

1 KAMALA D. HARRIS
2 Attorney General of California
3 PETER A. KRAUSE
4 Supervising Deputy Attorney General
5 KARI KROGSENG
6 State Bar No. 215263
7 Deputy Attorney General
8 1300 I Street, Suite 125
9 P.O. Box 944255
10 Sacramento, CA 94244-2550
11 Telephone: (916) 322-1067
12 Fax: (916) 324-8835
13 E-mail: Kari.Krogseng@doj.ca.gov
14 *Attorneys for Defendant*
15 *California Secretary of State Debra Bowen*

16
17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
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20

21 **CALIFORNIA JUSTICE
22 COMMITTEE, THE
23 CONSTITUTION PARTY OF
24 CALIFORNIA, JEFF NORMAN,
25 CHARLES MICHEL DEEMER, and
26 JOHN GABREE,**

27 v. Plaintiffs,

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

Defendant.

CV 12-3956 PA (AGRx)

THE SECRETARY OF STATE'S
HIGHLIGHTED VERSION OF
PLAINTIFFS' 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 her
2 Highlighted Version of Plaintiffs' Proposed Findings of Fact and Conclusions of
3 Law, in order to set forth the findings of fact and conclusions of law that she agrees
4 with, disagrees with, and finds irrelevant, in accordance with the Court's July 23,
5 2012 Order.

PLAINTIFFS' FINDINGS OF FACT

A. Plaintiffs' Background

9 1. The California Justice Party and Plaintiff Constitution Party of
10 California are political bodies attempting to qualify for the 2012 general election
11 and desire to list their nominees for President and Vice President with their party
12 affiliations on the November Presidential Election ballot. [Decl. of Jeff Norman
13 (“Norman Decl.”) ¶¶ 2, 11, 15 (Dkt. No. 6); Decl. of Charles Michel Deemer
14 (“Deemer Decl.”) ¶¶ 11-12, 17 (Dkt. No. 8).]

15 2. Plaintiff California Justice Committee is a general purpose committee
16 under California law formed to support the efforts of the California Justice Party to
17 qualify as a recognized political party in California. [Norman Decl. ¶ 2.]

18 3. Plaintiffs Jeff Norman and John Gabree are registered voters who have
19 submitted affidavits declaring their intention to affiliate with the California Justice
20 Party and who wish to vote for their party's candidates and the party with which
21 they align. [Norman Decl. ¶¶ 6, 11; Decl. of John Gabree ¶¶ 3, 6 (Dkt. No. 4).]

22 4. Plaintiff Charles Michel Deemer is a registered voter who has
23 submitted an affidavit declaring his intention to affiliate with the Constitution Party
24 of California and who wishes to vote for his party's candidates and the party with
25 which he aligns. [Deemer Decl. ¶¶ 12, 15.]

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1 **B. California's Party-Qualification Scheme**

2 5. The California Elections Code defines a political “party” as a “political
3 party or organization that has qualified for participation in any primary election.”

4 [Cal. Elec. Code § 338.]

5 6. Elections Code § 5100 provides one of three avenues by which
6 political parties can receive formal recognition in California: (1) by receiving 2
7 percent of the statewide vote in the preceding gubernatorial election; (2) by having
8 1 percent of the vote from the last gubernatorial election declare their intent to
9 affiliate with the party by registering with the party; or (3) by collecting signatures
10 of voters supporting recognition of the political body as a political party equal to 10
11 percent of the vote from the last gubernatorial election. [Cal. Elec. Code § 5100.]

12 7. For the current election cycle, if a political body sought to qualify as a
13 political party through the voter registration method in Elections Code § 5100(b), a
14 minimum of 103,004 voters needed to have declared their intention to affiliate with
15 that party by the deadline specified by statute. [Joint Stipulated Facts (“Stip.”) ¶ 3
16 (Dkt. No. 29).]

17 8. For the current election cycle, if a political body sought to qualify as a
18 political party through the petition method in Elections Code § 5100(c), a minimum
19 of 1,030,040 voters needed to have signed a petition supporting recognition of that
20 political body as a political party by the deadline specified by statute. [Request for
21 Judicial Notice (“RJN”) at 7 (Dkt. No. 3).]

22 9. Elections Code § 5100 provides that the Secretary of State shall certify
23 the parties eligible to participate in the primary election 135 days prior to the
24 primary election, which this year was held on June 5, 2012. [Cal. Elec. Code
25 § 5100; RJN at 6.]

26 10. The deadline for the Secretary of State’s certification of parties eligible
27 to participate in this year’s primary therefore fell on January 23, 2012. [Cal. Elec.
28 Code § 5100; RJN at 6-7, 10 &16.]

1 11. For political bodies seeking to qualify under Elections Code § 5100(b)
2 (voter registration), the Secretary of State's determination is based on voter
3 registration affidavits submitted to each county's registrar of voters by 154 days
4 before the primary. [Cal. Elec. Code §2187(d)(2); RJD at 10.]

5 12. The deadline for voters to submit voter registration affidavits that
6 would count toward the Secretary of State's certification of parties eligible to
7 participate in this year's primary therefore fell on January 3, 2012. [RJD at 6, 10 &
8 16.]

9 13. For political bodies seeking to qualify under Elections Code § 5100(c)
10 (petition) during this election cycle, the petition packet had to be submitted no later
11 no later than November 10, 2011 to ensure verification of signatures by January 23,
12 2012. [Cal. Elec. Code §§ 5100(c), 9030, 9031; RJD at 7.]

13 14. Under California law, only political bodies that fulfill California's
14 party-qualification requirements are entitled to place their nominees for President
15 and Vice President on the November Presidential ballot with their party affiliations
16 listed. [Cal. Elec. Code §§ 6901, 13105; *Field v. Bowen*, 199 Cal. App. 4th 346,
17 350, 131 Cal. Rptr. 3d 721 (2011).]

18 15. Under California law, candidates for President and Vice President do
19 not need to participate in the primary election to participate in the general election.
20 [Cal. Const., art. 2, § 5(a-b); Cal. Elec. Code § 359.5; RJD at 52.]

21 16. California's January 3, 2012 deadline for party qualification through
22 the voter registration option is earlier than almost every early qualification deadline
23 that has been struck down by courts, and only two deadlines were earlier in the
24 calendar year: the Arkansas deadline struck down in 1996 (January 2) and the Ohio
25 deadline struck down in 2006 (November 3 of the year preceding the election).

26 [Decl. of Richard Winger ("Winger Decl.") ¶ 28 & Exh. B (Dkt. No. 5).]

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1 **C. California's Requirements for Independent Presidential**
2 **Candidates**

3 17. Under California law, independent candidates for President may
4 qualify for the November ballot in California by submitting a petition with a
5 sufficient number of signatures by 88 days before the November Presidential
6 election. [Winger Decl. ¶ 32; RJD at 35 & 39.]

7 18. For the November 2012 election, the number of signatures required for
8 an independent Presidential candidate was 172,859, and the deadline for submitting
9 the petition for verification of signatures was August 10, 2012. [Winger Decl. ¶ 32;
10 RJD at 39.]

11 **D. Plaintiffs' Efforts to Satisfy California's Party-Qualification**
12 **Scheme**

13 19. On or about November 30, 2011, Rocky Anderson announced the
14 formation of the Justice Party and his intention to seek its nomination for President
15 in 2012, and, on or about December 15, 2011, a group of California voters
16 submitted to the California Secretary of State's office a notice of intent to qualify
17 the Justice Party as an official political party in California. [Norman Decl. ¶¶ 4-5.]

18 20. Because the Justice Party has limited funds, its supporters elected to
19 pursue the voter registration option for qualifying as a political party in California.
20 [Norman Decl. ¶ 10.]

21 21. The Constitution Party was founded by Howard Phillips as a national
22 political party in 1992. [Deemer Decl. ¶ 5.]

23 22. Since its first Presidential campaign in 1992, the Constitution Party has
24 placed its candidates for President and Vice President on the November ballot in no
25 less than 35 states, such that its Presidential candidates have been theoretically
26 capable of winning a majority of the electoral college in each election. [Deemer
27 Decl. ¶ 6.]

1 23. In 1992, the American Independent Party (AIP), which has been
2 continuously recognized as a political party by California since 1968, formally
3 affiliated with the Constitution Party, so the Constitution Party's nominees for
4 President and Vice President appeared on California's November Presidential ballot
5 as AIP's candidate between 1992 and 2004. [Deemer Decl. ¶¶ 3, 8.]

6 24. When the AIP declined to affiliate with the Constitution Party in 2008
7 and again in 2010, supporters of the Constitution Party who resided in California
8 filed, on or about August 9, 2010, a notice of intent to qualify the Constitution Party
9 of California as a political party. [Deemer Decl. ¶¶ 9-11.]

10 25. Because the Constitution Party of California has limited funds, its
11 supporters elected to pursue the voter registration option for qualifying as a political
12 party in California. [Deemer Decl. ¶ 14.]

13 26. As of January 23, 2012, insufficient voters had affiliated with the
14 California Justice Party or the Constitution Party of California to enable them to
15 qualify as a political party under Elections Code § 5100(b). [Stip. ¶ 2.]

16 27. On or about January 31, 2012, Defendant Debra Bowen announced
17 that the California Justice Party and Constitution Party of California had failed to
18 qualify as recognized political parties. [RJN at 4.]

19 28. After the announcement that the groups had not qualified as
20 recognized political parties, supporters of the California Justice Party and
21 Constitution Party of California continued their efforts to fundraise, educate voters,
22 and register supporters through the internet, conferences, and grassroots
23 campaigning. [Norman Decl. ¶ 12; Deemer Decl. ¶ 17.]

24 29. The Secretary of State's determination in January 2012 that the
25 California Justice Party and Constitution Party of California failed to qualify by the
26 135-day deadline undermined campaign activity because the parties' supporters
27 could not promote the goal as part of their organizing efforts of qualifying as a

1 recognized political party to place their candidates on California's 2012 Presidential
2 ballot. [Norman Decl. ¶ 12; Deemer Decl. ¶¶ 17, 18.]

3 **E. The Impact of Early Qualification Deadlines**

4 30. Early qualification deadlines, when coupled with high voter
5 registration or signature requirements, can act as barriers to the ability of minor
6 parties and independent candidates to gain access to the ballot. [Winger Decl.
7 ¶¶ 12-14.]

8 31. Events that occur during the spring of election years are sometimes
9 completely unexpected, and of great importance, but early deadlines prevent minor
10 parties from responding to and capitalizing on these developments. Two historical
11 examples underscore the importance of flexibility: both the Republican Party in
12 1854 and the Progressive Party in 1912 formed late in the election cycle in response
13 to political developments and ultimately garnered substantial support and won
14 several important races, but an early qualification deadline like California's would
15 have prevented either party from achieving that level of support. [Winger Decl.
16 ¶ 13.]

17 32. Additionally, early qualification deadlines that require political bodies
18 to organize in the year preceding the election hamper organizing efforts because
19 new parties seldom have enough public support that early in the election season to
20 comply with the requirement and there is seldom as much interest in politics that far
21 before the heart of the election cycle in the summer and fall. This is particularly
22 true of new parties, like the Justice Party (which formed in December 2011), which
23 not only have to organize but also make the public familiar with their platform.

24 [Winger Decl. ¶ 14.]

25 **F. California's History of Ballot Access for New Political Parties**

26 33. Since 1953, when California set the party-qualification deadline 135
27 days before the primary election, seven new political parties have attained formal

1 recognition under California's party-qualification scheme. [Stip. ¶ 6; Winger Decl.
2 ¶¶ 16-22.]

3 34. Since 1995, one new political body, the Americans Elect Party in
4 2011, has qualified as a recognized political party. [Stip. ¶ 7; Winger Decl. ¶¶ 21-
5 22.]

6 35. Since 2000, 61 groups that have registered with the Secretary of State
7 as political bodies have failed to qualify as recognized political parties in
8 California, with 11 of these having registered and failed to qualify more than once.
9 [Stip. ¶ 8.]

10 36. In the 2012 election cycle, 21 groups that registered with the Secretary
11 of State as political bodies failed to qualify as recognized political parties, and one
12 political body succeeded. [Stip. ¶ 9.]

13 **G. The Administrative Requirements for Preparing California's**
14 **General Election Ballot**

15 37. To have sufficient time to prepare the ballots for an election,
16 California counties require notification by the Secretary of State that a political
17 party has qualified for the ballot no more than 98 days before the election. [Stip.
18 ¶ 10.]

19 38. For the current election cycle, 98 days before the general election is
20 July 31, 2012. [Stip. ¶ 10; RJD at 38.]

21 39. California counties therefore would have sufficient time to prepare
22 ballots for the general election if they knew the identities of the political parties that
23 have qualified for the November 6, 2012 Presidential election by July 31, 2012.
24 [Stip. ¶ 10; RJD at 38.]

25 40. For the Secretary of State to determine whether a political party has
26 qualified 98 days prior to a Presidential election, each county would need to report
27 the registration totals for each political body no more than 110 days before the

1 election, which fell on July 19, 2012 in the current election cycle. [Stip. ¶ 11; RJN
2 at 38.]

3 41. The Secretary of State would therefore be able to ensure that the ballot
4 is prepared in time for the November general election if the counties reported the
5 registration totals of political bodies attempting to qualify for the November 6,
6 2012 Presidential election prior to July 19, 2012. [Stip. ¶ 11; RJN at 38

7 42. California counties require no more than 19 days to collect and verify
8 voter affidavits before them submitting them to the Secretary of State. [Stip. ¶ 12;
9 *see also* Elec. Code § 2187(d) (requiring that counties collect and verify voter
10 affidavits for submission to the Secretary of State at different points in the election
11 cycle in 7, 10 and 19 days).]

12 43. For the current election cycle, the State of California would therefore
13 have been able to ensure that ballots are prepared in time for the November general
14 election had the deadline for political bodies seeking to qualify for the November
15 Presidential election been June 30, 2012. [Stip. ¶ 12.]

16 **CONCLUSIONS OF LAW**

17 1. Plaintiffs challenge the application of the timing requirements in
18 California Elections Code § 5100 to political bodies seeking recognition as political
19 parties so that their candidates for President and Vice President can appear on
20 California's November general election ballot.

21 2. Plaintiffs' claims for declaratory and permanent injunctive relief are
22 brought pursuant to the First and Fourteenth Amendments to the Constitution of the
23 United States and 42 U.S.C. § 1983.

24 3. This Court has jurisdiction over Plaintiffs' claims under 28 U.S.C.
25 §§ 1331, 1343, and 2201. Declaratory relief is authorized under 28 U.S.C. §§ 2201
26 and 2202.

27 4. Venue is proper in this Court under 28 U.S.C. § 1391(b).

1 5. Plaintiffs seeking a permanent injunction must demonstrate: (1) that
2 they have suffered an irreparable injury; (2) that remedies available at law, such as
3 monetary damages, are inadequate to compensate for that injury; (3) that, [REDACTED]
4 considering the balance of hardships between the plaintiffs and defendant, a remedy
5 in equity is warranted; and (4) that the public interest would not be disserved by a
6 permanent injunction. *See Sierra Forest Legacy v. Sherman*, 646 F.3d 1161, 1184
7 (9th Cir. 2011) (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391,
8 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006)).

9 **A. Plaintiffs Have Demonstrated that California's Early Qualification**
10 **Deadline Causes Irreparable Injury**

11 6. Plaintiffs have established that California's early party-qualification
12 deadline has caused, and will continue to cause, irreparable harm to political bodies
13 and to voters seeking to cast their votes and to engage in the electoral process
14 effectively in this and future Presidential elections.

15 7. Courts have consistently recognized that state ballot-access restrictions
16 implicate two First Amendment guarantees, ““the right of individuals to associate
17 for the advancement of political beliefs”” and ““the right of qualified voters,
18 regardless of their political persuasion, to cast their votes effectively,”” both of
19 which ““rank among our most precious freedoms.”” *Anderson v. Celebrezze*,
20 460 U.S. 780, 787-88, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983) (quoting *Williams*
21 *v. Rhodes*, 393 U.S. 23, 30-31, 89 S. Ct. 5, 10, 21 L. Ed. 2d 24 (1968)).

22 8. Under the balancing test laid out in *Anderson* and clarified in *Burdick*
23 *v. Takushi*, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992), courts weigh
24 “the character and magnitude of the asserted injury to the rights protected by the
25 First and Fourteenth Amendments” against “the precise interests put forward by the
26 State as justifications for the burden imposed by its rule,” considering “the extent to
27 which those interests make it necessary to burden the plaintiff’s rights.” *Anderson*,
28 460 U.S. at 789. If the combined effect of a State’s laws places “severe”

1 restrictions upon these rights, then courts apply strict scrutiny, but if the laws
2 impose only “reasonable, nondiscriminatory restrictions,” then courts apply rational
3 basis review. *Burdick*, 504 U.S. at 434 (internal quotation marks omitted).

4 9. Plaintiffs have established that California’s early party-qualification
5 deadline severely burdens their First and Fourteenth Amendment rights and is
6 therefore subject to strict scrutiny.

7 10. “[T]he great weight of authority that has distinguished between filing
8 deadlines well in advance of the primary and general election and deadlines falling
9 closer to the dates of those elections,” *Libertarian Party of Ohio v. Blackwell*,
10 462 F.3d 579, 590 (6th Cir. 2006), and courts have consistently struck down
11 deadlines that fall far in advance of the relevant election because of the severe
12 burden they impose on voters’ rights, *see id.* at 586 (“Many courts have
13 documented the burden imposed by statutes requiring political parties to file
14 registration petitions far in advance of the primary and general elections.”); *id.* at
15 590-91 (“A number of other courts have noted the problems associated with filing
16 deadlines far in advance of the election.”).

17 11. For example, in *Nader v. Brewer*, 531 F.3d 1028 (9th. Cir. 2008), the
18 Ninth Circuit applied strict scrutiny and struck down Arizona’s early filing deadline
19 for independent Presidential candidates, which fell 90 days before the primary and
20 146 days before the general election, *see id.* at 1031.

21 12. California’s party-qualification deadline is among the earliest
22 deadlines that federal courts have considered and is earlier than all but two of the
23 early deadlines that courts have struck down, including the early deadline to which
24 the Ninth Circuit applied strict scrutiny in *Nader*, further supporting the conclusion
25 that California’s party-qualification deadline imposes a severe burden on Plaintiffs
26 rights. *See Nader*, 531 F.3d at 1039 (noting that challenged “signature requirement
27 is greater and the deadline [earlier]” than in a case where a registration deadline
28 was upheld); *Blackwell*, 462 F.3d at 591 (noting that “Ohio’s deadline in the

1 November preceding the election is the earliest of any deadline reviewed by a
2 federal court").

3 13. The limited success of new political parties in satisfying California's
4 qualification requirements—only seven new political parties have satisfied
5 California's party-qualification scheme since the current deadline was adopted 60
6 years ago and only one, the Americans Elect Party, has done so since 1995—also
7 supports the conclusion that the early deadline is a severe barrier for political bodies
8 seeking to qualify as recognized political parties. *See Libertarian Party of Wash. v.*
9 *Munro*, 31 F.3d 759, 762 (9th Cir. 1994) (holding that the controlling inquiry is
10 "whether 'reasonably diligent' minor party candidates can normally gain a place on
11 the ballot, or if instead they only rarely will succeed" (quoting *Storer v. Brown*,
12 415 U.S. 724, 742, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974); *see also Blackwell*,
13 462 F.3d at 592 ("[T]he fact that an election procedure can be met does not mean
14 the burden imposed is not severe.")).

15 14. The Secretary of State's argument that Plaintiffs have suffered no real
16 injury because they have not made meaningful progress toward satisfying the
17 103,004 voter registration threshold erroneously shifts the focus from whether
18 Plaintiffs have established the unconstitutionality of § 5100, the legal issue before
19 the Court, to the likelihood that Plaintiffs will ever meet the qualification
20 requirements that the Court might conclude are constitutional. Whether Plaintiffs
21 have met, or ever would meet, the numeric threshold has no bearing on determining
22 whether setting the deadline for doing so ten months before the relevant election
23 impermissibly burdens Plaintiffs fundamental rights, which involves assessing the
24 severity of that restriction against the justifications for it proffered by the Secretary
25 of State.

26 15. The Secretary of State has not proffered a sufficient or credible
27 justification the party-qualification deadline in California Elections Code § 5100,
28 let alone evidence that the timing requirement is "narrowly drawn" to justify the

1 severe restriction it places on Plaintiffs and other voters and political bodies. *See*
2 *Burdick*, 504 U.S. at 434.

3 16. Although California elections officials undoubtedly require a
4 reasonable amount of time in advance of an election to certify that a candidate or
5 party have satisfied the eligibility requirements for inclusion on the ballot and to
6 prepare election materials, the evidence demonstrates that a June 30, 2012 deadline
7 would have adequately served that legitimate interest during the current election
8 cycle.

9 17. The State of California's ability to ensure that eligible independent
10 candidates for President are included on the November ballot based on a petition
11 deadline that is 98 days before the November election further confirms that
12 California election officials do not need 10 months to tabulate whether a political
13 body has satisfied the voter registration threshold in order to place its candidates for
14 President and Vice President on the November ballot with the party label.

15 18. Although California has a legitimate interest in limiting ballot access
16 to bona fide parties to avoid voter confusion and to protect the integrity of the
17 electoral process, those concerns are far more relevant to support § 5100's
18 numerosity requirement than the timing requirement. A party-qualification
19 deadline closer to the relevant election would amply serve those interests.

20 19. Although California has legitimate interests in avoiding voter
21 confusion and preventing fraud, the Secretary of State has presented no evidence
22 and offered no plausible explanation why establishing a later party-qualification
23 deadline would cause voter confusion or increase the likelihood of voter fraud, nor
24 has she explained how the early qualification deadline is narrowly tailored to
25 advance those interests.

26 20. California does not have a legitimate interest in withholding formal
27 recognition from political parties who satisfy the numeric threshold based primarily
28 on voter support for the party's presidential nominee. A state's interest in

1 restricting ballot access is at its lowest when it comes to regulating Presidential
2 elections, *see Anderson*, 460 U.S. at 794-95, and limiting ballot access for political
3 parties that form primarily to support a candidate in the national Presidential
4 election is not a legitimate state interest, *see Burdick*, 504 U.S. at 434 (holding that
5 the constitution may permit “reasonable, *nondiscriminatory* restrictions” on ballot
6 access (emphasis added and internal quotation marks omitted)).

7 21. Even if this were a legitimate interest, the early party-qualification
8 deadline is not narrowly tailored to advance that interest. Under the current
9 deadline, there is nothing that prevents a new party from meeting the numeric
10 threshold based solely on voter support for that new party’s putative Presidential
11 nominee. Additionally, even with a later deadline for parties seeking recognition so
12 their Presidential candidates may appear on the general election ballot, there is no
13 reason to believe that voters who affirm their support for a party that is focused
14 primarily on trying to place its Presidential candidate on the general election ballot
15 would not also support a broader slate of candidates from that party in future
16 elections.

17 22. To the extent that California has a legitimate interest in assuring equal
18 political opportunities for all unqualified parties, refusing to establish a later party-
19 qualification deadline, which would be open to all political bodies seeking formal
20 recognition, does not advance that interest.

21 23. Although California elections officials need sufficient time to resolve
22 judicial and administrative challenges to the qualification of a party, they are able to
23 resolve challenges involving independent Presidential candidates, who must submit
24 their nomination petitions 98 days before the general election, before the general
25 election, and the Secretary of State has presented no evidence establishing that a
26 deadline 10 months before the election is necessary to accommodate this interest.

27 24. The loss of First Amendment freedoms “for even minimal periods of
28 time, unquestionably constitutes irreparable injury” because “[t]he timeliness of

1 political speech is particularly important.” *Elrod v. Burns*, 427 U.S. 347, 373, 374
2 n.29, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976).

3 **B. Plaintiffs Have Demonstrated that Remedies at Law Are**
4 **Inadequate**

5 25. Monetary damages or other legal remedies are inadequate to resolve
6 Plaintiffs’ claims because “[t]here is no way to calculate the value of such a
7 constitutional deprivation.” *Walters v. Reno*, 145 F.3d 1032, 1048 (9th Cir. 1998);
8 *see also Allee v. Medrano*, 416 U.S. 802, 814-15 94 S. Ct. 2191, 40 L. Ed. 2d 566
9 (1974) (holding “[n]o remedy at law would be adequate to provide [adequate]
10 protection” where plaintiffs challenged conduct that infringed “constitutionally
11 protected rights of free expression, assembly, and association”).

12 **C. Plaintiffs Have Demonstrated the Balance of Hardships Tips**
13 **Sharply in Favor of Granting a Permanent Injunction**

14 26. The substantial infringement on fundamental personal liberties caused
15 by California’s early party-qualification deadline greatly outweighs whatever
16 minimal burden the State of California must undertake to establish a
17 constitutionally compliant deadline for political bodies seeking recognition so their
18 candidates for President and Vice President may appear on the November
19 Presidential Election ballot. *See Anderson*, 460 U.S. at 806 (“If the State has open
20 to it a less drastic way of satisfying its legitimate interests, it may not choose a
21 legislative scheme that broadly stifles the exercise of fundamental personal
22 liberties.” (internal quotation marks omitted)).

23 **D. Plaintiffs Have Demonstrated that Permanent Injunctive Relief**
24 **Serves the Public Interest**

25 27. An order prohibiting the State of California from denying political
26 bodies the opportunity to participate meaningfully in the current and future
27 Presidential Election cycles greatly benefits the public, because “[t]he ability of a
28 political party to appear on the general election ballot affects not only the party’s

1 rights, but also the First Amendment right of voters.” *Blackwell*, 462 F.3d at 588;
2 *see also Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir.
3 2002) (recognizing “the significant public interest in upholding First Amendment
4 principles”).

5 **E. Plaintiffs Have Established Their Entitlement to Declaratory and**
6 **Permanent Injunctive Relief**

7 28. Plaintiffs are entitled to the declaratory relief requested in their
8 Complaint.

9 29. Plaintiffs are entitled to the permanent injunctive relief requested in
10 their Complaint.

11 Dated: October 1, 2012

12 Respectfully submitted,

13 KAMALA D. HARRIS
14 Attorney General of California
15 PETER A. KRAUSE
16 Supervising Deputy Attorney General

17 /s/
18 KARI KROGSENG
19 Deputy Attorney General
Attorneys for Defendant
California Secretary of State Debra
Bowen

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