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12
13 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
14
15 IN AND FOR THE COUNTY OF MARICOPA

16 SAVE OUR VOTE, OPPOSING C-03-
17 2012, an unincorporated Arizona political
18 committee, LISA GRAY, a qualified
19 elector and taxpayer of the State of Arizona,
20 JAMIE A. MOLERA, a qualified elector
21 and taxpayer of the State of Arizona,
22 BARRY HESS, a qualified elector and
23 taxpayer of the State of Arizona, and the
24 LEAGUE OF WOMEN VOTERS OF
25 ARIZONA, an Arizona non-profit
26 corporation,

27 Plaintiffs,

28 v.

KEN BENNETT, in his official capacity as
Secretary of State of the State of Arizona,

Defendant,

and

OPEN GOVERNMENT COMMITTEE, an
unincorporated Arizona political
committee,

Real Party in Interest.

COPY

JUL 16 2012



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No. CV2012-010717

VERIFIED COMPLAINT

(A.R.S. § 19-122(C) Challenge to
Sufficiency of Initiative Petition)

**(Entitled to Immediate Trial Pursuant
to A.R.S. § 19-122(C))**

1 For their Verified Complaint, Plaintiffs allege as follows:

2 **PRELIMINARY STATEMENT**

3 1. This is a challenge to the legal sufficiency of an initiative measure known as
4 the “Open Elections/Open Government Act” (the “Initiative”) and designated with the
5 serial number C-03-2012 by Defendant Arizona Secretary of State, the application for
6 which was filed on or about September 26, 2011. An accurate copy of the Initiative is
7 attached hereto as Exhibit A.

8 2. The Initiative’s stated purpose is to “ensure that every person qualified to
9 vote, including those not affiliated with any political party, has the right to vote at any
10 election for any candidate, regardless of the voter’s or the candidate’s party affiliation or
11 lack of party affiliation.” Initiative at 1 § 2.A The Initiative contains multiple operative
12 provisions, including without limitation:

13 a. repealing the part of the Arizona Constitution that establishes the
14 direct primary system for electing candidates to office, Initiative at 1 § 3;

15 b. repealing the part of the Arizona Constitution that enables
16 Independent and party-not-designated voters to select which party primary election that
17 they will vote in, *id.*;

18 c. repealing the existing law for selecting general election candidates
19 for all federal, state, county, and local elective offices except for non-partisan elections
20 and elections for President and Vice President of the United States, and replacing it with a
21 new primary-general election procedure, *id.* at 2;

22 d. amending existing law to permit voters to vote for any candidate in
23 the primary election by way of eliminating partisan primaries and requiring all candidates
24 for a particular office to run in one primary election, *id.* at 3;

25 e. amending existing law to require that “the two candidates who
26 receive the most votes in the primary election shall compete in the general election” and
27 that “the number of candidates who compete in the general election shall be the number of
28 candidates to be elected times two,” *id.* (all cap formatting omitted);

1 f. amending the existing voter registration law to allow voters to
2 declare a “party preference (if any) in their own words on their voter registration form,”
3 *id.*;

4 g. repealing the existing requirements for nomination signature
5 gathering and leaving it to the legislature to establish a new signature requirement by law,
6 except that “signature requirements . . . shall be the same for all candidates for that office,
7 regardless of party affiliation or lack thereof,” *id.* (all cap formatting omitted);

8 h. repealing the existing requirements for party identification and
9 allowing candidates “to declare his or her party preference (if any) as it is stated on their
10 voter registration form, up to a maximum of 20 characters,” *id.* (all cap formatting
11 omitted);

12 i. repealing the existing requirements for petition signature sheet forms
13 by changing the identification of party preference statements, column headings, and
14 prefatory text, *id.*;

15 j. repealing the existing law for electing precinct committee members
16 for political parties.

17 k. amending existing law to require a disclaimer on ballots that “the
18 party registration (if any) stated with the candidates’ names on this ballot is not an
19 indication that a candidate has been nominated or endorsed by that party, but only reflects
20 the registration (if any) of the candidate,” *id.* (all cap formatting omitted);

21 l. generally stating that nothing in the Initiative restricts the right of
22 individuals to join or organize political parties nor restricts the right of political parties to
23 support candidates for office, and permitting political parties to establish procedures for
24 various functions, *id.*;

25 m. generally stating that all qualified voters and candidates should be
26 treated equally.

27 n. exempting presidential elections from the effects of the Initiative; and

28 o. exempting nonpartisan elections from the effects of the Initiative.

1 3. In addition, the Initiative consists of a legion of amendments to Arizona law
2 by imposing constitutional principles that nullify or supersede scores of existing
3 constitutional, statutory, and code provisions, and regulations dealing generally with
4 elections and, more specifically, relating to:

- 5 a. the conduct of primary elections;
- 6 b. the conduct of general elections;
- 7 c. nomination procedures for having a candidate's name placed on the
8 primary ballot;
- 9 d. nomination procedures for candidates by political parties;
- 10 e. traditional campaign finance regulation;
- 11 f. campaign finance regulation under the Citizens Clean Elections Act;
- 12 g. the federal Voting Rights Act of 1965 and the ability of minority
13 voters to elect candidates of their choice;
- 14 h. the ability of independent and third-party candidates to appear on the
15 general election ballot;
- 16 i. voter registration methods;
- 17 j. election of precinct committeemen;
- 18 k. access to the statewide voter database;
- 19 l. the number of petition signatures required by each candidate for
20 office to qualify for the ballot;
- 21 m. the cost of paying for primary and general elections;
- 22 n. how vacancies in public office are filled;
- 23 o. designation of party affiliation on ballots; and
- 24 p. the organization of political parties.

25 4. As is explained in this Complaint, these amendments to Arizona law
26 constitute several different subjects that, when presented in one initiative, violate the
27 Arizona Constitution's separate amendment rule.

28 5. Moreover, the Initiative was circulated among the electorate, and gained

1 support from voters, under false pretenses. Namely, the summary of the Initiative that the
2 Real Party in Interest provided to voters was materially misleading as to the effects the
3 Initiative would have on Arizona election law if passed. An accurate copy of the petition
4 signature sheet summary for the Initiative is included on the Application for Initiative or
5 Referendum Petition Serial Number, which is attached hereto as Exhibit B.

6 PARTIES

7 6. Plaintiff Save Our Vote, opposing C-03-2012 (“Save Our Vote”) is a
8 political committee organized under the laws of the State of Arizona and registered with
9 the Defendant Secretary of State as a ballot measure committee. Save Our Vote is
10 committed to preserving the democratic process in Arizona and advocating in opposition
11 to election schemes such as those proposed in the Initiative.

12 7. Plaintiff Lisa Gray is a qualified elector and a taxpayer in the State of
13 Arizona who supports fair elections and preserving Arizona’s democratic process.
14 Plaintiff Gray votes in primary and general elections for federal, state, and local
15 candidates. Plaintiff Gray has voluntarily contributed funds to candidates for public office
16 and has participated in politics as a precinct committeeman, state committeeman, and
17 legislative district chair.

18 8. Plaintiff Jaime A. Molera is a qualified elector and a taxpayer in the State of
19 Arizona who supports fair elections and preserving Arizona’s democratic process.
20 Plaintiff Molera votes in primary and general elections for federal, state, and local
21 candidates. Plaintiff Molera previously served as Arizona’s Superintendent of Public
22 Instruction and was a candidate for the Republican nomination for that office in 2002.

23 9. Plaintiff Barry Hess is a qualified elector and a taxpayer in the State of
24 Arizona who supports fair elections and preserving Arizona’s democratic process.
25 Plaintiff Hess is an active member of the Libertarian Party of Arizona and, among other
26 things, he was the Libertarian Party’s nominee for governor in 2002 and 2010.

27 10. Plaintiff League of Women Voters of Arizona (the “League”) is an Arizona
28 non-profit corporation. The League is a nonpartisan political organization encouraging

1 informed and active participation in government. It influences public policy through
2 education and advocacy. As part of its educational activities, the League reviews
3 proposed initiatives and provides its analysis to the voting public. In the case of the
4 Initiative, the League is concerned that its multiple provisions force the public to choose
5 between more than one substantive amendment that should have been submitted to the
6 voters separately.

7 11. Each of these Plaintiffs have a strong interest in preserving Arizona's
8 democratic process for electing candidates for political office and maintaining the
9 constitutional requirement that distinct amendments to the Arizona Constitution be
10 submitted to the voters separately. Each Plaintiff would suffer injury if the Initiative is
11 approved as a constitutional amendment.

12 12. Defendant Ken Bennett is the Arizona Secretary of State (the "Secretary of
13 State"), a public officer of this State, and is named as a defendant in this action solely in
14 his official capacity. The Secretary of State is the public officer responsible for the
15 conduct of statewide elections, including elections on, and the canvassing of votes for,
16 statewide ballot measures, Ariz. Const. art. 4, pt. 1, § 1(9)-(11), and is charged with
17 submitting "proposed amendment or amendments to the vote of the people at the next
18 general election," *id.* art. 21 § 1.

19 13. Upon information and belief, the Real Party in Interest, Open Government
20 Committee, is an unincorporated association and a political committee organized under
21 the laws of the State of Arizona. Upon information and belief, it is the primary promoter
22 and sponsor of the Initiative. Real Party in Interest was responsible for drafting and
23 proposing the substantive language that was filed with the Secretary of State and
24 circulated by petition to the public.

25 JURISDICTION AND VENUE

26 14. This Court has jurisdiction and venue pursuant to Article 6 § 14 of the
27 Arizona Constitution and A.R.S. §§ 12-123, 12-1801, 12-1831, and 19-122(D).

28 15. Because this Complaint challenges the sufficiency of an initiative petition,

1 Plaintiffs are entitled to an immediate trial under A.R.S. § 19-122(C).

2 **GENERAL ALLEGATIONS**

3 **The Initiative**

4 16. On July 5, 2012, Open Government Committee submitted signatures and
5 petition signature sheets that it purports to exceed the 259,213 signature threshold
6 required for a constitutional amendment initiative to appear on the November 2012
7 general election ballot.

8 17. Upon information and belief, the Secretary of State has not yet completed
9 his review of the petition signature sheets for the Initiative to determine whether it has
10 qualified for the ballot.

11 18. On information and belief, each petition signature sheet contains the
12 following summary of the Initiative, which was printed on the Application for Initiative
13 filed with the Secretary of State:

14 This measure will allow all Arizonans, regardless of party
15 affiliation, to vote in a single open primary for the candidates
16 of their choice. The two candidates who receive the most
17 votes in the primary will compete in the general election.
18 There will be a level playing field for all voters and
19 candidates, and the current system of taxpayer-funded partisan
20 primaries will be abolished. This reform will promote open
21 government and encourage the election of candidates who will
22 work together for the good of the state.

19 19. The summary fails to address or mention many of the Initiative's
20 substantive provisions.

21 20. The Initiative's stated purpose is to "ensure that every person qualified to
22 vote, including those not affiliated with any political party, has the right to vote at any
23 election for any candidate, regardless of the voter's or the candidate's party affiliation or
24 lack of party affiliation." Initiative at 1 § 2.A.

25 21. To accomplish this objective of "provid[ing] more choice to all voters and
26 candidates in Arizona," the Initiative purports to:

27 (1) Abolish[] the existing system of taxpayer-funded primary
28 elections to select nominees for political parties.

1 (2) Create[] in its place an Open “Top Two” Primary Election,
2 in which all candidates running for an office appear together
3 on the same ballot and all qualified voters (regardless of party
4 affiliation or lack thereof); are able to vote for the candidate of
5 their choice. The two candidates receiving the highest vote
6 totals for each office would then go on to face each other in
7 the general election. [*Id.* at 1 § 2.B]

8 22. As set forth above, the Initiative’s operative provisions propose a multitude
9 of amendments to Arizona law that constitute separate amendments to the Arizona
10 Constitution.

11 **Repeal of Arizona’s Direct Primary Law and Open Primary for** 12 **Independents and No Party Preference Voters**

13 23. The Arizona Constitution and Title 16 of the Arizona Revised Statutes
14 establish a two-tier election system for most public offices: the primary and general
15 election.

16 24. Since statehood, the Arizona Legislature has enacted legislation regulating
17 the primary system for nominating candidates who will appear on the general election
18 ballot. *See* Ariz. Const. art VII § 10 (West-Historical Notes); A.R.S. § 16-201 (West-
19 Historical and Statutory Notes). The stated goal of the Initiative is to shift this authority
20 out of the Legislature’s purview and confine it to the language embodied in the Initiative.

21 25. In 1998, Arizona voters enacted Proposition 103, an amendment to the
22 Arizona Constitution that permits “[a]ny person who is registered as no party preference
23 or independent as the party preference or who is registered with a political party that is not
24 qualified for representation on the ballot may vote in the primary election of any one of
25 the political parties that is qualified for the ballot.” Ariz. Const. art. 7 § 10.

26 26. Under Proposition 103, Arizona electors registered as independent, no party
27 preference, or with a party not qualified to appear on the ballot have the right to vote in
28 the partisan primary of their choice.

29 27. As a result of Proposition 103, for a voter who is registered as an
Independent, or no party preference, or as a member of a political party that is not entitled
to continued representation on the ballot, the voter in a primary election is allowed “to

1 designate the ballot of only one of the political parties that is entitled to continued
2 representation on the ballot and the judge of election shall give the elector only that
3 political party's ballot." A.R.S. § 16-467(B).

4 28. To a large extent, primary elections determine which candidates make the
5 general election ballot. In fact, pursuant to A.R.S. §§ 16-301 and 302, if a major party
6 candidate (e.g., Democrat or Republican) wants to make the general election ballot, he or
7 she must be "nominated in the primary election for a particular office." If no candidate
8 from a major political party is nominated, then no candidate for that office for that party
9 may appear on the general election ballot except as it pertains to candidates for the office
10 of presidential electors who are nominated through state party committees.

11 29. A candidate who is not a registered member of a political party that is
12 recognized pursuant to Title 16 of the Arizona Revised Statutes (e.g., Independent) "may
13 be nominated as a [general election] candidate for public office otherwise than by primary
14 election or by party committee pursuant to" A.R.S. § 16-341. These candidates must be
15 nominated through nomination petition process set forth in A.R.S. § 16-341.

16 30. The Initiative proposes repealing both Arizona's existing (a) direct primary
17 election system and general election system for nominating candidates for public office
18 and (b) open primary for Independent voters, voters registered with no party preference,
19 and voters of a political party that is not entitled to continued representation on the ballot.

20 31. The proposed repeal of Proposition 103 is not topically related to, nor is it
21 sufficiently interrelated to constitute a consistent and workable whole with, the proposed
22 establishment of a top-two primary system.

23 **Repeal of General Election Ballot Access**
24 **for Independents and Third Parties**

25 32. Following a primary election, candidates for public office are selected at a
26 general election. The general election ballot consists of candidates (a) nominated by
27 political parties that meet the qualification for ballot access and (b) "[a]ny qualified
28 elector who is not a registered member of a political party that is recognized pursuant to

1 [Title 16, A.R.S.]” that is nominated pursuant to the steps established in A.R.S. § 16-
2 341(A).

3 33. The general election ballot consists of candidates from as many political
4 parties that have qualified for ballot access under law (provided that such political parties
5 have nominated candidates for that office) and as many candidates who are registered
6 “Independent” or with no party identification who can qualify for ballot access under law.

7 34. In instances where one office is to be filled under present law, there may be
8 several candidates from various political parties and or whom are registered as
9 Independents listed on the general election ballot. For example, in the 2010 general
10 election (selected races):

11 a. for the office of United States Senator, candidates from the
12 Democratic Party, Green Party, Libertarian Party, Republican Party, and seven write-in
13 candidates were on the general election ballot;

14 b. for the office of United States Representative in Congress, District
15 No. 7, candidates from the Democratic Party, Libertarian Party, Republican Party, and an
16 Independent/Nonpartisan candidate were on the general election ballot;

17 c. for the office of Governor, candidates from the Democratic Party,
18 Green Party, Libertarian Party, Republican Party, and three write-in candidates were on
19 the general election ballot;

20 d. for the office of State Treasurer, candidates from the Democratic
21 Party, Green Party, Libertarian Party, and Republican Party were on the general election
22 ballot; and

23 e. for the office of State Senator, District No. 28, candidates from the
24 Democratic Party, Republican Party, and two Independent candidates were on the general
25 election ballot.

26 35. Under the Initiative, only two candidates for public office, including without
27 limitation each of the foregoing offices, would be named on the general election ballot.

28 36. Under existing law, Independents, Libertarians, and Green Party members

1 may access the general election ballot under the party nominating procedures provided by
2 law without regard to votes cast for candidates of other political parties. The Initiative's
3 provisions would indirectly repeal Arizona's ballot access law and statistically prevent
4 third-party candidates and Independents from appearing on the general election ballot. In
5 the Initiative's primary election, Independents and third parties such as Libertarians and
6 Green Party members, due to their substantially fewer registration numbers compared to
7 the other major political parties, would be statistically disqualified from appearing on the
8 general election ballot.

9 37. The proposed indirect elimination of general election ballot access for
10 Independents and third parties such as Libertarians and Green Party members is not
11 topically related to nor is it sufficiently interrelated to constitute a consistent and workable
12 whole with the proposed establishment of a top-two primary system.

13 **Amendment Impacting the Voting Rights Act** 14 **and Majority-Minority Districts**

15 38. Section 2 of the federal Voting Rights Act protects the ability of voters in
16 majority-minority districts to elect the candidates of their choice.

17 39. Creation of a majority-minority district protects against vote dilution to
18 minority voting strength and, in Arizona, often involves protection of Hispanic and Native
19 American voters.

20 40. Under the Initiative, the two candidates who receive the most votes for a
21 particular office in minority-majority districts will advance to the general election.

22 41. In a minority-majority district, the presence of several minority candidates
23 on a primary election ballot will dilute the voting strength of minority voters such that
24 non-minority voters can coalesce behind two non-minority candidates. Under these
25 conditions, the comparative voting strength of the non-minority voters can overcome the
26 voting strength of minority voters, sending two non-minority candidates to the general
27 election ballot. Such a scenario directly interferes with federal law and policy designed to
28 protect against vote dilution among minorities.

1 42. On June 26, 2012, a voter in California, a state that has enacted a “top-two”
2 primary system similar to that proposed in the Initiative, filed a lawsuit in the United
3 States District Court for the Central District of California, captioned *Brown v. Bowen*, No.
4 CV 12-05547, challenging the California system under the Fourteenth and Fifteenth
5 Amendments and the Voting Rights Act. An accurate copy of the California Complaint is
6 attached hereto as Exhibit C. According to the California Complaint, the rights secured
7 by the United States Constitution and Voting Rights act for African-American voters have
8 been violated because:

9 [I]t is now factually impossible in the upcoming November
10 2012 election for the vast majority of African Americans in
11 the 8th Congressional District [to elect a representative of their
12 choice] because the Top 2 Primary law has left the field with
13 two candidates for the November election that are openly
14 hostile to the rights and interests of African American voters
15 in the 8th Congressional district . . . [despite] the significant
16 traditional pro-Democrat voting history of African Americans
17 [in the district]. [*Brown v. Bowen* Compl. at ¶ 2]

18 43. Similarly, the Initiative’s proposed “top-two” amendments that will conflict
19 with the federal Voting Rights Act are not topically related to nor are they sufficiently
20 interrelated to constitute a consistent and workable whole with the proposed establishment
21 of a top-two primary system.

22 **Repeal of Citizens Clean Elections Act’s** 23 **Majority-Dominant District Fund Shifting**

24 44. In 1998, Arizona voters enacted the Citizens Clean Elections Act, a ballot
25 measure that established a system of public financing for statewide and legislative
26 political campaigns.

27 45. The Citizens Clean Elections Act was designed to provide adequate funding
28 for candidates in both primary and general elections. In so doing, the Citizens Clean
Elections Act provides a limited amount of base level funding for statewide and
legislative candidates who agree to forgo traditional fund raising approaches. Funding is
distributed to candidates in both the primary and general election at differing levels.

 46. The Initiative’s proposed open primary system is fundamentally

1 inconsistent with the current system of campaign finance regulation as it creates two “de
2 facto” general elections under a public campaign finance system that is specifically
3 designed for both a partisan primary and a general election.

4 47. Without complete integration of the two systems, the Initiative creates
5 structural inequities that will advantage one party over others without providing a clear
6 mechanism to remedy these inequities. This is especially problematic because under
7 Article 4, Part 1, § 6 of the Arizona Constitution (the Voter Protection Act), the Citizens
8 Clean Elections Act can only be modified by the Legislature with a 3/4 vote and in a
9 manner that furthers the purpose of the Act. The Citizens Clean Elections Act was created
10 specifically with partisan primaries in mind and its public financing system reflects that
11 intent.

12 48. One example is found in the relationship between the Citizens Clean
13 Elections system and the financing of candidates in one-party dominant districts. This
14 finance system intentionally creates structural advantages for majority parties in majority-
15 dominant districts. Under the Act, a majority-dominant district is one in which the voter
16 registration numbers of one major political party far exceed the registration numbers for
17 the other major political party such that the general election result is, for the most part,
18 decided in the dominant party’s primary election.

19 49. A.R.S. § 16-952(D) provides that, “[u]pon applying for citizen funding
20 pursuant to § 16-950, a participating candidate for the legislature in a one-party dominant
21 legislative district, who is qualified for clean campaign funding *for the party primary
22 election of the dominant party* may choose to reallocate a portion of funds from the
23 general election period to the primary election period.” (Emphasis added.) According to
24 this statute, candidates of the “dominant” party are provided a special benefit by allowing
25 them to reallocate a portion of their anticipated general elections funds (up to 50%) for
26 use in the primary election. For the 2012 election cycle, candidates for the Legislature in
27 one-party dominant districts will receive up to \$21,533 for the primary compared to
28 \$14,355 for non-dominant party candidates, as non-dominant party candidates are not

1 allowed such an allocation.

2 50. This feature does not permit shifting of funds for Independent candidates in
3 single-party dominant districts nor for political party candidates other than those
4 registered with the dominant party. Under the Citizens Clean Elections Act, Independents
5 receive no Clean Elections funds until the general election.

6 51. The Initiative requires that all candidates be treated equally under the law.
7 Initiative at 3 (proposed subsection H: “Level Playing Field”). The Initiative proposes to
8 indirectly repeal a provision of law by prohibiting the use of public funds in a manner
9 established by the Citizens Clean Elections Act to fund political candidates and campaigns
10 in the same manner that was invalidated by the Supreme Court of Arizona in *Clean*
11 *Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 99 P.3d 570 (2004).

12 52. The proposed amendments to the Citizens Clean Elections Act are not
13 topically related to, nor are they sufficiently interrelated to constitute a consistent and
14 workable whole with, the proposed establishment of a top-two primary system.

15 **Repeal of the Law Establishing the Political Party System**

16 53. Arizona law authorizes the formation of political parties for the nomination
17 of candidates for the general election.

18 54. Present law establishes requirements for ballot qualification for political
19 parties and for separate ballot qualification methods for those unaffiliated with political
20 parties including, without limitation, nominating petition format and minimum signature
21 requirements. The minimum signature requirements vary among the different political
22 parties based on party registration numbers. A.R.S. § 16-322.

23 55. The Initiative proposes to repeal this method for calculating signatures
24 required for nominating petitions and replace it with an undefined method that must “be
25 the same for all candidates for that office, regardless of party affiliation or lack thereof.”

26 56. The Initiative proposes to repeal the legal authorization for political party
27 organization by permitting candidates to declare any party label on the ballot.

28 57. The Initiative proposes to replace the nominating petition format with new

1 requirements for the identification of party preference statements, column headings, and
2 prefatory text.

3 58. These amendments to the political party nominating system are not topically
4 related to, nor are they sufficiently interrelated to constitute a consistent and workable
5 whole with, the proposed establishment of a top-two primary system.

6 **Amendment of Existing Voter Registration Law**

7 59. Arizona's voter registration forms permit electors to designate their political
8 party preference as, without limitation, one of the two largest political parties entitled to
9 continuous representation on the ballot, Independent, and any existing party label of the
10 voter's choice.

11 60. Under current law, a registration form with an unorganized party or a party
12 not recognized for representation on the ballot will be recorded by elections officials as
13 follows: (a) on the registration card, the party designation is "NONE", (b) in the voter file,
14 the party designation is "PND" or "Party Not Defined, and (c) in the polling place, the
15 party designation is "OTHER".

16 61. The Initiative proposes to repeal these procedures and replace them with a
17 system whereby voters may designate any party label on their registration.

18 62. The proposed amendment to the voter registration law is not topically
19 related to, nor is it sufficiently interrelated to constitute a consistent and workable whole
20 with, the proposed establishment of a top-two primary system.

21 **Repealing Elections for Precinct Committee**

22 63. Arizona law provides for the election of a political party's precinct
23 committee member on the primary election ballot.

24 64. Where an election for precinct committee member is held, only members of
25 that candidate's political party may vote for that office. For example, only electors
26 registered as Democrats may vote for the office of Democratic precinct committee
27 member in that elector's precinct.

28 65. The Initiative proposes amendments to this law by (a) allowing any elector

1 to run for any office, including that of Republican or Democratic precinct committee
2 member regardless of that elector's party affiliation and (b) allowing every elector to vote
3 in every election, including precinct committee, regardless of that elector's party
4 registration.

5 66. The proposed repeal of the existing law for electing precinct committee
6 members is not topically related to, nor is it sufficiently interrelated to constitute a
7 consistent and workable whole with, the proposed establishment of a top-two primary
8 system.

9 **Other Separate Amendments**

10 67. Other separate amendments proposed by the initiative include, but are not
11 limited to:

- 12 a. requiring sweeping amendments to traditional campaign finance
13 regulation;
- 14 b. changing existing law to allow expansive access to the voter
15 registration database that is not permitted under existing law;
- 16 c. requiring a new approach to redistricting based on past electoral
17 performance for legislative and congressional districts;
- 18 d. changing the procedures by which vacancies in public office are
19 filled; and
- 20 e. changing the procedures by which municipalities, including charter
21 and home rule cities, conduct elections for municipal office.

22 68. These proposed amendments are not topically related to, nor are they
23 sufficiently interrelated to constitute a consistent and workable whole with, the proposed
24 establishment of a top-two primary system.

25 **FIRST CLAIM FOR RELIEF**

26 **Violation of Art. 21 § 1 of the Arizona Constitution (Separate Amendment Rule)**

27 69. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of
28 this Complaint as if fully set forth herein.

1 70. Article 21 § 1 of the Arizona Constitution provides that, “[i]f more than one
2 proposed amendment shall be submitted at any election, such proposed amendments shall
3 be submitted in such a manner that the electors may vote for or against such proposed
4 amendments separately.”

5 71. The Separate Amendment Rule requires “that voters must be allowed to
6 express their separate opinion as to each proposed constitutional amendment.” *Clean
7 Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 244, 99 P.3d 570, 573 (2004).

8 72. As described in detail throughout this Complaint, the multitude of
9 amendments proposed by the Initiative are such that they are not all topically related to
10 one another and that they are not sufficiently interrelated so as to form a consistent and
11 workable proposition.

12 73. These different measures are not supported by a common purpose or
13 principle such that each could logically stand or fall as a whole if voted on separately.

14 **SECOND CLAIM FOR RELIEF**

15 **Invalid Petition Signature Sheets**

16 74. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of
17 this Complaint as if fully set forth herein.

18 75. A.R.S. § 19-102(A) requires that initiative petition signature sheets contain
19 a description of the proposed initiative “of no more than one hundred words of the
20 principal provisions of the proposed . . . constitutional amendment.”

21 76. The description printed on the Initiative’s petition signature sheets is
22 materially misleading as to the effects that the Initiative would have on Arizona election
23 law, if enacted. Examples of misleading statements include the following:

24 a. The summary falsely indicates that the Initiative “will allow all
25 Arizonans . . . to vote in a single open primary.” *In truth*, even if the Initiative is adopted,
26 some Arizona residents will be unable to vote in the proposed open primary due to
27 alienage, prior criminal convictions, failure to register to vote, etc.

28 b. The summary falsely states that if the Initiative is passed “[t]here will

1 be a level playing field for all . . . candidates.” *In truth*, even if the Initiative is adopted,
2 disparities arising from campaign contributions and expenditures, name recognition,
3 support from organized political parties, and other factors, will persist. Moreover,
4 independent voters and candidates will be materially disadvantaged and will have a much
5 more difficult time participating in the political process.

6 c. The summary falsely states that if the Initiative is passed “[t]here will
7 be a level playing field for all voters.” *In truth*, even if the Initiative is adopted, the
8 ballots cast by many voters will be less influential than the ballots cast by other voters,
9 due to uncompetitive districting, disparities in party registration within a given district,
10 disparities in population between districts, disparities in voter registration between
11 districts, disparities in voter participation between districts, and other factors.

12 d. The summary falsely states that if the Initiative is passed “the current
13 system of taxpayer-funded partisan primaries will be abolished.” *In truth*, even if the
14 Initiative is adopted, the Citizens Clean Elections Act will continue to publicly fund
15 primary election activities. Additionally, because candidates in the primary elections can
16 and will run as affiliates of their respective political parties, the public funding of
17 “partisan” primaries will persist.

18 e. The summary falsely implies that it will affect “all voters and
19 candidates.” *In truth*, the Initiative would have no effect on the most visible elections
20 (*i.e.*, presidential elections) or non-partisan elections.

21 f. The summary falsely states, “[t]he two candidates who receive the
22 most votes in the primary will compete in the general election.” *In truth*, in presidential
23 elections, the two candidates receiving the most votes in Arizona presidential preference
24 election(s) will not necessarily compete in the general election. And in elections to fill
25 more than one opening, more than two candidates will move on from the primary election
26 to compete in the general election.

27 77. Under A.R.S. § 19-121(A)(1), when initiative petitions signature sheets
28 contain an improper description of the proposed initiative, all signatures on the

1 accompanying signature sheets are invalid.

2 78. Upon information and belief, all the petition signature sheets submitted in
3 support of the Initiative contained the offending language, and therefore all signatures on
4 those petitions are invalid.

5 **THIRD CLAIM FOR RELIEF**

6 **Mandamus - Pursuant to A.R.S. § 12-2021**

7 79. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of
8 this Complaint as if fully set forth herein.

9 80. Pursuant to A.R.S. § 19-102(A), initiative petition signature sheets must
10 contain an accurate description of the proposed initiative “of no more than one hundred
11 words of the principal provisions of the proposed . . . constitutional amendment.”

12 81. Defendant Secretary of State is charged with fulfilling this requirement by,
13 among other things, rejecting petition signature sheets that include inaccurate, false, or
14 misleading descriptions.

15 82. Upon information and belief, Defendant Secretary of State has failed to
16 reject petition signature sheets that do not comply with A.R.S. § 19-102(A).

17 83. Upon information and belief, all of the Initiative’s signature sheets contain
18 descriptions that do not comply with A.R.S. § 19-102(A).

19 84. Plaintiffs have no plain, adequate and speedy remedy at law to compel
20 Defendant Secretary of State to comply with A.R.S. § 19-102(A). Therefore, Plaintiffs
21 request this Court issue a Writ of Mandamus pursuant to A.R.S. § 12-2021 to require
22 Defendant Secretary of State to reject all of the Initiative’s petition signature sheets.

23 **REQUEST FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for:

25 A. A declaration that the Initiative violates Article 21 § 1 of the Arizona
26 Constitution.

27 B. A declaration that the signatures on the petition sheets containing the
28 summary of the Initiative described herein are invalid as false or misleading under A.R.S.

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§§ 19-102(A) and 19-121(A)(1).

C. A Writ of Mandamus compelling Defendant Secretary of State to reject all of the Initiative’s signature sheets that contain such false or misleading summary.

D. An injunction pursuant to A.R.S. § 19-122(C) prohibiting Defendant Secretary of State from certifying and placing the Initiative on the ballot for the forthcoming general election in the State of Arizona for the year 2012.

E. In the alternative, should this case not be resolved prior to the 2012 general election ballot printing deadline, an injunction prohibiting Defendant Secretary of State from counting and canvassing the votes cast on the Initiative.

F. An order awarding Plaintiffs’ attorney’s fees and nontaxable expenses incurred in this action under:

1. A.R.S. § 12-2030;
2. the private attorney general doctrine as established in *Arnold v. Arizona Department of Health Services*, 160 Ariz. 593, 775 P.2d 521 (1989), because the rights sought to be vindicated here (a) benefit a large number of people, (b) require private enforcement, and (c) are of societal importance; and
3. any other applicable law authorizing the award of attorney’s fees and nontaxable expenses to Plaintiffs.

G. An order awarding Plaintiffs their taxable costs and such other and further relief as may be appropriate.

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DATED this 16th day of July, 2012.

SNELL & WILMER L.L.P.

By: Michael T. Liburdi

Michael T. Liburdi
Adam E. Lang
One Arizona Center
400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202

Attorneys for Plaintiffs

LIBURDMSWDMS\15449468

EXHIBIT 1

CREATING AN OPEN PRIMARY GIVING ALL QUALIFIED VOTERS THE RIGHT TO VOTE FOR THE CANDIDATES OF THEIR CHOICE, PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VII OF THE CONSTITUTION OF ARIZONA RELATING TO DIRECT PRIMARY ELECTION LAW

TEXT OF PROPOSED AMENDMENT

Be it enacted by the People of the State of Arizona:

Section 1. Title. This initiative amendment shall be known as the "Open Elections/Open Government Act."

Section 2. Purpose.

A. This initiative will ensure that every person qualified to vote, including those not affiliated with any political party, has the right to vote at any election for any candidate, regardless of the voter's or the candidate's party affiliation or lack of party affiliation.

B. To provide more choice to all the voters and candidates of Arizona, this proposition:

(1) Abolishes the existing system of taxpayer-funded primary elections to select nominees for political parties.

(2) Creates in its place an Open "Top Two" Primary Election, in which all candidates running for an office appear together on the same ballot and all qualified voters (regardless of party affiliation or lack thereof) are able to vote for the candidate of their choice. The two candidates receiving the highest vote totals for each office would then go on to face each other in the general election.

C. This proposition applies to all Arizona elections in which a candidate's party affiliation, registration, or preference may appear on the ballot. It does not apply to elections in which no party affiliation, registration, or preference appears on the ballot, and it also does not apply to the system for the election of President and Vice President of the United States.

Section 3. Article VII section 10, Constitution of Arizona, is amended by repealing section 10 and replacing it as follows:

~~§ 10. Direct primary election law~~

~~Section 10. The Legislature shall enact a direct primary election law, which shall provide for the nomination of candidates for all elective State, county, and city offices, including candidates for United States Senator and for Representative in Congress. Any person who is registered as no party preference or independent as the party preference or who is registered with a political party that is not qualified for representation on the ballot may vote in the primary election of any one of the political parties that is qualified for the ballot.~~

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§ 10. OPEN TOP TWO PRIMARY

A. APPLICABILITY. THIS SECTION SHALL APPLY TO THE ELECTION OF CANDIDATES FOR ALL FEDERAL, STATE, COUNTY, AND LOCAL ELECTIVE OFFICES EXCEPT (1) THOSE IN WHICH NO PARTY AFFILIATION, REGISTRATION, OR PREFERENCE MAY APPEAR ON THE ELECTION BALLOT AND (2) THE SYSTEM FOR THE ELECTION OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES.

B. RIGHTS OF VOTERS. ALL QUALIFIED VOTERS SHALL BE GUARANTEED THE UNRESTRICTED RIGHT TO VOTE FOR THE QUALIFIED CANDIDATE OF THEIR CHOICE IN ALL ELECTIONS. NO VOTER SHALL BE DENIED THE RIGHT TO VOTE FOR THE QUALIFIED CANDIDATE OF HIS OR HER CHOICE IN A PRIMARY OR GENERAL ELECTION BASED UPON HIS OR HER PARTY AFFILIATION OR LACK THEREOF. VOTERS SHALL BE PERMITTED TO STATE THEIR PARTY PREFERENCE (IF ANY) IN THEIR OWN WORDS ON THEIR VOTER REGISTRATION FORM, AND SHALL NOT BE LIMITED TO SELECTING FROM A LIST OF RECOGNIZED PARTIES OR AFFILIATIONS.

C. PROCEDURE. FOR OFFICES TO WHICH THIS SECTION APPLIES, AN OPEN PRIMARY ELECTION SHALL BE CONDUCTED TO SELECT THE CANDIDATES WHO COMPETE IN THE GENERAL ELECTION. ALL REGISTERED VOTERS MAY VOTE IN THE OPEN PRIMARY ELECTION FOR ANY QUALIFIED CANDIDATE, PROVIDED THAT THE VOTER IS OTHERWISE QUALIFIED TO VOTE FOR CANDIDATES FOR THE OFFICE IN QUESTION. THE TWO CANDIDATES WHO RECEIVE THE MOST VOTES IN THE PRIMARY ELECTION SHALL COMPETE IN THE GENERAL ELECTION; EXCEPT THAT, FOR ANY OFFICE TO WHICH MORE THAN ONE CANDIDATE WILL BE ELECTED, THE NUMBER OF CANDIDATES WHO WILL COMPETE IN THE GENERAL ELECTION SHALL BE THE NUMBER OF CANDIDATES TO BE ELECTED TIMES TWO. THIS SECTION DOES NOT PROHIBIT WRITE-IN VOTING IN EITHER THE PRIMARY OR GENERAL ELECTION AS OTHERWISE PRESCRIBED BY LAW.

D. FILING REQUIREMENT. ALL CANDIDATES WISHING TO RUN FOR AN ELECTIVE OFFICE TO WHICH THIS SECTION APPLIES SHALL FILE, WITH THE APPROPRIATE ELECTIONS OFFICER, PETITIONS CONTAINING THE SIGNATURES OF REGISTERED VOTERS IN AN AMOUNT TO BE ESTABLISHED BY LAW. THE SIGNATURE REQUIREMENTS ESTABLISHED PURSUANT TO THIS SECTION SHALL BE BASED ON THE TOTAL VOTES CAST FOR THAT OFFICE IN THE PREVIOUS GENERAL ELECTION AND SHALL BE THE SAME FOR ALL CANDIDATES FOR THAT OFFICE, REGARDLESS OF PARTY AFFILIATION OR LACK THEREOF.

E. RIGHTS OF CANDIDATES. AT THE TIME THEY FILE TO RUN FOR PUBLIC OFFICE, EVERY CANDIDATE SHALL HAVE THE CHOICE TO DECLARE HIS OR HER PARTY PREFERENCE (IF ANY) AS IT IS STATED ON THEIR VOTER REGISTRATION FORM, UP TO A MAXIMUM OF 20 CHARACTERS. THAT PARTY PREFERENCE (IF ANY) SHALL APPEAR ON THE CANDIDATE'S NOMINATION PETITIONS AND ON THE PRIMARY AND GENERAL ELECTION BALLOTS USING THE PHRASE "REGISTERED AS _____." ON THE BALLOTS, THE WORDS "REGISTERED AS" MAY BE USED IN A COLUMN HEADING OR OTHER PREFATORY TEXT RATHER THAN BEING REPEATED NEXT TO THE PARTY PREFERENCE OF EACH CANDIDATE, SO LONG AS THE WORDS "REGISTERED AS" REMAIN PROMINENTLY STATED AND CLEAR TO THE READER. IF NO PARTY PREFERENCE IS STATED ON A CANDIDATE'S VOTER REGISTRATION FORM, THEN NO DESIGNATION SHALL APPEAR ON THE NOMINATION PETITIONS OR BALLOT WITH THE CANDIDATE'S NAME.

F. BALLOT LANGUAGE. IN ALL GOVERNMENT-ISSUED VOTER EDUCATION MATERIALS THAT CONTAIN A LIST OF CANDIDATES STANDING FOR ELECTION AND ON EVERY PRIMARY AND GENERAL ELECTION BALLOT, THE FOLLOWING LANGUAGE SHALL BE PROMINENTLY DISPLAYED: "THE PARTY

REGISTRATION (IF ANY) STATED WITH THE CANDIDATES' NAMES ON THIS BALLOT IS NOT AN INDICATION THAT A CANDIDATE HAS BEEN NOMINATED OR ENDORSED BY THAT PARTY, BUT ONLY REFLECTS THE PARTY REGISTRATION (IF ANY) OF THE CANDIDATE."

G. RIGHTS OF POLITICAL PARTIES. NOTHING IN THIS SECTION SHALL RESTRICT THE RIGHT OF INDIVIDUALS TO JOIN OR ORGANIZE INTO POLITICAL PARTIES OR IN ANY WAY RESTRICT THE RIGHT OF PRIVATE ASSOCIATION OF POLITICAL PARTIES. NOTHING IN THIS SECTION SHALL RESTRICT THE PARTIES' RIGHT TO CONTRIBUTE TO, ENDORSE, OR OTHERWISE SUPPORT OR OPPOSE CANDIDATES FOR ELECTIVE OFFICE. POLITICAL PARTIES MAY ESTABLISH SUCH PROCEDURES AS THEY SEE FIT TO ELECT PARTY OFFICERS, ENDORSE OR SUPPORT CANDIDATES, OR OTHERWISE PARTICIPATE IN ALL ELECTIONS, BUT NO SUCH PROCEDURES SHALL BE PAID FOR OR SUBSIDIZED USING PUBLIC FUNDS.

H. LEVEL PLAYING FIELD. ALL QUALIFIED VOTERS AND CANDIDATES SHALL BE TREATED EQUALLY BY STATUTES AND REGULATIONS GOVERNING ELECTIONS REGARDLESS OF THEIR PARTY AFFILIATION OR LACK THEREOF. TO THE EXTENT THAT ANY PRIVILEGES OR PROCEDURES ARE MADE AVAILABLE TO CANDIDATES OR POLITICAL PARTIES, THEY SHALL BE MADE EQUALLY AVAILABLE TO ALL CANDIDATES OR POLITICAL PARTIES, REGARDLESS OF PARTY AFFILIATION, RECOGNITION, OR LACK THEREOF.

Section 4. Severability

If any provision of this initiative is held invalid for any reason, the remaining portions of this initiative will be severed from the void portion and given the fullest possible force and application. The people of Arizona declare their intention that the provisions of this initiative are severable.

Section 5. Submission to voters

The Secretary of State shall submit this proposition to the voters at the next general election as provided by Article XXI, Section 1, Constitution of Arizona.

Section 6. Effective date and implementation by Legislature

If approved by the voters, this Constitutional Amendment shall apply to all elections occurring after January 1, 2014, and shall supersede any existing state statutes, regulations, and elections procedures to the extent that they are inconsistent with this Constitutional Amendment. The Legislature, Secretary of State and local officials shall promptly make such changes in and additions to state statutes, regulations, and elections procedures as are necessary to fully implement the provisions of this Constitutional Amendment in time for the open primary election in 2014 and for every open primary and general election thereafter. Legislation, regulations, and elections procedures implementing this amendment must be consistent with and further the purpose of this amendment to permit and encourage all qualified voters in Arizona to vote in primary and general elections for the candidates of their choice, regardless of the political affiliation of voters and candidates.

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SECRETARY OF STATE

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EXHIBIT 2

APPLICATION FOR INITIATIVE OR REFERENDUM PETITION SERIAL NUMBER

Secretary of State
1700 W. Washington Street, 7th Floor
Phoenix, AZ 85007

The undersigned intends to circulate and file an INITIATIVE or a REFERENDUM (circle the appropriate word) petition and hereby makes application for the issuance of an official serial number to be printed in the lower right-hand corner of each side of each signature sheet of such petition. Pursuant to Arizona Revised Statutes § 19-111, attached hereto is the full text, in no less than eight point type, of the MEASURE or CONSTITUTIONAL AMENDMENT (circle appropriate word) intended to be INITIATED or REFERRED (circle appropriate word) at the next general election.

SUMMARY: A description of no more than one hundred words of the principal provisions of the proposed law, constitutional amendment or measure that will appear in no less than eight point type on the face of each petition signature sheet to be circulated.

This measure will allow all Arizonans, regardless of party affiliation, to vote in a single open primary for the candidates of their choice. The two candidates who receive the most votes in the primary will compete in the general election. There will be a level playing field for all voters and candidates, and the current system of taxpayer-funded partisan primaries will be abolished. This reform will promote open government and encourage the election of candidates who will work together for the good of the state.



Signature of Applicant

Paul Johnson

Printed Name of Applicant

11811 N. Tatum Blvd., Suite 1051

Address

Phoenix, AZ 85028

City

State

Zip

602-413-8785

Telephone Number

Open Government Committee

Name of Organization (if any)

5125 N. 16th St., Suite B226

Address

Phoenix, AZ 85016

City

State

Zip

602-684-3143

Telephone Number

Paul Johnson, Chairman

Name of Officer and Title

11811 N. Tatum Blvd., Suite 1051

Address

Phoenix, AZ 85028

City

State

Zip

602-413-8785

Telephone Number

Paulina Morris, Treasurer

Name of Officer and Title

2525 E. Biltmore Circle A-212

Address

Phoenix, AZ 85016

City

State

Zip

602-505-7228

Telephone Number

Date of Application	<u>September 26, 2011</u>
Signatures Required	<u>259, 213</u>
Deadline for Filing	<u>July 5, 2012</u>
Serial Number Issued	<u>C-03-2012</u>
FOR OFFICE USE ONLY	

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SECRETARY OF STATE

Revised 11/92

CFID# 201200145

EXHIBIT 3

FILED

J/S

2012 JUN 26 AM 10: 52

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

BY: 

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9 Attorney for ELISE BROWN, Plaintiff

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 **CV 12 - 05547**

13 **PA**

(SPX)

14 ELISE BROWN,

CASE No.

15 Plaintiff,

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

16 v.

[Fourteenth Amendment to United
States Constitution; 42 USC 1983;
Section 2 of the Voting Rights Act, 42
USC 1973]

17 DEBRA BOWEN, California
18 Secretary of State

19 Defendant.

20 **I. THE NATURE OF THE CASE**

21 1. This is an action for declaratory and injunctive relief to enforce
22 the provisions of the Fourteenth and Fifteenth Amendments of the Constitution
23 of the United States and 2 of the Voting Rights Act of 1965 ("VRA"), as amended
24 in 1982 or more commonly known of as 42 U.S.C. 1973, and to prevent
25 deprivation under color of state law, ordinance, regulation, custom or usage of the
26 rights, privileges and immunities secured by the aforementioned federal
27 constitutional provisions and statute, and more specifically under the VRA's 1982
28 reauthorization held that "minorities had a right [to not just vote] but to elect
representatives of their choice", a right, that is now factually impossible in the

1 upcoming November 2012 election for the vast majority of African Americans in
2 the 8th Congressional District because the Top 2 Primary law has left the field with
3 two candidates for the November election that are openly hostile to the rights and
4 interests of African American voters in the 8th Congressional District even were it
5 not for the significant traditional pro-Democrat voting history of African
6 Americans.

7 2. This action would have not been ripe for adjudication until such time
8 the election results were in and the resulting injury to the rights of African
9 Americans to participate in the general election in the 8th Congressional District
10 contest for Congress were concrete.

11 3. Additionally, this is an action for declaratory to obtain a ruling that
12 California's Proposition 14 entitled the "Top Two Primaries Act [which took
13 effect April 19, 2011] that modified Article II, Section 5 of the California
14 Constitution and Section 6 of Article II of the California Constitution, is
15 unconstitutional as violating ELISE BROWN's rights in the 8th Congressional
16 District in that:

17 (a) the first and fourteenth amendment right to freedom of association,
18 which protects the freedom to join and participate in the general election process
19 in furtherance of common political beliefs, which by its nature includes the right to
20 select and be able to vote for party nominees in the general elections [as per
21 United States Supreme Court in Democratic Party of the United States of America
22 v Wisconsin ex rel La Follette, 450 US 107 (1981) and reaffirmed in California
23 Democratic Party v Jones 530 US 567, 573-74 (2000)], the right of qualified
24 voters to cast their votes effectively ["which ranks amongst our most precious
25 freedoms" per Anderson v Celebreeze, 460 U.S. 780, 787-88, quoting Williams v
26 Rhodes, 393 U.S. 23, 30-31] and the right to have ideas compete through general
27 election candidates from each of the parties, is abridged as in the Top Two
28 Primaries Act, the top two candidates present race-hostile policy positions

1 including but not limited to Craig Imus (the top vote getter in the 8th Congressional
2 District) wanting to only uphold the Constitution as it was written (which did not
3 recognize that anyone had the right to vote other than white males and only
4 counted African Americans as three-fifths of a person under Section 2 of Article 1
5 of the United States Constitution) and both Craig Imus and Paul Cook not
6 recognizing the right of women to control their reproductive health decisions, both
7 major issues for people of color in general elections such as the one coming up in
8 November. Paul Cook voted against an anti-discrimination bill (AB 1450 which
9 prohibited discrimination against unemployed workers, a class African Americans
10 lead percentage-wise in California, SB 185 which allowed race, ethnicity and
11 gender to be considered in college admission decisions).

12 (b) The retained right to vote in a federal general election for a democrat, a
13 practice that has existed all of Plaintiff's adult life and since the first election after
14 California was admitted to the Union, is a substantive due process right protected
15 under the 14th Amendment & Bush v Gore (2000), which recognized that State
16 citizens had rights in federal elections under the substantive due process clause of
17 the United States Constitution, rights now abridged by the conservative-only
18 republican-only general election in the 8th Congressional District./1

19 (c) California Election Code Section 8147 authorizes and directs the
20 California Secretary of State to issue certificates of nomination (note nomination
21 is singular) to candidates for Congress, which is contradicted when nomination is
22 of people from the same political party, an enlargement of power under statute.

23 //

24 //

25 1/ Districts with two republican "nominees" includes the 31st with Bob Dutton and Gary Miller,
26 leaving top vote getting democratic candidate Pete Aguilar out of the November general election
27 & in the 8th top Democratic vote getter Jackie Conaway will similarly not be in the general
28 election either. Districts where the two top voters are democrats, which could be affected by a
decision in this case include the 15th (Eric Stalwell-D), the 30th (Howard Berman-D), 33rd (Chris
David-R), 43rd (Bob Flores-D), 44th (Laura Richardson-D) & the 40th (David Sanchez-D).

1 **II. JURISDICTION**

2 4. The jurisdiction of this Court is invoked as to the Voting Rights
3 Act under Title 28 of the United States Code, 1331, 1343(3), 1343(4) and 2201,
4 this suit being authorized by Title 42 of the United States Code, 1983.

5 5. The jurisdiction of this Court as to the associational right claims is
6 based on the common law articulated in Democratic Party of the United States of
7 America v Wisconsin ex rel La Follette, 450 US 107 (1981) and reaffirmed in
8 California Democratic Party v Jones [530 US 567, 573-74 (2000)], which
9 recognized that “substantial intrusion into [] associational freedom” occurs
10 when people are deprived of the right to vote for their candidate in the November
11 general election for federal offices.

12 **III. PARTIES**

13 6. Plaintiff Elise Brown is an African American adult citizen, a long
14 time member of the California Democratic Party, the San Bernardino County
15 Democratic Central Committee by election, the California State Democratic
16 Party’s Central Committee, an officer of the Adelanto-Victorville Democratic
17 Club and proceeds in her own behalf and of those person similarly situated.

18 7. Plaintiff desires to participate in the electoral and political process for
19 the House of Representatives and to have her and all those similarly situated
20 persons’ votes counted on an equal basis with white citizens of San Bernardino
21 County by being able to vote for a Democratic candidate in the general election.

22 8. Defendant Secretary of State, Deborah Bowen is sued in her official
23 capacity only to the extent of her issuing a certificate of nomination for
24 Congressional races pursuant to State Election Code Section 8147 pursuant to the
25 Top 2 Primary law. As Bowen is the Chief Election Officer of the State of
26 California and has responsibility for the general supervision and administration of
27 the election laws, is responsible to obtain and maintain uniformity in the
28 application and administration of the election laws and issue a certificates of

1 nomination for congress for each of the top voters for each party.

2 9. At all relevant times set out herein, defendant was and have been
3 acting under color of the statutes, ordinances, regulations, customs and usages of
4 the State of California.

5 **IV. FACTS**

6 10. Plaintiff as a democrat and an African American voter represents a
7 group that predominately votes for Democrats for federal offices in primary and
8 general elections and the registration numbers bears that disparity out. Since 1964
9 when African Americans voted democratic 82% of the time, 92% of the time in
10 1968 and with the exception of 1972, 1984 and the 1992 elections, African
11 Americans would continue to give at least 80% of the collective votes to
12 Democrats.

13 11. The 8th Congressional Districts break down as 8% African American,
14 35% Hispanic, 50% White.

15 12. Pursuant to California's Proposition 14 entitled the "Top Two
16 Primaries Act", which took effect April 19, 2011, modified Article II, Section 5 of
17 the California Constitution and Section 6 of Article II of the California
18 Constitution, effectively deprives African American voters of the right to vote:

19 (a) Prohibiting political parties which historically align with African
20 American voters from nominating candidates in a primary;

21 (b) Prohibits plaintiff and all those similarly situated from supporting a
22 federal candidate from their own political party of choice in the general election
23 by eliminating their candidate should he or she not be a top two vote getter in the
24 primary;

25 (c) Prohibiting the highest Democratic vote getter from representing the
26 democratic party in the November 2012 general election for the first time in 160
27 years of California and United States history;

28 (d) Creating voter confusion when they see only 2 republicans to vote for,

1 having come to the polls expecting to have a choice of voting for a democratic
2 candidate of their own choosing;

3 (e) Creating a severe restriction upon the exercise of their voting rights in
4 that for the first time, they will have to decide whether to vote at all for a non-
5 democratic candidate;

6 (f) Prohibiting write in voters that are Democrats from seeking to participate
7 in the November 2012 election;

8 (g) Taking away a fundamental right to be able to vote for a party champion
9 in a federal race in the general election;

10 (h) By having only republicans in the general election for a federal office,
11 depriving plaintiff and all those similarly situated of the right to associate by
12 supporting and voting for a Democratic candidate in the general election for
13 Congress;

14 (i) By the Secretary of State upholding a law like the Top 2 Primary which
15 compels the citizens to vote in a top two open primary in a district that has a
16 substantial advantage registration-wise for republicans as created by the so-called
17 non-partisan commission, the state is effectively empowering the Republican party
18 by declaring to plaintiff and all those similarly situated, that they no any longer
19 have a right to vote for a democratic candidate of their choice, in effect a state
20 action stripping political choice and are further stripping the people like plaintiff
21 and those similarly situation from having the back-up valve of being able to run a
22 write-in candidate of their choice;

23 (j) By having a Top 2 Primary System in a republican registration advantage
24 district, plaintiff and all those similarly situation are coerced to associate with the
25 republican candidates selected, should they wish to exercise their right to vote, by
26 voting for persons that philosophically and politically are diametrically opposed to
27 their interests and views in violation of plaintiff's and those similarly situated's
28 right to NOT associate or not exercising the fundamental right to vote.

1 (k) Debra Bowen as the California Secretary of State is to issue under
2 Elections Code Sec. 8147 a certificates of "nomination" (a singular) reference,
3 for each top vote getter for each party, and to issue certificates of nomination for
4 people from the same party, facially contradicts the plain meaning of term.

5 13. The political processes leading to the general election in 2012 and
6 every two years thereafter in San Bernardino County are not equally open to
7 participation by African-Americans, in that African-Americans have less
8 opportunity than other members of the electorate to participate in the political
9 process and to elect candidates of their choice because of the Top 2 Primary.

10 14. African-Americans in San Bernardino County bear the effects of
11 discrimination in such areas as education, employment and health, which hinder
12 their ability to participate effectively in the political process.

13 15. In the entire history of San Bernardino County, no African-American
14 has ever been elected to any countywide office and with the Top Two primary,
15 with 8.9% of San Bernardino County being African American, .6% in Inyo County
16 and .3% in Mono County [county-wise numbers per the 2012 Census] and a
17 created 10% registration advantage of Republican over democrat and a nearly 20%
18 decline-to-state budge on top of that, African American voters will have added to
19 their burden the result of having to choose between two conservative republicans
20 that garnered only 30.8% of the vote.

21 VI. EQUITABLE RELIEF

22 16. There is a real and actual controversy between the parties and the
23 issue is ripe for adjudication. Plaintiffs have no adequate remedy at law other
24 than this action for injunctive and declaratory relief and to deny relief herein,
25 due to the percentage to population of African Americans, will strip African
26 Americans of their associational and other related civil rights as set forth herein
27 for the next decade.

28 17. Plaintiffs are and will continue to suffer irreparable injury as a result

1 of the acts of Defendant complained of herein and that injury will continue unless
2 declared to be unlawful and enjoined by this Court.

3 **V. CAUSES OF ACTION**

4 **FIRST CLAIM FOR RELIEF**

5 *Fourteenth Amendment to the United States Constitution 42 U.S.C. §1983*

6 18. Plaintiffs hereby reallege and incorporate by reference each of the 16
7 foregoing paragraphs.

8 19. Unless enjoined by this Court, Defendant on or about July 13,
9 2012 will prepare Certificates of Nomination for Congressional candidates under
10 California Election Code Sec. 8147.

11 20. Defendant, acting under color of state law, threatens to deprive
12 Plaintiffs including the individual Plaintiff of their fundamental right to vote.

13 21. Any holding (of using the Top 2 Primary results) results in the denial
14 or abridgment of the right of plaintiff's fundamental right under the 14th
15 Amendment in that Democrats have had the right to have a party representative in
16 the general election for Congress since California joined the Union over 160 years
17 ago. To now abolish that right by State Initiative and allow the Secretary of State
18 to prepare 2 nomination certificates for people from the same political party,
19 violates plaintiff's and all those similarly situated's substantive due process right,
20 right of association and those rights otherwise reserved to the state, but not
21 enumerated in the Bill of Rights.

22 22. Plaintiff and all those similarly situated have always been able to vote
23 for a party champion since the first days of the republic, creating a federal voting
24 right that should not be abridged by State Action under the 14th Amendment and
25 the rationale in *Bush v Gore*.

26 23. Defendant, acting under color of state law, threatens to violate
27 Plaintiffs' rights to equal protection, due process, and the privileges or immunities
28 of citizens of the United States guaranteed by the Fourteenth Amendment to the

1 United States Constitution in that for the next decade, plaintiff and those similarly
2 situated will not be able to exercise their associational rights by voting for a
3 candidate that shares their concerns and priorities.

4 **SECOND CLAIM FOR RELIEF**

5 *Section 2 of the Voting Rights Act, 42 U.S.C. §1973*

6 24. Plaintiff hereby realleges and incorporate by reference each of the 22
7 foregoing paragraphs.

8 25. Section 2 of the Voting Rights Act, 42 U.S.C. §1973, prohibits voting
9 practices and procedures that result in the denial or abridgement of the right to
10 vote on account of race, color, or linguistic minority status.

11 26. The holding of using the Top 2 Primary results in the denial or
12 abridgment of the right of Plaintiffs to vote on account of race or color in
13 violation of 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, and these
14 election structures were adopted and have the effect of diluting, minimizing and
15 canceling out the voting strength of African-Americans in violation of the rights
16 of Plaintiffs secured by the Fourteenth and Fifteenth Amendments of the
17 Constitution of the United States, and 2 of the Voting Rights Act of 1965, 42
18 U.S.C. 1973 or in resulting dilution, minimizing and canceling out by a reckless
19 disregard of the substantial likelihood of creating a district where a democrat
20 would not be available for an African American to vote for, creating not only a
21 denial of choice and abridgement of associational rights in a federal election.

22 27. Unless enjoined by this Court, Defendant will on July 13, 2012
23 prepare Certificates of Nomination for Congressional candidates under California
24 Election Code Sec. 8147 a system of voting that abridges Plaintiffs' right to vote
25 for the next decade in violation of Section 2 of the Voting Rights Act.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, PLAINTIFFS respectfully request that this Court enter
28 judgment in their favor and the following relief:

1 (1) Issue a temporary restraining order or such other preliminary injunctive
2 relief as is appropriate prior to the Secretary of State's scheduled preparation of
3 the certificates of nomination on July 13, 2012 so that the court can first decide if
4 California's Proposition 14 entitled the "Top Two Primaries Act [which took
5 effect April 19, 2011] that modified Article II, Section 5 of the California
6 Constitution and Section 6 of Article II of the California Constitution, violates the
7 1982 Reauthorization of the Federal Voting Rights Act by eliminating from the
8 November 2012 general election the top vote getting democratic candidate;

9 (2) Alternatively to No. (1), issue a temporary restraining order or such
10 other preliminary injunctive relief as is appropriate prior to the Secretary of State's
11 scheduled preparation of the certificates of nomination on July 13, 2012 so that the
12 court can decide if California's Proposition 14 entitled the "Top Two Primaries
13 Act [which took effect April 19, 2011] that modified Article II, Section 5 of the
14 California Constitution and Section 6 of Article II of the California Constitution,
15 violates the 1982 Reauthorization of the Federal Voting Rights Act, by abolishing
16 160 years of voting rights for ALL Californians that they be able to vote in a
17 general election for a candidate from the party they are members of, is unlawful;

18 (3) Issue a temporary restraining order or such other preliminary injunctive
19 relief as is appropriate based on the plain reading of Election Code 8147 which
20 refers to nomination certificates in the singular, requiring under historical tradition
21 and the plain meaning of the words, one nomination, for one person from each
22 party that ran;

23 (4) Alternatively, issue a temporary restraining order or such other
24 preliminary injunctive relief as is appropriate prior to the Secretary of State's
25 scheduled preparation of the certificates of nomination on July 13, 2012 so that the
26 court can decide if California's Proposition 14 entitled the "Top Two Primaries
27 Act [which took effect April 19, 2011] that modified Article II, Section 5 of the
28 California Constitution and Section 6 of Article II of the California Constitution,

1 violates the first, fourteen and fifteen amendments of the United States
2 Constitution;

3 (5) Enter a declaratory judgment that ELISE BROWN's and all those
4 Democrats similarly situated's rights are violated by California's Proposition 14
5 entitled the "Top Two Primaries Act" [which took effect April 19, 2011] that
6 modified Article II, Section 5 of the California Constitution and Section 6 of
7 Article II of the California Constitution, violates rights under Section 2 of the
8 Voting Rights Act as amended in 1982;

9 (5) Enter a declaratory judgment that ELISE BROWN's and all those
10 Democrats similarly situated's rights are violated first, fourteenth and fifteenth
11 amendment right to freedom of association, to cast their votes effectively;

12 (6) To restore the previous system that allowed the top vote getter from each
13 party to stand for election in the November 2012 election so to obtain and
14 maintain constitutional uniformity;

15 (7) *Alternatively*, should the court not set this motion and rule on it before
16 the Secretary of State prepares its certificates of nomination for Congressional
17 candidates, that the court, should it rule on the merits in plaintiff's favor, vacate
18 and expunge from the record the certificates of nomination prepared and issued,
19 and issue an order declaring the top voter getter from each party be only issued
20 certificates of nomination for the November 2012 general election.

21 (8) To award Plaintiffs the costs and expense of this action together with
22 their reasonable attorneys' fees; and

23 (9) To retain jurisdiction of this action and grant to Plaintiff(s) any further
24 relief which may, in the discretion of this Court, be necessary and proper.

25 DATED: June 25, 2012

Respectfully submitted,

26
27 By: 
28 ROBERT D. CONAWAY
Attorneys for Plaintiff, ELISE BROWN

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Percy Anderson and the assigned discovery Magistrate Judge is Sheri Pym.

The case number on all documents filed with the Court should read as follows:

CV12 - 5547 PA (SPx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

1 (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Elise Brown	DEFENDANTS Debra Bowen, California Secretary of State
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(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Robert D. Conaway Bar No 119657 [760-256-0603] 222 East Main Street, Suite 212, Barstow CA 92311 Mailing address: PO Box 865, Barstow CA 92312-0865	Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No
 MONEY DEMANDED IN COMPLAINT: \$ injunction, dec relief & atty fees

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

42 USC 1973, Section 2 of Voting Rights Act, 42 USC 1983 [voting rights of African Americans violated by California's Top 2 Primary]

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV 12 - 05547 PA SPX

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
San Bernardino County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Sacramento County	

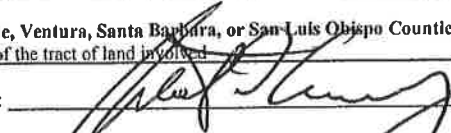
(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
San Bernardino County	Inyo, Mono

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):

 Date 6/22/2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

AO 440 (Rev. 06/12) Summons in a Civil Action

FOR OFFICE USE ONLY

UNITED STATES DISTRICT COURT
for the
Central District of California

Elise Brown,

Plaintiff(s)

v.

Debra Bowen, California Secretary of State

Defendant(s)

CV 12 - 05547

Civil Action No.

PA
SPX

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Debra Bowen
California Secretary of State
1500 11th Street
Sacramento CA 95814

FOR OFFICE USE ONLY

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Robert D. Conaway
222 East Main Street, Suite 212, Barstow CA 92311
Mailing address: PO Box 865, Barstow CA 92312-0865

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JUN 26 2012

Date: _____

TERRY NAFISI

CLERK OF COURT

FOR OFFICE USE ONLY



(1134)

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

SAVE OUR VOTE, OPPOSING C-03-2012,
an unincorporated Arizona political
committee, LISA GRAY, a qualified elector
and taxpayer of the State of Arizona, JAMIE
A. MOLERA, a qualified elector and
taxpayer of the State of Arizona, and the
LEAGUE OF WOMEN VOTERS OF
ARIZONA, an Arizona non-profit
corporation,

Plaintiffs,

v.

KEN BENNETT, in his official capacity as
Secretary of State of the State of Arizona,

Defendant,

and

OPEN GOVERNMENT COMMITTEE, an
unincorporated Arizona political committee,

Real Party in Interest.

No.

VERIFICATION

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

1. I, Lisa Gray, am a qualified elector and taxpayer in the State of Arizona.
2. I have read the Verified Complaint in this matter, know the contents thereof,
and state that it is true based on my own knowledge, except as to the matters alleged
therein upon information and belief, and that as to those matters, I believe them to be true.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 13th day of July, 2012.

Lisa Gray
Lisa Gray

SUBSCRIBED AND SWORN to before me on July 13, 2012.

Cynthia J. Tassielli
Notary Public

CYNTHIA J. TASSIELLI
Notary Public, State of Arizona
MARICOPA COUNTY
My Commission Expires
June 1, 2015

Snell & Wilmer
LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 362-6000