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7 *California Justice Committee, the*
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8 *Jeff Norman, Charles Michel Deemer,*
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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 CALIFORNIA JUSTICE COMMITTEE; et) Case No. CV12-3956 PA (AGR_x)
13 al.,)
14 Plaintiffs,) The Honorable Percy Anderson
15 vs.) **PLAINTIFFS' RESPONSE TO**
16 DEBRA BOWEN, California Secretary of) **THE SECRETARY OF STATE'S**
17 State, in her official capacity,) **OBJECTIONS TO EVIDENCE**
18 Defendant.) **AND PROPOSED FINDINGS OF**
19) **FACT**
) Trial Date: October 16, 2012
) Time: 9 a.m.
) Courtroom: 15

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1 Following this Court’s entry of a preliminary injunction in favor of Plaintiffs,
2 the parties met and conferred in advance of the Rule 16 Conference. Consistent with
3 the Rule and this Court’s order, the parties discussed the scope of discovery and
4 identified the material issues in dispute. As reflected in the parties’ Rule 26(f) Report:

5 The Parties agree that no discovery is needed in this matter and that
6 the dispute in this case is legal, and not factual, in nature. They
7 believe that the legal issues in this case can be decided based on the
8 factual record presented in support and in opposition to the
9 preliminary injunction, supplemented by a joint stipulation as to
10 additional facts, and with the opportunity for supplemental legal
11 briefing to this Court.

12 Rule 26(f) Report at 3 (Dkt. No. 23). The parties therefore stated that they “do not
13 believe that a proposed discovery plan is necessary and, in the interest of resolving the
14 dispute in the most efficient manner possible,” proposed a schedule that included only
15 five events/deadlines: filing an amended complaint (if needed), filing joint stipulated
16 facts, filing opening trial briefs, filing responsive briefs, and a trial date. *Id.* at 3-4.

17 In response to the parties’ representations in the Rule 26(f) Report, this Court
18 entered a scheduling order that essentially adopted the parties’ proposed schedule.
19 *See* 7/23/12 Minute Order at 1 (Dkt. No. 26). Specifically, this Court’s order stated:

20 According to the Joint 26(f) Report, the parties agree that no
21 discovery is necessary and that “the legal issues in this case can be
22 decided based on the factual record presented in support and in
23 opposition to the preliminary injunction, supplemented by a joint
24 stipulation as to additional facts, and with the opportunity for
25 supplemental legal briefing” Based on the agreement of the
26 parties, the Court waives the ordinary pretrial requirements and
27 instead establishes [pretrial procedures and dates for filing Stipulated
28 Facts, Opening Trial Briefs, and Responsive Trial Briefs; exchanging

1 Proposed Findings of Fact and Conclusions of Law; filing and serving
2 Underlined Findings of Fact and Conclusions of Law; discussing
3 settlement; and conducting the Trial].

4 7/23/12 Minute Order at 1.

5 Notwithstanding her prior representation that “the dispute in this case is legal,
6 and not factual, in nature,” Rule 26(f) Report at 3, the Secretary of State has now, for
7 the first time, raised objections to the admissibility of testimony contained in the
8 declarations that Plaintiffs filed during the preliminary injunction stage. *See* Secretary
9 of State’s Objections to Evidence and Proposed Findings of Fact (Dkt. No. 41). The
10 Court should overrule the Secretary of State’s objections for two reasons.

11 First, the Secretary of State has waived any evidentiary objection to the
12 declarations submitted in support of the preliminary injunction. *See Jerden v.*
13 *Amstutz*, 430 F.3d 1231, 1237 (9th Cir. 2005) (“An objection must be made as soon
14 as the ground of it is known, or could reasonably have been known to the objector,
15 unless some special reason makes its postponement desirable for him and not unfair to
16 the offeror.”) (*quoting* 21 CHARLES ALAN WRIGHT & KENNETH W. GRAHAM, JR.,
17 FEDERAL PRACTICE AND PROCEDURE § 5037.1 (2d ed. 2005)). Plaintiffs filed the
18 declarations on May 4, 2012, and the Secretary of State filed her opposition on May
19 14. She did not file any evidentiary objections at that time. The Rule 26(f) report
20 stated that the parties were prepared to proceed on the preliminary injunction record,
21 plus further factual stipulations. This Court’s order accepted the parties’ proposal and
22 ordered that the preliminary injunction record would serve as the basis for resolving
23 the permanent injunction. Upon entry of this Court’s order, the evidentiary record in
24 this case was set, subject only to expansion through a joint factual stipulation, which
25 by its nature cannot include disputed facts.

26 Second, this Court has not authorized evidentiary objections at this late date.
27 The parties’ proposal in the Rule 26(f) Report did not reference or otherwise suggest
28 that evidentiary objections to the already-filed declarations should be permitted. The

1 pre-trial procedures and schedule that this Court established after reviewing the Rule
2 26(f) Report also did not provide any mechanism for lodging evidentiary objections.
3 Simply put, the evidentiary objections are untimely under, and contrary to, this
4 Court's scheduling order.

5 The Secretary of State's perverse attempt to stipulate that the case can be tried
6 on the existing factual record but then seek, at the last minute, to modify portions of
7 that record established by Plaintiffs should be rejected. Even if this Court were to
8 sustain the objections, however, the ultimate legal question should still be resolved in
9 Plaintiffs' favor: the challenged deadline is ten months before the relevant election,
10 courts have consistently recognized that early deadlines severely burden fundamental
11 First and Fourteenth Amendment rights, and Secretary of State has not provided any
12 plausible justification for such an early deadline. The objections do not, in any way,
13 implicate those key propositions. Nonetheless, if the Court is inclined to consider the
14 Secretary of State's evidentiary objections, notwithstanding their untimeliness and
15 incompatibility with the parties' stipulation and this Court's scheduling order,
16 Plaintiffs respectfully request that they be permitted to respond to the objections and
17 explain why they are without merit and should be overruled.

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19 Dated: October 3, 2012

Respectfully Submitted,

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21 By: /s/ David B. Sapp

22 David B. Sapp
23 ACLU Foundation of Southern California
24 *Attorneys for Plaintiffs*
25 *California Justice Committee, Constitution*
26 *Party of California, Jeff Norman, Charles*
27 *Michel Deemer, and John Gabree*
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