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8 Appearing for the Plaintiffs

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

11 LIBERTARIAN PARTY OF LOS)
12 ANGELES COUNTY, THEODORE)
13 BROWN, and CHRISTOPHER)
14 AGRELLA,)

15 Plaintiffs,)

16 v.)

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

20 Defendant.)
21)

Case No. CV10-2488 PSG (OP)

Judge: Hon. Philip S. Gutierrez
Action Filed: April 6, 2010

22 **FIRST AMENDED COMPLAINT**

23 This amended complaint is filed pursuant to the Court's Order dated
24 November 2, 2010. (Doc. 25, p. 6.) This paper is filed in paper format using the
25 traditional filing method pursuant to General Order 08-02, ¶ V.C.1.
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27

1 associational rights, and the right to use or hire non-resident circulators if they so
2 choose.

3 **THE PARTIES**

4 **Plaintiffs**

5 4. The LPLAC is an active political party in the state of California and is
6 not allowed to associate with non-residents of either Los Angeles County or
7 California to circulate nominating papers or petitions on their candidates' behalf.
8 The LPLAC is also barred from choosing its own spokesmen for petition
9 circulation activities.

10 5. Brown is a resident of Los Angeles County and California and is
11 denied the right to associate with non-residents of Los Angeles County or
12 California, and with persons who live in other political districts within California
13 for the purpose of circulating nominating papers or petitions within Los Angeles
14 County. He is also denied the right to circulate nominating papers or petitions, in
15 support of candidates, outside of his district or political subdivisions. His rights to
16 political speech and political association are severely burdened by these bars on
17 petition circulation.

18 6. Agrella is a resident of San Bernardino County and California and is
19 denied the right to associate with non-residents of Los Angeles County or
20 California for the purpose of circulating nominating papers or petitions. He is also
21 denied the right to circulate nominating papers or petitions, in support of
22 candidates, outside of his district or political subdivision. His rights to political
23 speech and political association are severely burdened by these bars on petition
24 circulation.

1 **Defendant**

2 7. Defendant, Debra Bowen (“Bowen”), is the Secretary of the State of
3 California, and as such, oversees the State’s electoral processes. The Secretary of
4 the State enforces the state laws at issue. Bowen is sued in her official capacity.

5 **FACTS**

6 8. Candidates can attain places on ballots by filing nomination papers or
7 petitions signed by qualified electors. *See e.g.* Cal. Elec. Code §§ 8060, 8400
8 (2008).

9 9. The State of California bars non-residents from circulating nomination
10 papers or petitions within the state. *See e.g.* Cal. Elec. Code §§ 8066, 8451,
11 (2008).

12 10. Furthermore, a resident of California may only circulate nomination
13 papers or petitions in the district or political subdivision in which the circulator is a
14 resident and in which the candidate is to be voted on. *See e.g.* Cal. Elec. Code §§
15 8066, 8451 (2008).

16 11. Bowen provides written notice to all candidates that ballot access
17 petition circulators may only circulate petitions in political districts from which the
18 circulator resides and that this is a requirement for a candidate seeking a
19 nomination by petition.

20 12. Exhibit A, which is attached to this Amended Complaint and made a
21 part of this Amended Complaint as if set forth in full in this Complaint is Bowen’s
22 “Summary of Qualifications and Requirements for Partisan Nomination for the
23 Offices of STATE SENATOR [and] MEMBER OF THE ASSEMBLY.” Exhibit
24 A reads in part: “Circulators shall be voters in the district or political subdivision
25 in which the candidate is to be voted on and shall serve only in that district or
26 political subdivision.” (Exhibit A, p. 5.) Exhibit A was pulled from Bowen’s

1 official website at: <http://www.sos.ca.gov/elections/running-for->
2 [office/2010/pdf/state-senate-assembly-2010.pdf](http://www.sos.ca.gov/elections/running-for-office/2010/pdf/state-senate-assembly-2010.pdf).

3 13. Bowen has identified candidate qualifications and requirements that are
4 required by statute or constitutional clause that Bowen also believes is not
5 enforceable as violative of the United States Constitution. Specifically, Bowen's
6 Summary of Qualifications and Requirements states: "Article IV, section 2(c), of
7 the California Constitution requires a one-year residency in the legislative district
8 and three years residency in California; however, it is the legal opinion of this
9 office that these provisions violate the U.S. Constitution and are unenforceable."

10 (Exhibit A, p. 1, fn. 1.)

11 14. Bowen intends to enforce all qualifications and requirements set forth in
12 California statutes and in the California Constitution except for those qualifications
13 and requirements not specifically excepted in the Summary of Qualifications and
14 Requirements. Bowen intends to enforce the residency requirement for petition
15 circulators referred to in ¶ 12, above.

16 15. Exhibit B, which is attached to this Amended Complaint and made a
17 part of this Amended Complaint as if set forth in full in this Complaint is a
18 document publically issued by Bowen entitled: "Information Sheet –
19 Qualifications and Requirements – Member of the State Senate, 1st District Special
20 Election." The document was pulled from Bowen's official website at:

21 <http://www.sos.ca.gov/elections/Special/sd01/qualifications-requirements.pdf>.

22 16. Bowen continues to notice all candidates that the residency
23 requirement for petition circulators is a requirement for candidates for state office.
24 Bowen's Summary of Qualifications and Requirements for candidates in the most
25 recent special election for the California Senate, District 1, the primary of which
26

1 was held November 2, 2010, Bowen repeated the requirement set forth in ¶ 12
2 above as a requirement for those candidates. *See* Exhibit B, p. 3.

3 17. Circulators must attach and sign a declaration to the nomination paper
4 or petition setting forth the circulator's residence address. *See e.g.* Cal. Elec. Code
5 § 104 (2008).

6 18. A circulator who signs an incorrect declaration can be punished by
7 fine or imprisonment. *See e.g.* Cal. Elec. Code § 18203 (2008).

8 19. Brown is a resident of Los Angeles County and California and in the
9 last election cycle wanted to circulate petitions in support of candidates located in
10 political districts other than the district within which he lives, but was barred by
11 state law. *See e.g.* Cal. Elec. Code §§ 8066, 8451. Brown also intends to continue
12 supporting candidates for ballot access in future elections and intends to circulate
13 petitions in support of those candidates in political districts other than the district
14 within which he lives.

15 20. Agrella is a resident of San Bernardino County, a candidate for the
16 House of Representatives, who circulated petitions in his own behalf in this last
17 election cycle, but was barred from circulating petitions for a state senate candidate
18 that overlaps his district because he does not reside within the state senate district
19 for which that candidate was running because he was barred by state law. *See e.g.*
20 Cal. Elec. Code §§ 8066, 8451. Agrella also intends to continue supporting
21 candidates for ballot access in future elections and intends to circulate petitions in
22 support of those candidates in political districts other than the district within which
23 he lives.

24 21. The LPLAC would like to associate with non-resident supporters of
25 the Libertarian Party, both non-residents of Los Angeles county and non-residents
26 of California, and use non-resident supporters to circulate nomination papers and
27

1 petitions in Los Angeles county in support of Libertarian Party candidates but are
2 barred by state law. *See e.g.* Cal. Elec. Code §§ 8066, 8451 (2008). The LPLAC
3 also intends to continue supporting candidates for ballot access in future elections
4 and intends to circulate petitions in support of those candidates in political districts
5 other than the district within which he lives

6 **COUNT ONE**
7 **CALIFORNIA LAWS PROHIBITING NON-RESIDENTS**
8 **FROM CIRCULATING PETITIONS VIOLATE FIRST AND**
9 **FOURTEENTH AMENDMENT RIGHTS TO FREE SPEECH,**
FREE ASSOCIATION, AND VOTING RIGHTS

10 22. Paragraphs 1 through 21 are incorporated within this count.

11 23. The residency requirement for circulators severely burdens the
12 political speech and political association rights of Brown, Agrella and the LPLAC,
13 in violation of the First and Fourteenth Amendments to the United States
14 Constitution, and 42 U.S.C. § 1983.

15 24. The residency requirement for circulators severely burdens the right
16 of the LPLAC to name its own spokesmen in violation of the First and Fourteenth
17 Amendments to the United States Constitution, and 42 U.S.C. § 1983.

18 25. The residency requirement for circulators severely burdens the voting
19 rights of Brown, Agrella and the LPLAC because unconstitutional ballot access
20 laws diminish the statewide and national viability of the organization whose ballot
21 presence is denied, thereby diminishing the value of votes cast by the harmed
22 parties.

23 26. By reason of the foregoing, Bowen, acting under color of state law,
24 has deprived Plaintiffs of the rights, privileges and immunities secured to them
25 under the First and Fourteenth Amendments to the United States Constitution and
26 § 1983 of title 42 of the United States Code to participate in the democratic process

1 free from unreasonable impediments, undue restraints on core political speech, free
2 and expressive associational rights, and the right to equal protection of the laws.

3 27. Plaintiffs have no adequate remedy at law for such deprivation of their
4 rights, privileges and immunities.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs respectfully ask this Court:

7 A. To enter a judgment declaring that the residency requirement for
8 petition circulators severely limits the speech, associational, and voting rights of
9 supporters of political parties and are in violation of the United States Constitution,
10 including particularly the First and Fourteenth Amendment to the United States
11 Constitution;

12 B. To grant permanent injunctive relief enjoining and restraining
13 Defendant, her servants, agents, employees, and all other persons in active concert
14 and participation with her from implementing and enforcing the residency
15 requirement;

16 C. To award Plaintiffs costs and disbursements associated with the filing
17 and maintenance of this action, including an award of reasonable attorneys' fees
18 pursuant to 42 U.S.C. § 1988; and

19 D. To award such other equitable and further relief as the Court deems
20 just and proper.

1 Respectfully submitted on this the 22nd day of November, 2010.

2 THE BERNHOFT LAW FIRM, S.C.
3 Attorneys for the Plaintiffs

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18 capacity as Secretary of State of)
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20 Defendant.)
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22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on November 22, 2010, I mailed the foregoing
24 document to the defendant by sending the document to her counsel at the following
25 address:
26
27

1 Attorney Michael Witmer, Deputy Attorney General
2 Attorney General's Office
3 300 South Spring Street, Suite 1702
4 Los Angeles, CA 90013

5 Dated this 22nd day of November, 2010.



6 Daniel J. Treuden

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