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8 *California Secretary of State Debra Bowen*

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

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13 **CALIFORNIA JUSTICE**
COMMITTEE, THE
14 **CONSTITUTION PARTY OF**
CALIFORNIA, JEFF NORMAN,
15 **CHARLES MICHEL DEEMER, and**
JOHN GABREE,

16 Plaintiffs,

17 v.

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

20 Defendant.

CV 12-3956 PA (AGRx)

THE SECRETARY OF STATE'S
OBJECTIONS TO EVIDENCE
AND PROPOSED FINDINGS OF
FACT

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

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1 Defendant California Secretary of State Debra Bowen hereby submits the
2 following objections to Plaintiffs' Proposed Findings of Fact and the Declaration of
3 Richard Winger in Support of Plaintiffs' Motion for Preliminary Injunction and Ex
4 Parte Application Shortening Time:

5 **Objections to Plaintiffs' Proposed Findings of Fact**

6 1. Proposed Findings of Fact, Paragraph 6: The paragraph misstates the
7 law. Elections Code section 5100 provides three avenues to qualification, not "one
8 of three avenues." Elections Code section 5100(c) provides that a party may
9 qualify by collecting signatures on a petition from voters "declaring that they
10 represent a proposed party, the name of which shall be stated in the petition, which
11 proposed party those voters desire to have participate in that primary election."

12 2. Proposed Findings of Fact, Paragraph 8: The paragraph misstates the
13 law. Elections Code section 5100(c) provides that a party may qualify by collecting
14 signatures on a petition from voters "declaring that they represent a proposed party,
15 the name of which shall be stated in the petition, which proposed party those voters
16 desire to have participate in that primary election."

17 3. Proposed Findings of Fact, Paragraph 9: The paragraph misstates the
18 law. Elections Code section 5100 provides that the Secretary of State shall
19 determine party qualification, not certify.

20 4. Proposed Findings of Fact, Paragraph 10: The paragraph misstates the
21 law. Elections Code section 5100 provides that the Secretary of State shall
22 determine party qualification, not certify.

23 5. Proposed Findings of Fact, Paragraph 12: The paragraph misstates the
24 law. Elections Code section 5100 provides that the Secretary of State shall
25 determine party qualification, not certify.

26 6. Proposed Findings of Fact, Paragraph 16: The analysis of out-of-
27 jurisdiction court opinions is irrelevant to the only issue before the court: whether
28 Elections Code section 5100's timing requirement posed a severe burden on the

1 Justice Party and the Constitution Party’s attempts to qualify as parties in the 2012
2 California election cycle. Fed. R. Evid. 401. The paragraph is also based on
3 inadmissible testimony regarding legal issues from a non-lawyer, and the testimony
4 will not assist the court in understanding the evidence or determining a fact in issue.
5 Fed. R. Evid. 702. The court, not a witness, should determine matters of law.

6 7. Proposed Findings of Fact, Paragraph 29: The assertion that the
7 Constitution Party and Justice Party’s failure to qualify “undermined campaign
8 activity because the parties’ supporters could not promote the goal as part of their
9 organizing efforts” lacks foundation, is speculation, and is based on inadmissible
10 lay opinion testimony. Fed. R. Evid. 602, 701. The opinion does not account for
11 obvious alternative explanations, like lack of voter support or problems with the
12 parties’ organization, platform, or messaging.

13 8. Proposed Findings of Fact, Paragraph 30: The assertion that “[e]arly
14 qualification deadlines, when coupled with high voter registration or signature
15 requirements, can act as barriers to the ability of minor parties and independent
16 candidates to gain access to the ballot” lacks foundation and is speculation. Fed. R.
17 Evid. 602. The opinion does not account for obvious alternative explanations, like
18 lack of voter support or problems with the minor party or independent candidate’s
19 organization, platform, or messaging. It is also irrelevant to the only issue before
20 the court: whether Elections Code section 5100’s timing requirement posed a severe
21 burden on the Justice Party and the Constitution Party’s attempts to qualify as
22 parties in the 2012 California election cycle. Fed. R. Evid. 401.

23 9. Proposed Findings of Fact, Paragraph 31: The assertion, including that
24 “[e]vents that occur during the spring of election years are sometimes completely
25 unexpected, and of great importance,” and the summary of historical events lack
26 foundation and are speculation. Fed. R. Evid. 602. They are also irrelevant to the
27 only issue before the court: whether Elections Code section 5100’s timing
28 requirement posed a severe burden on the Justice Party and the Constitution Party’s

1 attempts to qualify as parties in the 2012 California election cycle. Fed. R. Evid.
2 401.

3 10. Proposed Findings of Fact, Paragraph 32: The assertion that early
4 qualification deadlines “hamper organizing efforts because new parties seldom have
5 enough public support that early in the election season to comply with the
6 requirement and there is seldom as much interest in politics that far before the heart
7 of the election cycle in the summer and fall” lacks foundation and is speculation.
8 Fed. R. Evid. 602. The opinion does not account for the actual level of voter
9 interest in the months before the primary election, and obvious alternative
10 explanations, like problems with the new party’s organization, platform, or
11 messaging. Fed. R. Evid. 702. It is also irrelevant to the only issue before the
12 court: whether Elections Code section 5100’s timing requirement posed a severe
13 burden on the Justice Party and the Constitution Party’s attempts to qualify as
14 parties in the 2012 California election cycle. Fed. R. Evid. 401.

15 11. Proposed Findings of Fact, Paragraph 37: The paragraph misstates
16 paragraph 10 of the Joint Stipulated Facts, in which parties agreed that counties
17 require “at least” 98 days notification before the election, not “no more than” 98
18 days before the election.

19 12. Proposed Findings of Fact, Paragraph 41: The paragraph misstates
20 California’s ballot preparation process and lacks foundation. The Secretary of State
21 does not prepare the ballot, and cannot “ensure” the preparation of the ballot by the
22 counties.

23 13. Proposed Findings of Fact, Paragraph 43: The paragraph misstates
24 California’s ballot preparation process and lacks foundation. The Secretary of State
25 does not prepare the ballot, and cannot “ensure” the preparation of the ballot by the
26 counties.

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1 **Objections to the Declaration of Richard Winger in Support of Plaintiffs’**
2 **Motion for Preliminary Injunction and *Ex Parte* Application Shortening Time**

3 14. Winger Declaration, Paragraph 2: The paragraph is vague and lacks
4 foundation. The analysis of court opinions that are not even cited in the testimony
5 is irrelevant to the only issue before the court: whether Elections Code section
6 5100’s timing requirement posed a severe burden on the Justice Party and the
7 Constitution Party’s attempts to qualify as parties in the 2012 California election
8 cycle. Fed. R. Evid. 401. The paragraph is also inadmissible testimony offering
9 legal conclusions from a non-lawyer. The testimony will not assist the court in
10 understanding the evidence or determining a fact in issue. Fed. R. Evid. 702. The
11 court, not a witness, should determine matters of law.

12 15. Winger Declaration, Paragraph 3: The paragraph is vague and lacks
13 foundation. It is inadmissible testimony regarding unspecified California law from
14 a non-lawyer. The testimony will not assist the court in understanding the evidence
15 or determining a fact in issue. Fed. R. Evid. 702. The court, not a witness, should
16 determine matters of law.

17 16. Winger Declaration, Paragraph 4: The paragraph is vague and lacks
18 foundation. The analysis of court opinions that are not even cited in the testimony
19 is irrelevant to the only issue before the court: whether Elections Code section
20 5100’s timing requirement posed a severe burden on the Justice Party and the
21 Constitution Party’s attempts to qualify as parties in the 2012 California election
22 cycle. Fed. R. Evid. 401. The paragraph is also inadmissible testimony offering
23 legal conclusions from a non-lawyer. The testimony will not assist the court in
24 understanding the evidence or determining a fact in issue. Fed. R. Evid. 702. The
25 court, not a witness, should determine matters of law.

26 17. Winger Declaration, Paragraph 5: The paragraph is vague and lacks
27 foundation. The assertions are irrelevant to the only issue before the court: whether
28 Elections Code section 5100’s timing requirement posed a severe burden on the

1 Justice Party and the Constitution Party's attempts to qualify as parties in the 2012
2 California election cycle. Fed. R. Evid. 401. The offered opinion also does not
3 account for obvious alternative explanations as to why new political parties fail to
4 qualify for the ballot, like lack of voter support or problems with the minor party's
5 organization, platform, or messaging. Fed. R. Evid. 702.

6 18. Winger Declaration, Paragraph 6: The paragraph is vague and lacks
7 foundation. It is inadmissible testimony regarding unspecified California law from
8 a non-lawyer. The testimony will not assist the court in understanding the evidence
9 or determining a fact in issue. Fed. R. Evid. 702. The court, not a witness, should
10 determine matters of law.

11 19. Winger Declaration, Paragraph 7: The paragraph is vague and lacks
12 foundation. It is inadmissible testimony regarding unspecified California law from
13 a non-lawyer. The testimony will not assist the court in understanding the evidence
14 or determining a fact in issue. Fed. R. Evid. 702. The court, not a witness, should
15 determine matters of law.

16 20. Winger Declaration, Paragraph 8: The paragraph is vague and lacks
17 foundation. It is inadmissible testimony regarding unspecified California law from
18 a non-lawyer. The testimony will not assist the court in understanding the evidence
19 or determining a fact in issue. Fed. R. Evid. 702. The court, not a witness, should
20 determine matters of law.

21 21. Winger Declaration, Paragraph 9: The paragraph is vague and lacks
22 foundation. It is inadmissible testimony regarding unspecified California law from
23 a non-lawyer. The testimony will not assist the court in understanding the evidence
24 or determining a fact in issue. Fed. R. Evid. 702. The court, not a witness, should
25 determine matters of law.

26 22. Winger Declaration, Paragraph 10: The paragraph is vague and lacks
27 foundation. It is inadmissible testimony regarding unspecified California law from
28 a non-lawyer. The testimony will not assist the court in understanding the evidence

1 or determining a fact in issue. Fed. R. Evid. 702. The court, not a witness, should
2 determine matters of law.

3 23. Winger Declaration, Paragraph 11: The paragraph is vague and lacks
4 foundation. It is inadmissible testimony regarding unspecified California law from
5 a non-lawyer. The testimony will not assist the court in understanding the evidence
6 or determining a fact in issue. Fed. R. Evid. 702. The court, not a witness, should
7 determine matters of law.

8 24. Winger Declaration, Paragraph 12: The paragraph is vague and lacks
9 foundation. The assertion that “early qualification deadlines, when coupled with
10 high voter registration or signature requirements, disadvantage minor parties and
11 independent candidates and can therefore act as a severe barrier to their ability of to
12 gain access to the ballot” lacks foundation and is speculation. Fed. R. Evid. 602.
13 The opinion does not account for obvious alternative explanations, like lack of
14 voter support or problems with the minor party or independent candidate’s
15 organization, platform, or messaging. Fed. R. Evid. 702. It is also irrelevant to the
16 only issue before the court: whether Elections Code section 5100’s timing
17 requirement posed a severe burden on the Justice Party and the Constitution Party’s
18 attempts to qualify as parties in the 2012 California election cycle. Fed. R. Evid.
19 401. The assertion regarding the actions of “numerous courts around the country”
20 is inadmissible testimony consisting of legal conclusions regarding unspecified
21 court opinions from a non-lawyer. The testimony will not assist the court in
22 understanding the evidence or determining a fact in issue. Fed. R. Evid. 702. The
23 court, not a witness, should determine matters of law.

24 25. Winger Declaration, Paragraph 13: The assertions, including that
25 “[e]vents that occur during the spring of election years are sometimes completely
26 unexpected, and of great importance,” and the summary of historical events, lack
27 foundation and are speculation. Fed. R. Evid. 602. They are also irrelevant to the
28 only issue before the court: whether Elections Code section 5100’s timing

1 requirement posed a severe burden on the Justice Party and the Constitution Party's
2 attempts to qualify as parties in the 2012 California election cycle. Fed. R. Evid.
3 401.

4 26. Winger Declaration, Paragraph 14: The assertions in the paragraph lack
5 foundation and are speculation. Fed. R. Evid. 602. The opinion does not account
6 for the actual level of voter interest in odd years before elections, and obvious
7 alternative explanations, like problems with the new party's organization, platform,
8 or messaging. Fed. R. Evid. 702. It is also irrelevant to the only issue before the
9 court: whether Elections Code section 5100's timing requirement posed a severe
10 burden on the Justice Party and the Constitution Party's attempts to qualify as
11 parties in the 2012 California election cycle. Fed. R. Evid. 401.

12 27. Winger Declaration, Paragraph 15: The assertions in the paragraph lack
13 foundation and are speculation. Fed. R. Evid. 602. The opinion does not account
14 for obvious alternative explanations to why minor parties fail to qualify, like
15 problems with organization, platform, or messaging. Fed. R. Evid. 702. It is also
16 irrelevant to the only issue before the court: whether Elections Code section 5100's
17 timing requirement posed a severe burden on the Justice Party and the Constitution
18 Party's attempts to qualify as parties in the 2012 California election cycle. Fed. R.
19 Evid. 401. The assertion that California's statutory scheme poses a severe barrier to
20 political bodies is inadmissible testimony consisting of legal conclusion from a
21 non-lawyer. The testimony will not assist the court in understanding the evidence
22 or determining a fact in issue. Fed. R. Evid. 702. The court, not a witness, should
23 determine matters of law.

24 28. Winger Declaration, Paragraph 16: The assertions in the paragraph
25 regarding California election history and legislation lack foundation.

26 29. Winger Declaration, Paragraph 17: The assertions in the paragraph lack
27 foundation.
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1 30. Winger Declaration, Paragraph 18: The assertions in the paragraph
2 regarding California election history lack foundation.

3 31. Winger Declaration, Paragraph 19: The assertions in the paragraph
4 regarding California election history lack foundation.

5 32. Winger Declaration, Paragraph 20: The assertions in the paragraph
6 regarding California election history lack foundation.

7 33. Winger Declaration, Paragraph 21: The assertions in the paragraph
8 regarding California election history lack foundation.

9 34. Winger Declaration, Paragraph 22: The assertions in the paragraph
10 regarding California election history lack foundation.

11 35. Winger Declaration, Paragraph 23: The assertions in the paragraph
12 regarding other states' arms of the Justice Party and the Constitution Party lack
13 foundation.

14 36. Winger Declaration, Paragraph 24: The assertions in the paragraph lack
15 foundation and are speculation. Fed. R. Evid. 602. The opinion does not account
16 for obvious alternative explanations to why minor parties fail to qualify, like
17 problems with organization, platform, or messaging. Fed. R. Evid. 702. It is also
18 irrelevant to the only issue before the court: whether Elections Code section 5100's
19 timing requirement posed a severe burden on the Justice Party and the Constitution
20 Party's attempts to qualify as parties in the 2012 California election cycle. Fed. R.
21 Evid. 401. The assertion that California's party-qualification statutory scheme
22 poses substantial hurdles to new political parties is inadmissible testimony
23 consisting of legal conclusion from a non-lawyer. The testimony will not assist the
24 court in understanding the evidence or determining a fact in issue. Fed. R. Evid.
25 702. The court, not a witness, should determine matters of law.

26 37. Winger Declaration, Paragraph 25: The assertions in the paragraph lack
27 foundation. It is inadmissible testimony regarding unspecified California law from
28 a non-lawyer. The testimony will not assist the court in understanding the evidence

1 or determining a fact in issue. Fed. R. Evid. 702. The court, not a witness, should
2 determine matters of law.

3 38. Winger Declaration, Paragraph 26: The assertions in the paragraph lack
4 foundation and are speculation, as it refers to analyses conducted by the declarant
5 that are not provided. Fed. R. Evid. 602, 702.

6 39. Winger Declaration, Paragraph 27 and Exhibit B: The summary of out-of-
7 jurisdiction court opinions is irrelevant to the only issue before the court: whether
8 Elections Code section 5100's timing requirement posed a severe burden on the
9 Justice Party and the Constitution Party's attempts to qualify as parties in the 2012
10 California election cycle. Fed. R. Evid. 401. Paragraph 27 and Exhibit B contain
11 inadmissible testimony regarding out-of-jurisdiction court decisions and legal
12 conclusions from a non-lawyer, which will not assist the court in understanding the
13 evidence or determining a fact in issue. Fed. R. Evid. 702. The court, not a
14 witness, should determine matters of law.

15 40. Winger Declaration, Paragraph 28: The analysis of out-of-jurisdiction
16 court opinions is irrelevant to the only issue before the court: whether Elections
17 Code section 5100's timing requirement posed a severe burden on the Justice Party
18 and the Constitution Party's attempts to qualify as parties in the 2012 California
19 election cycle. Fed. R. Evid. 401. The paragraph contains inadmissible testimony
20 regarding out-of-jurisdiction court decisions and legal conclusions from a non-
21 lawyer, and the testimony will not assist the court in understanding the evidence or
22 determining a fact in issue. Fed. R. Evid. 702. The court, not a witness, should
23 determine matters of law.

24 41. Winger Declaration, Paragraph 29: The assertions in the paragraph lack
25 foundation and are speculation. Fed. R. Evid. 601. The witness claims to be an
26 expert on ballot access for minor parties, not California's general election process.
27 The paragraph contains inadmissible testimony regarding legal conclusions from a
28 non-lawyer, and the testimony will not assist the court in understanding the

1 evidence or determining a fact in issue. Fed. R. Evid. 702. The court, not a
2 witness, should determine matters of law.

3 42. Winger Declaration, Paragraph 30: The assertions in the paragraph lack
4 foundation and are speculation. Fed. R. Evid. 601. The witness claims to be an
5 expert on ballot access for minor parties, not the cost of printing ballots.

6 43. Winger Declaration, Paragraph 31: The assertions in the paragraph lack
7 foundation and are speculation. Fed. R. Evid. 601. The witness claims to be an
8 expert on ballot access for minor parties, not the cost of printing or processing
9 ballots. The paragraph contains inadmissible testimony regarding unspecified
10 California law from a non-lawyer, and the testimony will not assist the court in
11 understanding the evidence or determining a fact in issue. Fed. R. Evid. 702. The
12 court, not a witness, should determine matters of law.

13 44. Winger Declaration, Paragraph 32: The assertions in the paragraph lack
14 foundation and are speculation. Fed. R. Evid. 601. The witness claims to be an
15 expert on ballot access for minor parties, not California's general election process.
16 The paragraph contains inadmissible testimony regarding unspecified California
17 law from a non-lawyer, and the testimony will not assist the court in understanding
18 the evidence or determining a fact in issue. Fed. R. Evid. 702. The court, not a
19 witness, should determine matters of law.

20 Dated: October 1, 2012

Respectfully submitted,

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