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MESSAGE/INSTRUCTIONS

Re: Mona Field, et al. v. Debra Bowen, et al.

Service by facsimile and U.S. Mail of:

RESPONDENT SECRETARY OF STATE'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE AND MOTIONS TO INTERVENE

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In the Supreme Court of the State of California

MONA FIELD, et. al., **Petitioners,** **v.** **SUPERIOR COURT FOR THE COUNTY OF SAN FRANCISCO,** **Respondent,** **DEBRA BOWEN, as California Secretary of State; et. al.,** **Real Parties in Interest.**	Case No. S188436

First Appellate District, Case No. A129829
San Francisco County Superior Court, Case No. CGC-10-502018
Hon. Charlotte W. Woolard, Judge

RESPONDENT SECRETARY OF STATE'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE AND MOTIONS TO INTERVENE

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INTRODUCTION

In the June 2010 primary election, California voters approved Proposition 14, a legislative constitutional amendment that changes the state's system of primary and general elections for state and congressional offices. Passage of this measure triggered the operation of Senate Bill 6, which makes statutory changes designed to implement the new elections system.

In this proceeding, petitioners seek to challenge the facial constitutionality of one provision of Senate Bill 6: the identification on primary and general election ballots of the political party preference of candidates who are not members of qualified political parties. Asserting that this provision renders all of Senate Bill 6 defective, petitioners seek a writ of mandate directing the lower court to enjoin implementation not only of Senate Bill 6 but also of Proposition 14 itself.

Procedurally, this matter comes to this Court following the denial of a motion for preliminary injunction by the trial court and denial of a subsequent petition for writ of mandate in the First District Court of Appeal. (Case No. A129829.) Petitioners have also initiated a separate appeal in the First District from the denial of the preliminary injunction. (Case No. A129946.) None of the six petitioners, however, are candidates in any current election or, unlike the proposed intervenors, claim that they will be candidates in any upcoming special election. As such, they have not shown that there is any reason why their claims cannot be heard in due course as part of their appeal in the First District.

Apart from the writ petition itself, two new parties, Michael Chamness and Carol Winkler, seek leave to intervene. But neither of these parties moved to intervene in the lower court and neither demonstrates good cause to intervene as part of the proceedings in this Court. Neither proposed intervenor has submitted an affidavit supporting their motions.

Nor have they demonstrated a need to invoke the jurisdiction of this Court rather than proceeding initially in the superior court if and when they seek to become candidates in a special election.

Moreover, as a substantive matter, the distinction between qualified political parties and non-qualified political bodies remains an important one under California law. As this Court recognized in *Libertarian Party v. Eu* (1980) 28 Cal.3d 535, which upheld the pre-Proposition 14 limits on party identification on the ballot, the state has a compelling interest in regulating the manner in which candidates who do not belong to a qualified political party may identify their party affiliation on the ballot. Indeed, candidates who are not members of qualified political parties have never been allowed to identify their affiliation with a non-qualified political body on the ballot. Petitioners have not shown that the provisions of Senate Bill 6 relating to party preference identification are facially invalid under this standard.

In short, on both procedural and substantive grounds, the petition does not present an issue requiring immediate intervention by this Court. Therefore, the Secretary of State respectfully submits that the petition for writ of mandate and the motions to intervene should be denied without further proceedings or briefing in this Court.

STATEMENT OF THE CASE

A. Proposition 14 and its Companion Senate Bill 6.

In February 2009, the Legislature approved Senate Constitutional Amendment 4 for placement on the June 2010 election ballot. (Sen. Const. Amend. No. 4, stats. 2009 (2009-2010 4th Ex. Sess.) res. ch. 2.) (Hereinafter "SCA 4"). Designated as Proposition 14 by the Secretary of State, the measure was approved by the voters by a margin of 53.8 to 46.2 percent. (See http://www.sos.ca.gov/elections/sov/2010-primary.)

As relevant here, Proposition 14 amended the state Constitution to do away with partisan primaries for state and congressional offices and create an open primary that would select the two top vote-getters for the general election ballot. (See Petitioner's Exh. 8, Beckington Decl., Exh. C, Prop 14: Analysis by the Legislative Analyst, p. 1.) The measure amended article II, section 5, of the state Constitution to create "[a] voter-nomination primary election . . . to select the candidates for congressional and state elective offices in California." (SCA 4, art. II, § 5, new subd. (a).) Under this system, "[a]ll voters may vote at a voter-nominated primary election for any candidate for congressional and state elective office without regard to the political party preference disclosed by the candidate or the voter, provided that the voter is otherwise qualified to vote for candidates for the office in question." (*Ibid.*)

The general election becomes a contest between the two primary candidates receiving the most votes, candidates who may be from the same political party: "The candidates who are the top two vote-getters at a voter-nominated primary election for a congressional or state elective office shall, regardless of party preference, compete in the ensuing general election." (SCA 4, art. II, § 5, new subd (a).) Partisan elections continue, however, for presidential candidates and for political party and party central committees. (*Id.*, new subd. (c).)

Proposition 14 also addresses the identification of a candidate's political party preference on the ballot. Except for nonpartisan offices, a candidate for congressional or state office "may have his or her political party preference, or lack of political party preference, indicated upon the ballot for the office in the manner provided by statute." (SCA 4, art. II, § 5, new subd. (b).)

Proposition 14 did not immediately go into effect following the June 2010 election. The measure becomes operative on January 1, 2011. (SCA 4, Fifth Clause.)

Concurrently with approval of SCA 4, the Legislature approved Senate Bill 6, the measure's implementing legislation. (Sen. Bill No. 6 ("SB 6") (2009-2010 4th Ex. Sess.).) The measure was to become operative only if SCA 4 was approved by the voters. (*Id.*, § 67.) Thus, approval of Proposition 14 triggered implementation of Senate Bill 6.

With respect to party preference designations, Senate Bill 6 makes two statutory changes that are relevant to the writ petition herein. First, the measure adds new section 8002.5 to the Elections Code. This section provides, in part:

> A candidate for a voter-nominated office may indicate his or her party preference, or lack of party preference, as disclosed upon the candidate's most recent statement of registration, upon his or her declaration of candidacy. If a candidate indicates his or her party preference on his or her declaration of candidacy, it shall appear on the primary and general election ballot in conjunction with his or her name. . . . A candidate for voter-nominated office may also choose not to have the party preference disclosed upon the candidate's most recent affidavit of registration indicated upon the ballot.

(SB 6, § 17, adding new Elec. Code, § 8002.5, subd. (a).)

Additionally, Senate Bill 6 amends subdivision (a) of Elections Code 13105 to require that, on the ballot immediately following the name of a candidate for a voter-nominated office, "there shall be identified . . . the name of the political party designated by the candidate pursuant to Section 8002.5." (SB 6, § 46, amending Elec. Code, § 13105, subd. (a).) The identification shall be in substantially the following form: "My party preference is the _____ Party." (*Ibid.*)

Amended section 13105 also addresses the identification of candidates who designate no political party or choose not to disclose that preference. "If the candidate designates no political party, the phrase 'No Party Preference' shall be printed instead of the party preference identification." (SB 6, § 46, amending Elec. Code, § 13105, subd. (a).) On the other hand, "[i]f the candidate chooses not to have his or her party preference listed on the ballot, the space that would be filled with a party preference designation shall be left blank." (*Ibid.*)

B. The Proceedings Below.

Following passage of Proposition 14, the petitioners, as plaintiffs below, filed a complaint in San Francisco County Superior Court challenging two provisions of Senate Bill 6: the write-in vote restrictions implemented by new Elections Code section 8606 (SB 6, § 35) and the ballot party preference designations.[1] Plaintiffs Field, Winger, Chessin, and Wozniak, alleging that they may wish to vote for candidates whose names do not appear on the ballot, designated themselves as the "Write-In Plaintiffs." (Petitioners' Exh. 16, Complaint, ¶¶ 54-57, 60.) Plaintiffs Mackler and Martin, who allege that they are respectively members of the Socialist Action Party and the Reform Party (both non-qualified organizations) and that they wish to run for Congress in 2012 under those labels, designated themselves as the "Party-Preference Plaintiffs."[2] (*Id.*, ¶¶ 58-60.)

---

[1] New Elections Code section 8606, added by Senate Bill 6, section 35, provides: "A person whose name has been written on the ballot as a write-in candidate at the general election for a voter-nominated office shall not be counted."

[2] Plaintiffs later filed an amended complaint that made a minor change in the allegations not relevant to this proceeding. (Petitioners' Exh. 4.)

Citing various provisions of the California and United States Constitutions, including free speech, right-to-vote and due process protections, the Write-In Plaintiffs alleged six causes of action challenging the write-in vote restriction. (Petitioners Exh. 16, Complaint, pp. 14-19.) The Party-Preference Plaintiffs alleged two causes of action asserting that the candidate party preference designations of Senate Bill 6 violate the equal protection clauses of the state and federal Constitutions. (*Id.*, Complaint, pp. 19-20.)

Asserting that these provisions could not be severed from the rest of the measure, plaintiffs asked for preliminary and permanent injunctions enjoining implementation of the entirety of Senate Bill 6. (Petitioners Exh. 16, Complaint, pp. 20-21 [prayer, ¶¶ A, B].) Further, they asked for a declaration that Proposition 14 is not self-executing and is inoperative in the absence of enforceable implementing legislation. (*Id.*, p. 22 [prayer, ¶¶ M, N.)

Following a hearing held September 14, 2010, the trial court issued an order denying the plaintiffs' motion for preliminary injunction. (Petition, Exh. A, Order filed Oct. 5, 2010.) With respect to the plaintiffs' arguments relating to the party preference designations, the court's order ruled as follows:

> [I]nsufficient evidence and case law support the argument that the party preference ban violates the Equal Protection Clause or the Elections Clause. The state may require candidates not affiliated with qualified parties to use the "independent" label. (See *Libertarian Party v. Eu* (1980) 28 Cal.3d 535.) Several federal circuit courts have also held that a state is not constitutionally obligated to permit candidates to list their preferred party label on the ballot. [Citations omitted.]

(*Id.*, p. 1:23-2:4.)

Shortly after the trial court denied the motion for preliminary injunction, the petitioners filed a petition for writ of mandate in the First District Court of Appeal seeking to overturn the ruling. (Case No. A129829; Petitioners' Exh. 18.) In addition, two persons represented by the petitioners' counsel sought to intervene in that writ proceeding.[3] (*Id.*, Exh. 19.) The Court of Appeal denied the petition and the motion to intervene on October 14, 2010. (Pet., Exh. D.)

In addition, petitioners took a separate appeal to the First District from the denial of the motion for preliminary injunction. (Case No. A129946.) This appeal is pending in the First District, and petitioners' opening brief is due on January 10, 2011. (See http://appellatecases.courtinfo.ca.gov/search.cfm?dist=1, Case No. A129946 ["Scheduled Actions"].)

ARGUMENT

I. THE PETITION SHOULD BE SUMMARILY DENIED.

A. Petitioners Fail to Show Any Need for Immediate Intervention by this Court.

A writ of mandate issues "in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc., § 1086.) "[T]he adequacy of another remedy, such as an appeal, depends on the circumstances of the particular case, and thus, a large measure of discretion to grant or deny the writ rests in the court." (8 Witkin, California Procedure (2008 5th ed.) Writs, § 117, p. 1005.) But "where the object sought by the writ could be obtained by a direct appeal

[3] The proposed trial court intervenors, David Misso and Linda Hall, asserted that they were a potential write-in candidate and write-in voter respectively in the Senate District 1 special election. (Petitioners' Exh. 19.) Neither Misso nor Hall seeks to intervene in this proceeding.

from a challenged ruling of a lower court, an appeal is presumed to be an adequate remedy." (*Id.*, § 127, p. 1020.)

Four of the petitioners (Field, Winger, Chessin, and Wozniak) fail to allege any personal basis for seeking relief in this Court. These were the "Write-In Plaintiffs" below whose claims in the lower court center on their objection to the ban on counting write-in votes in general elections under Elections Code section 8606. (See Petitioners' Exh. 16, Complaint, ¶¶ 54-57, 60.) These petitioners alleged that they may wish to vote for write-in candidates in a general election, not that they may become candidates who seek to identify themselves on the ballot with a political body other than a qualified political party. (*Ibid.*) Although these petitioners presented their claim in the proceedings below, this claim has not been presented in the petition filed in this Court. Thus, these four petitioners have no personal stake in the outcome of this proceeding, which focuses solely on the party preference identification question, and therefore no immediate need for writ relief by this Court.

The issue is somewhat different, but the result the same, for the remaining two petitioners, Mackler and Martin, who allege that they intend to run for Congress in 2012. (Petitioners' Exh. 16, Complaint, ¶¶ 58-60.) Calling themselves the "Party Preference Plaintiffs" in the proceedings below, they alleged that they are members of two non-qualified political bodies or organizations, Socialist Action and the Reform Party. (*Ibid.*) They claim that they want to be identified on the 2012 ballot using the names of these organizations.

Neither Mackler nor Martin requires any immediate writ relief from this or any other court. The first round of the election on which they are focused, the 2012 congressional primary election, will not take place for more than a year. Neither candidate claims that they plan to run in any of

the upcoming special elections for the state Legislature identified in the petition.

Therefore, all of the petitioners have a "plain, speedy, and adequate remedy" without seeking review by this Court on the party preference identification question. They may continue with their appeal in the First District, which will provide them with timely consideration of their claims before the 2012 primary election.

B. Proposed Intervenors Fail to Establish Any Basis for Immediate Writ Relief in this Court.

Proposed intervenors Chamness and Winkler seek to intervene in this proceeding in support of petitioners. But they did not seek to intervene in either the trial court or in the pending appeal, and they did not seek leave to intervene in the mandamus proceeding in the First District. Nor do they bring their own petition for writ relief in the first instance.

These proposed parties have not established grounds to participate as intervenors. The proposed intervenors would not qualify for mandatory intervention because they have not identified a "provision of law [that] confers an unconditional right to intervene" or the requisite "interest relating to the property or transaction which is the subject of the action." (Code Civ. Proc., § 387.) Further they would not qualify for permissive intervention because they have, at most, only an indirect interest in the action below. (See *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1037 ["To support permissive intervention, . . . proposed intervenor's interest in the litigation must be direct rather than consequential, and it must be an interest that is capable of determination in the action."])

Moreover, neither Chamness nor Winkler has submitted an affidavit or declaration establishing facts supporting an immediate need for writ relief from this Court, including the absence of a plain, speedy, and

adequate remedy. Instead, they have "verified" their motions to intervene, which are essentially points and authorities, an inadequate and unorthodox method of certifying facts for the Court's consideration. And there has been no development of facts in the lower court to determine whether these individuals qualify for relief.

Even if the assertions in the motions were taken at face value, they do not support the writ relief sought by the proposed intervenors. Chamness claims that he wants to run as a member of the "Coffee Party" for the 28th Senate District seat made vacant by the death of Senator Jennie Oropeza.[4] Winkler asserts that she wants to run for the 17th Senate District seat that will open when Senator George Runner resigns from the Senate to succeed to his seat on the State Board of Equalization. But neither election has been scheduled and neither Chamness nor Winkler has shown that they will eventually qualify to run as a candidate in either district.[5]

Therefore, Chamness and Winkler have, at least at this stage, no need to involve this Court. If they submit papers to run for either office, and qualify for the ballot, they may seek appropriate relief in the superior court to challenge a party preference identification with which they disagree.

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[4] Chamness does not describe the platform or form of organization of the "Coffee Party" or explain how he qualifies as a member of that entity. The Coffee Party is not a qualified political party or a political body seeking qualified status in California. (See http://www.sos.ca.gov/elections/elections_f.htm [list of qualified political parties]; http://www.sos.ca.gov/elections/elections_f_non.htm [list of political bodies seeking to qualify for 2012 election].)

[5] Although Senator Oropeza passed away before the November election, her seat does not officially become vacant until she would have been sworn in for her new term on December 6, 2010. (Elec. Code, § 15402.) Senator Runner's seat will not become vacant until he vacates the seat to assume his duties on the Board of Equalization.

These proposed parties have not shown that this would be an inadequate remedy.

Moreover, because Chamness and Winkler seek to intervene in support of the petitioners, the question would remain whether the petitioners have established grounds for writ relief. The proposed intervenors' motions do not change the unalterable fact that the petitioners themselves have an adequate remedy in the Court of Appeal.

II. IN ANY EVENT, THE PARTY PREFERENCE IDENTIFICATION PROVISIONS OF SENATE BILL 6 ARE A FACIALLY PERMISSIBLE REGULATION OF THE ELECTIONS PROCESS.

Under federal law, "[a] court considering a challenge to a state election law must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" (*Burdick v. Takushi* (1992) 504 U.S. 428, 434, quoting *Anderson v. Celebreeze* (1983) 460 U.S. 780, 788.)

"[W]hen those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" (*Burdick v. Takushi*, *supra*, 504 U.S. at 434, quoting *Norman v. Reed* (1992) 502 U.S. 279, 289.) "But when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." (*Ibid.*, quoting *Anderson v. Celebreeze*, *supra*, 460 at p. 788.)

These principles also apply to challenges under the California Constitution. In analyzing constitutional challenges to election laws, California "has closely followed the analysis of the United States Supreme

Court." (*Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 179.)

Consideration of petitioners' claim begins with the definition of the "party" as used in the Elections Code. Under Elections Code section 338, the term "party" means "a political party or organization that has *qualified for participation in any primary election.*" (Emphasis added.) This definition was not changed by Proposition 14 or Senate Bill 6.

A party becomes qualified by receiving at least two percent of the votes cast in the preceding gubernatorial election, by having voters equal to at least one percent of the votes in that election declare their affiliation with the party, or by submission of a petition signed by voters equaling at least 10 percent of the entire vote in that election. (Elec. Code, § 5100.) Presently, six political parties have qualified for this status in California. (See http://www.sos.ca.gov/elections/ elections_f.htm [list of qualified political parties].)

On the other hand, the term *political body* is used to refer to "a group of electors desir[ing] to qualify a new political party meeting the requirements of Section 5100." (Elec. Code, § 5000.) A group may qualify as a political body by holding a caucus or convention to elect temporary officers and selecting a party name and by filing a formal notice with the Secretary of State. (Elec. Code, § 5001.) This terminology also remains unchanged by Senate Bill 6. Presently, 11 political bodies are seeking qualified political party status in California. (See http://www.sos.ca.gov/ elections/elections_f_non.htm [list of political bodies].)

As they admit in their papers, petitioners necessarily bring this proceeding as a *facial* challenge to Senate Bill 6. Neither Senate Bill 6 nor Proposition 14 goes into effect until January 1, 2011, and no election applying their terms has yet been scheduled. No elections official has yet been called upon to implement the provisions of Senate Bill 6 in an election

and no petitioner or proposed intervenor has yet submitted papers to run for office. As such, petitioners have yet to show that Senate Bill 6 has or will be applied to them in an unconstitutional manner.

"A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.) "'To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute . . . . Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.'" (*Ibid*, quoting *Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 267.)

Here the party preference provisions of Elections Code sections 8002.5 and 13105 cannot be characterized as facially invalid under this standard. Petitioners have not shown that there is no manner in which these sections can be applied consistent with constitutional norms.

This conclusion follows in light of this Court's decision in *Libertarian Party v. Eu*, which construed the current, pre-Proposition 14 method of listing political party preferences on the general election ballot. Under the Elections Code provisions that remain valid until Proposition 14 goes into effect, qualified political party nominees selected in the primary election are identified by their respective party affiliations. (Elec. Code, § 13105, subd. (a).) On the other hand, candidates who make their way onto the general election ballot by the independent nomination process are not designated by party affiliation, but by the "independent" label. (Elec. Code, § 13105, subd. (c).)

In *Libertarian Party v. Eu*, this Court found that the "independent" label imposes "an insubstantial burden on the rights to associate and to vote and that the statute serves a compelling state interest to protect the integrity and stability of the electoral process in California." (*Libertarian Party v. Eu, supra*, 28 Cal.3d at p. 542.) "The maintenance of the integrity of the distinction between qualified and nonqualified parties serves a compelling state interest and the restriction of party designation on the ballot [under former Elections Code section 10210] furthers that interest without substantially impairing the rights of political association and voting." (*Id.* at p. 546.)

As this Court further noted in *Libertarian Party v. Eu*, "[i]t is settled that a state has a compelling interest in regulating the *method* by which parties appear on the ballot." (*Libertarian Party v. Eu, supra*, 28 Cal.3d at p. 545.) Quoting the United States Supreme Court, this Court recognized the importance of "avoiding confusion, deception and even frustration of the democratic process" and "further[ing] the State's interest in the stability of its political system." (*Id.*, at p. 546, quoting *Jenness v. Fortson* (1971) 403 U.S. 431, 442 and *Storer v. Brown* (1974) 415 U.S. 724, 736.)

As in the system considered by *Libertarian Party v. Eu*, the state continues to have a compelling interest under the new open primary system in avoiding voter confusion and deception leading to a frustration of the democratic process. Requiring candidates who have not designated a party preference within the meaning of sections 8002.5 and 13105 to disclose that they have no party preference or to choose the option of no disclosure continues to protect this interest even in the absence of partisan primaries leading to party nominated candidates in the general election.

Moreover, use of the phrase "No Party Preference" is substantively indistinct as a facial matter from use of the term "independent" that was considered in *Libertarian Party v. Eu*. "[I]t is not inaccurate to describe

candidates who qualify for the ballot by the independent nomination method as independents, for such candidates *are* independent of the qualified political parties." (*Libertarian Party v. Eu*, *supra*, 28 Cal.3d at p. 544.) Similarly, it would not be inaccurate to describe persons who have not disclosed a party preference for a qualified political party as having no party preference.

Thus, Senate Bill 6 remains facially valid even if it is applied to allow only members of qualified political parties to state their party preference on the ballot and to require all other candidates to be identified as having no party preference or allowing them to leave this information unstated. This identification would convey to the voter that the candidate is not a member of a qualified political party, just as the label "independent" conveyed the information that the candidate was not a nominee of such a party. The state's compelling interest in maintaining this distinction would continue to outweigh the nominal burden placed on the candidate. (See *Libertarian Party v. Eu*, *supra*, 28 Cal.3d at p. 545 [burden on associational rights or voting rights "is clearly insubstantial" when weighed against compelling interest in maintaining distinction between qualified political parties and non-qualified bodies].)

Indeed, this conclusion is consistent with current California elections law, which does not permit candidates to identify their affiliation with non-qualified political bodies or other non-qualified organizations on the ballot. Nothing on the face of Senate Bill 6 purports to alter this accepted practice, as approved by this Court in *Libertarian Party v. Eu*.

As petitioners cannot establish a facial constitutional violation, they have not set forth an issue meriting the immediate attention of this Court. Resolution of questions raised by this limited portion of Senate Bill 6

would more effectively be addressed in a case involving application of the measure to candidates who have qualified for the ballot.[6]

CONCLUSION

For the foregoing reasons, the Secretary of State respectfully submits that the petition for writ of mandate should be denied without further consideration by this Court.

Dated: December 6, 2010

Respectfully submitted,

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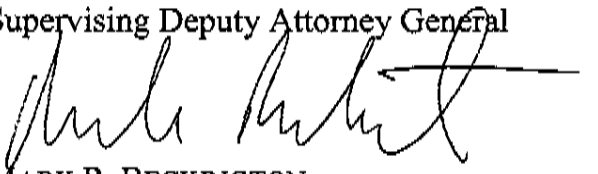

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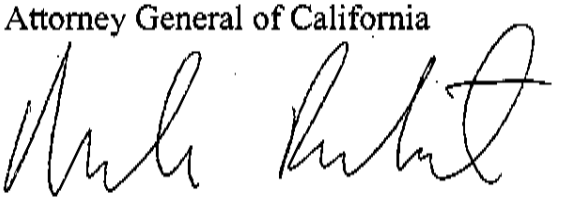
[6] In their brief, petitioners repeatedly claim that the Secretary of State has "conceded" or "waived" issues relating to the constitutionality of Senate Bill 6. For example, they incorrectly claim that the Secretary of State conceded that provisions of Senate Bill 6 violate the Elections Clause of the United States Constitution. In fact, the Secretary of State's trial court brief opposed the relief sought by petitioners and did not concede this point or other points as asserted by petitioners. (See Petitioners' Exh. 8.)

CERTIFICATE OF COMPLIANCE

I certify that the attached Preliminary Opposition to Petition for Writ of Mandate and Motions to Intervene uses a 13 point Times New Roman font and contains 4,287 words.

Dated: December 6, 2010

EDMUND G. BROWN JR.
Attorney General of California



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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Mona Field, et al. v. Debra Bowen, et al.**

Case No.: **S188436**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On December 6, 2010, I served the attached **RESPONDENT SECRETARY OF STATE'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE AND MOTIONS TO INTERVENE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

[SEE ATTACHED SERVICE LIST]

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 6, 2010, at Los Angeles, California.

Rosa Michel
Declarant

Rosa Michel
Signature

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