 11.)

4 18. California counties require no more than 19 days to collect and verify  
5 voter affidavits for submission to the Secretary of State. (JSF No. 12.)

6 19. As of the February 10, 2011, Odd-Numbered Year Report of  
7 Registration, the Constitution Party of California had 157 registrants in the State of  
8 California. (Decl. of Jana Lean in Support of the Secretary of State's Opening Trial  
9 Brief ("Lean Decl.") ¶ 2, Ex. A.)

10 20. As of the January 3, 2012, Report of Registration (154 days before the  
11 June 5, 2012, Presidential Primary Election), the Constitution Party of California  
12 had 121 registrants in the State of California. (Lean Decl. ¶ 3, Ex. B.)

13 21. As of the January 3, 2012, Report of Registration (154 days before the  
14 June 5, 2012, Presidential Primary Election), the Justice Party had 183 registrants in  
15 the State of California. (Lean Decl. ¶ 4, Ex. B.)

16 22. As of the April 6, 2012, Report of Registration (60 days before the June  
17 5, 2012, Presidential Primary Election), the Constitution Party of California had  
18 234 registrants in the State of California. (Lean Decl. ¶ 5, Ex. C.)

19 23. As of the April 6, 2012, Report of Registration (60 days before the June  
20 5, 2012, Presidential Primary Election), the Justice Party did not have any reported  
21 registrants in the State of California. The Secretary of State did not request  
22 registration data for the Justice Party in the April 6, 2012, Report of Registration  
23 because two factions had claimed to be representatives of the Justice Party, and the  
24 Secretary of State had not determined the legitimate contact person(s) in order to  
25 determine whether the group's renewed notice to qualify had been received from a  
26 legitimate Justice Party representative. (Lean Decl. ¶ 6.)

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1 24. As of the May 21, 2012, Report of Registration (15 days before the June  
2 5, 2012, Presidential Primary Election), the Constitution Party of California had  
3 207 registrants in the State of California. (Lean Decl. ¶ 7, Ex. D.)

4 25. As of the May 21, 2012, Report of Registration (15 days before the June  
5 5, 2012, Presidential Primary Election), the Justice Party did not have any reported  
6 registrants in the State of California. The Secretary of State did not request  
7 registration data for the Justice Party in the April 6, 2012, Report of Registration  
8 because two factions had claimed to be representatives of the Justice Party, and the  
9 Secretary of State had not determined the legitimate contact person(s) in order to  
10 determine whether the group's renewed notice to qualify had been received from a  
11 legitimate Justice Party representative. (Lean Decl. ¶ 8.)

12 26. As of the September 7, 2012, Report of Registration (60 days before the  
13 November 6, 2012, General Election), the Constitution Party of California had 252  
14 registrants in the State of California. (Supplemental Declaration of Jana M. Lean in  
15 Support of the Secretary of State's Responsive Trial Brief ("Suppl. Lean Decl.")  
16 ¶ 2, Ex. E.)

17 27. As of the September 7, 2012, Report of Registration (60 days before the  
18 November 6, 2012, General Election), the Justice Party had 237 registrants in the  
19 State of California. (Suppl. Lean Decl. ¶ 3, Ex. E.)

20 28. As of the September 7, 2012, Report of Registration (60 days before the  
21 November 6, 2012, General Election), there were 17,259,680 registered voters in  
22 the State of California. (Suppl. Lean Decl. ¶ 4, Ex. F.)

23 29. There are no provisions in the California Elections Code that allow for a  
24 newly qualified political party to qualify for and participate only in a general  
25 election. However, should a political body be allowed by this Court to qualify as a  
26 political party before the November 6, 2012, Presidential Election, the Secretary of  
27 State's office and each of California's 58 counties would need sufficient time to  
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1 gather registration data and prepare ballots and election materials to reflect the new  
2 political party. (Lean Decl. ¶ 9.)

3 30. In order to provide counties sufficient time to prepare their ballots, the  
4 Secretary of State would need to announce whether a political party has qualified  
5 for the ballot 98 days prior to the election. To enable the Secretary of State to make  
6 that determination, each county would need to report the registration totals of  
7 political bodies attempting to qualify to the Secretary of State no later than July 19,  
8 2012. Counties would in turn require additional time to collect and verify the  
9 information provided to them. (Lean Decl. ¶ 10.)

10 31. As a practical matter, the Secretary of State informally informs counties  
11 earlier in the process how many parties will be included on the ballot so the  
12 counties can determine the length of the ballot, and the names of the candidates of  
13 those qualified parties can be filled in later. When a political party is newly  
14 qualified, particularly if it qualifies late and close to the election, counties must find  
15 and/or create space for an additional party's candidate(s) on their ballots. (Lean  
16 Decl. ¶ 11.)

17 32. The Secretary of State does not intend to submit any additional exhibits  
18 or witnesses outside of the declarations, and exhibits attached to the declarations,  
19 already submitted with its trial briefs.

## 20 CONCLUSIONS OF LAW

21 1. Plaintiffs' Claim/Relief Requested: Plaintiffs request a permanent  
22 injunction prohibiting the Secretary of State from enforcing the timing requirement  
23 in Elections Code section 5100 against groups that seek to qualify as political  
24 parties solely to place their candidates on the presidential general election ballot.  
25 They claim that the timing requirement violates the First and Fourteenth  
26 Amendment rights of such groups and their voter-supporters.

27 2. Plaintiffs' Dismissed Claim: Plaintiffs have dropped their claim that the  
28 numerical requirement of section 5100 violates the First and Fourteenth

1 Amendment. The Court accordingly dismissed that claim without prejudice in its  
2 July 23, 2012 Order. ECF No. 26, 2.

3 3. To obtain a permanent injunction, plaintiffs must show:

4 a. Success on the merits of their case;

5 b. The likelihood of irreparable harm in the absence of injunctive  
6 relief;

7 c. That the balance of the equities between the parties favors them;  
8 and

9 d. The injunction is in the public interest. *Winter v. Natural*  
10 *Resources Defense Council, Inc.*, 555 U.S. 7, 32, 295 S. Ct. 365, 172  
11 L. Ed. 2d 249 (2008).

12 4. With respect to the merits, the court must weigh:

13 a. The asserted injury to plaintiffs' First and Fourteenth Amendment  
14 rights against

15 b. The State's important regulatory interests that serve as  
16 justifications for the burden imposed by the election law that is being  
17 challenged. *Burdick v. Takushi*, 504 U.S. 433, 434, 1125 S. Ct. 2059,  
18 119 L. Ed. 2d 245 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S.  
19 780, 788, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983)).

20 It is only if plaintiffs' constitutional rights are subjected to a severe restriction  
21 or burden that strict scrutiny will apply. *Id.*

22 5. It is plaintiffs' burden to show that the timing requirement of Elections  
23 Code section 5100 imposes a severe restriction or burden on their First and  
24 Fourteenth Amendment rights by producing evidence that shows:

25 a. The purported burden on plaintiffs' constitutional rights imposed  
26 by the state regulation was a clear and present danger; and

27 b. Not merely the product of speculation. *Libertarian Party of Ohio*  
28 *v. Blackwell*, 462 F.3d 579, 589 (6th Cir. 2006) (quoting *California*

1 *Democratic Party v. Jones*, 530 U.S. 567, 578, 120 S. Ct. 2402,  
2 147 L. Ed. 2d 502 (2000)).

3 6. Plaintiffs Have Not Met Their Burden to Establish the Predicate  
4 Elements for Injunctive Relief: Plaintiffs have not submitted, and cannot submit,  
5 aside from mere speculation, evidence supporting their claim that section 5100's  
6 timing requirement imposed a clear and present danger to plaintiffs' constitutional  
7 rights. Plaintiffs therefore cannot succeed on the merits of their case.

8 a. There are currently seven parties qualified for the ballot in  
9 California, which demonstrates that California has a strong historical  
10 record of qualifying minor parties for the ballot.

11 b. Another political body, Americans Elect, qualified for the  
12 November 5, 2012 ballot under the same circumstances, and by the same  
13 deadline of which plaintiffs complain. There is thus sufficient  
14 opportunity for a new party to qualify by section 5100's deadline, as  
15 long as it obtains a reasonable amount of support from California voters.

16 c. Plaintiffs' failure to qualify stems from an inability to capture  
17 voter interest, not an inability to meet section 5100's deadline, as  
18 demonstrated by the extremely low number of voter registration  
19 affidavits they have garnered, even after this court issued a preliminary  
20 injunction that allowed them to continue soliciting affidavits throughout  
21 the summer. The timing requirement therefore does not impose a clear  
22 and present danger to plaintiffs.

23 7. The State has important regulatory interests that justify the timing  
24 requirement.

25 a. The State has a significant interest in limiting access to the ballot  
26 in a meaningful and fair way in order to promote order and prevent  
27 chaos.

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1 b. State laws governing party qualification must be deliberate,  
2 because qualified parties may participate in any future election and any  
3 future race, even if they claim they only want to participate in one race  
4 in one election.

5 c. The State must also ensure that the party has sufficient, timely  
6 voter support.

7 d. The State must have one standard deadline for all aspiring parties,  
8 in order to decrease confusion, promote equal political opportunities for  
9 all unqualified parties, and eliminate potential fraud.

10 e. The Secretary of State and county elections officials require  
11 sufficient time to prepare the ballots in time for the election.

12 f. The timing requirement allows time for judicial and  
13 administrative challenges to the qualification of a party.

14 8. There is no likelihood of irreparable harm to plaintiffs in the absence of  
15 injunctive relief, as they have demonstrated during the period that the preliminary  
16 injunction is in place that their inability to attract voter interest is not due to the  
17 timing requirement, but to their own organization, messaging and platform.

18 9. The balance of the equities between the parties favors the state, in order  
19 to protect the State's interest in having sufficient time to prepare the ballot,  
20 decrease voter confusion, and provide one set of rules for all parties seeking to  
21 qualify.

22 10. A permanent injunction is not in the public interest for the same reasons.

23 11. Plaintiffs' request for a permanent injunction should therefore be  
24 denied.

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Dated: September 24, 2012

Respectfully submitted,  
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/s/  
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