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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**  
16 **JOHN GABREE,**

Plaintiffs,

v.

17  
18 **DEBRA BOWEN, California**  
**Secretary of State, in her official**  
19 **capacity,**

20 Defendant.

CV 12-3956 PA (AGR<sub>x</sub>)

**NOTICE OF MOTION TO ALTER  
OR AMEND JUDGMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: December 10, 2012  
Time: 1:30 p.m.  
Courtroom: 15  
Judge: The Honorable Percy  
Anderson  
Trial Date: October 16, 2012  
Action Filed: May 7, 2012

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**NOTICE**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on December 10, 2012, at 1:30 p.m., in Courtroom 15 of the United States District Court for the Central District of California, located at 312 N. Spring Street, Los Angeles, California, defendant California Secretary of State Debra Bowen will and hereby does move for an order altering or amending the judgment entered on October 18, 2012, in order to clarify the scope of the permanent injunction and conform the judgment with the Findings of Fact and Conclusions of Law. This motion, which is not opposed by plaintiffs, is made pursuant to Federal Rules of Civil Procedure 59(e) and/or 60(a), and is based on the attached memorandum of points and authorities, the declaration of Kari Krogseng, any additional briefing, and any oral arguments presented at the hearing.

This motion is made following the conference of counsel pursuant to Local Rule 7-3, which took place on October 24, 2012. Decl. of Kari Krogseng in Supp. of Mot. to Alter or Amend Judg. (“Krogseng Decl.”) ¶¶ 2-3. Plaintiffs’ counsel, David Sapp, has also reviewed a draft of the motion and the proposed amendment to the judgment. *Id.* ¶ 4. Mr. Sapp has informed counsel for the Secretary of State that plaintiffs have no objection to the requested amendment of the judgment. *Id.*

Dated: October 26, 2012

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
PETER A. KRAUSE  
Supervising Deputy Attorney General

/s/  
KARI KROGSENG  
Deputy Attorney General  
*Attorneys for California Secretary of  
State Debra Bowen*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Elections Code section 5100 requires that political bodies that wish to qualify  
4 as political parties must obtain a requisite number of voter affidavits or signatures  
5 on petitions in support of their qualification at least 135 days before any primary  
6 election. Plaintiffs challenged the constitutionality of this provision as applied to  
7 groups that wished to qualify as political parties in order to participate in a  
8 presidential general election, but not a primary election. After a bench trial, this  
9 Court entered judgment on October 18, 2012, ordering that:

10 [T]he Secretary of State is permanently enjoined from enforcing or  
11 otherwise applying California Elections Code section 5100's requirement  
12 that proposed political parties must satisfy the party qualification  
13 requirements at least 135 days prior to the primary election.

14 ECF No. 50, 2. The judgment is broader than what the plaintiffs requested,  
15 and thus broader than what Secretary of State believes the Court intended.  
16 The judgment also goes beyond what the Findings of Fact and Conclusions of  
17 Law support. The Secretary of State therefore respectfully requests that, in  
18 order to clarify its intent and conform the judgment to the Findings of Fact and  
19 Conclusions of Law, this Court amend the judgment to read:

20 [T]he Secretary of State is permanently enjoined from enforcing or  
21 otherwise applying California Elections Code section 5100's requirement  
22 that proposed political parties that wish to qualify as political parties in  
23 order to participate in a November presidential general election must  
24 satisfy the party qualification requirements at least 135 days prior to the  
25 primary election.

26 Plaintiffs have no objection to the requested amendment of the judgment.

27 Krogseng Decl. ¶ 4.  
28

1 **ARGUMENT**

2 Rule 59(e) of the Federal Rules of Civil Procedure provides that a motion to  
3 alter or amend a judgment may be filed no later than 28 days after the entry of  
4 judgment. “Since specific grounds for a motion to amend or alter are not listed in  
5 the rule, the district court enjoys considerable discretion in granting or denying the  
6 motion.” *Allstate Inc. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (quoting  
7 *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc) (per  
8 curiam) (internal quotations and citations omitted)). There are a number of grounds  
9 upon which a Rule 59(e) motion may be granted, including if it “is necessary to  
10 correct manifest errors of law or fact upon which the judgment rests” or if it “is  
11 necessary to prevent manifest injustice.” *Id.* A court may also clarify a judgment,  
12 including the scope of an injunction, under Rule 59(e). *Brown v. Hovatter*, 525  
13 F. Supp. 2d 754, 757 (D. Md. 2007); *Capacchione v. Charlotte-Mecklenburg Sch.*,  
14 190 F.R.D. 170, 175 (W.D.N.C. 1995).

15 Rule 60(a) also allows a court to, at any time, “correct a clerical mistake or a  
16 mistake arising from oversight or omission whenever one is found in a judgment,  
17 order, or other party of the record.” Under Rule 60(a), a court may clarify a  
18 judgment by resolving an ambiguity to more clearly reflect the court’s  
19 contemporaneous intent. *Garamendi v. Henin*, 683 F.3d 1069, 1077-78 (9th Cir.  
20 2012) (quoting 12 James W. Moore, Moore’s Federal Practice § 60.11[1][c]  
21 (2011)); *Robi v. Five Platters, Inc.*, 918 F.2d 1439, 1445 (9th Cir. 1990) (district  
22 court may amend judgment that ordered a trademark be canceled to specify that  
23 three trademarks, identified by number, should be canceled).

24 The Court may amend its judgment under either Rule 59(e) or Rule 60(a) in  
25 this case. It is evident from the Findings of Fact and Conclusions of Law that the  
26 court intended to find the application of section 5100’s 135-day requirement  
27 unconstitutional with respect to parties seeking to qualify in order to place their  
28 presidential candidates on the general election ballot, but not with respect to parties

1 seeking to qualify in order to participate in a primary election. For example, in the  
2 introduction, the Court notes the limited requested relief by stating that plaintiffs  
3 “challenge section 5100’s provision requiring that a political body seeking to  
4 qualify as a political party to have its nominee for President appear as the **party’s**  
5 **nominee for President on the November general election** must satisfy the  
6 requirements for qualification at least 135 days prior to the primary election **even if**  
7 **the party does not use the primary election** in the process to choose its nominee.”  
8 ECF No. 49, 1-2 (emphasis added). The Court’s limited intent is further expressed  
9 in its conclusions of law:

- 10 • “Plaintiffs have established that California’s early party-qualification  
11 deadline has caused, and will continue to cause, irreparable harm to political  
12 bodies and to voters seeking to cast their votes and to engage in the electoral  
13 process effectively in this and future **Presidential elections.**” *Id.* at 10 (Law  
14 No. 6) (emphasis added).
- 15 • “Whether Plaintiffs have met, or ever would meet, the numeric threshold has  
16 no bearing on determining whether setting the deadline for doing so **ten**  
17 **months before the relevant election** impermissibly burdens Plaintiffs’  
18 fundamental rights . . . .” *Id.* at 12 (Law No. 14) (emphasis added).
- 19 • “Although California elections officials undoubtedly require a reasonable  
20 amount of time in advance of an election to certify that a candidate or party  
21 have satisfied the eligibility requirements for inclusion on the ballot and to  
22 prepare election materials, the evidence demonstrates that a June 30, 2012  
23 deadline would have adequately served that legitimate interest during the  
24 **current election cycle.**” *Id.* (Law No. 16) (emphasis added).
- 25 • “A state’s interest in restricting ballot access is at its lowest when it comes to  
26 regulating **Presidential elections**, [citation], and limiting ballot access for  
27 political parties that form primarily to support a candidate in the **national**  
28

1           **Presidential election** is not a legitimate state interest, [citation].” *Id.* at 13  
2 (Law No. 20) (emphasis added).

- 3       •     “The substantial infringement on fundamental personal liberties caused by  
4 California’s early party-qualification deadline greatly outweighs whatever  
5 minimal burden the state of California must undertake to establish a  
6 constitutionally compliant deadline for political bodies seeking recognition  
7 so their **candidates for President and Vice President may appear on the**  
8 **November Presidential Election ballot.**” *Id.* at 15 (Law No. 26) (emphasis  
9 added).
- 10     •     “An order prohibiting the State of California from denying political bodies  
11 the opportunity to participate meaningfully in the current and future  
12 **Presidential Election cycles** greatly benefits the public . . . .” *Id.* (Law  
13 No. 27) (emphasis added).

14           Moreover, the Findings of Fact and Conclusions do not support a judgment  
15 enjoining section 5100’s timing requirement in all its applications, and particularly  
16 with respect to qualification prior to a primary election. To the contrary, the  
17 Findings of Fact and Conclusions of Law support a conclusion that, for the  
18 qualification of political parties that wish to participate in a primary election, a 135-  
19 day deadline prior to the primary election is justified by the state’s interests. The  
20 Court found that a deadline of June 30, 2012 --129 days before the November 6,  
21 2012 general election -- would have allowed sufficient time for the counties and the  
22 Secretary of State to determine if political parties seeking to qualify for the  
23 November general election were eligible to participate in the election, and to  
24 prepare ballot materials in time for the November general election. *Id.* at 9 (Fact  
25 No. 43), 12 (Law No. 16). This time period is not significantly different from the  
26 135-day deadline required by section 5100 for qualification before a primary  
27 election. The Court thus tacitly found this timeframe administratively necessary  
28 prior to a primary election.

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**CONCLUSION**

For the foregoing reasons, the Secretary of State asks this Court to clarify its judgment to reflect its intent, as shown by the Findings of Fact and Conclusions of Law, to limit the scope of the injunction to political bodies that seek to qualify as political parties in order to participate in a presidential general election. Such an amendment would allow continued enforcement of section 5100's timing requirement for political bodies seeking to qualify as political parties for placement on a primary election ballot. Plaintiffs do not oppose the Secretary of State's request to amend the judgment to conform to the relief sought by plaintiffs in their Complaint and with the Findings of Fact and Conclusions of Law.

Dated: October 26, 2012

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
PETER A. KRAUSE  
Supervising Deputy Attorney General

/s/  
KARI KROGSENG  
Deputy Attorney General  
*Attorneys for California Secretary of State Debra Bowen*

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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)

**DECLARATION OF KARI**  
**KROGSENG IN SUPPORT OF**  
**MOTION TO ALTER OR AMEND**  
**JUDGMENT**

Date: December 10, 2012  
Time: 1:30 p.m.  
Courtroom: 15  
Judge: The Honorable Percy  
Anderson  
Trial Date: October 16, 2012  
Action Filed: May 7, 2012

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**DECLARATION OF KARI KROGSENG**

I, Kari Krogseng, declare as follows:

1. I am a Deputy Attorney General in the Attorney General’s Office, California Department of Justice. I represent defendant California Secretary of State Debra Bowen in this case.

2. Pursuant to Local Rule 7-3, on October 24, 2012, I participated in a telephone conference with David Sapp, counsel for plaintiffs, regarding, among other matters, the Secretary of State’s proposed motion to alter or amend judgment. I described to Mr. Sapp the scope of, and the grounds for, the motion.

3. During that conference, Mr. Sapp stated that plaintiffs would not object to the requested amendment to the judgment.

4. On October 25, 2012, I e-mailed Mr. Sapp a draft version of the motion to alter or amend judgment. Mr. Sapp confirmed by e-mail on October 25, 2012 that plaintiffs have no objection to the requested amendment of the judgment.

Dated: October 26, 2012

\_\_\_\_\_/s/  
Kari Krogseng

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20 Defendant.  
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CV 12-3956 PA (AGRx)

**[PROPOSED] ORDER AMENDING JUDGMENT**

Date: December 10, 2012  
Time: 1:30 p.m.  
Courtroom: 15  
Judge: The Honorable Percy Anderson  
Trial Date: October 16, 2012  
Action Filed: May 7, 2012

1 After considering the Secretary of State’s unopposed Motion to Alter or  
2 Amend Judgment pursuant to Federal Rules of Civil Procedure 59(e) and/or 60(a),  
3 and good cause appearing, IT IS ORDERED that the Judgment entered on October  
4 18, 2012 be amended to read:

5 “Pursuant to the Court’s Findings of Fact and Conclusions of Law issued on  
6 October 18, 2012,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiffs  
8 California Justice Committee, the Constitution Party of California, Jeff Norman,  
9 Charles Michel Deemer, and John Gabree (collectively “Plaintiffs”) shall have  
10 judgment in their favor against defendant Debra Bowen, California Secretary of  
11 State, in her official capacity (“Defendant” or “Secretary of State”).

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
13 California Elections Code section 5100’s timing requirement violates Plaintiffs’  
14 rights under the First and Fourteenth Amendments of the United States  
15 Constitution.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the  
17 Secretary of State is permanently enjoined from enforcing or otherwise applying  
18 California Elections Code section 5100’s requirement that proposed political parties  
19 that wish to qualify as political parties in order to participate in a November  
20 presidential general election must satisfy the party qualification requirements at  
21 least 135 days prior to the primary election.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs  
23 shall have their costs of suit.

24 IT IS SO ORDERED.”

25 Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Percy Anderson  
United States District Judge