



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-10-502018

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ORDER

MONA FIELD et al VS. DEBRA BOWEN et al

001C02993340

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FILED
San Francisco County Superior Court

OCT 05 2010

CLERK OF THE COURT

By: Jana Gonzales
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

MONA FIELD, RICHARD WINGER,
STEPHEN A. CHESSIN, JENNIFER
WOZNIAK, JEFF MACKLER, and
RODNEY MARTIN,

Plaintiffs,

vs.

DEBRA BOWEN, et al.,

Defendants.

ABEL MALDONADO; YES ON 14-
CALIFORNIANS FOR AN OPEN PRIMARY,
CALIFORNIA INDEPENDENT VOTER
PROJECT,

Intervener-Defendants.

Case No.: CGC-10-502018

**[Proposed] ORDER
DENYING PLAINTIFFS'
MOTION FOR
PRELIMINARY
INJUNCTION**

DATE: September 14, 2010

TIME: 9:30 a.m.

DEPT: 302

JUDGE: Hon. Charlotte Woolard

1 This matter came for hearing before the Court pursuant to Plaintiffs' motion for a
2 preliminary injunction, filed July 29, 2010.

3 Defendant Secretary of State Debra Bowen and Interveners Abel Maldonado, Yes on
4 14-Californians for an Open Primary, and the California Independent Voter Project oppose
5 Plaintiffs' motion. The remaining defendants, registrars of San Francisco, Los Angeles,
6 Orange, Santa Clara, Alameda, and Tulare Counties, filed statements of non-opposition
7 expressing their intention to be bound by the ruling of this Court.

8 This matter was heard at 9:30 a.m. on September 14, 2010, in Department 302 of
9 the Superior Court, the Honorable Charlotte Walter Woolard, Judge of the Superior Court
10 of the City & County of San Francisco presiding.

11 The Court, having considered the admissible documentary evidence and the
12 arguments of counsel, and the matter having been submitted for decision, **DENIES**
13 Plaintiffs' motion for preliminary injunction.

14 Plaintiffs have standing to file their claims and bring this motion. (*Storer v. Brown*
15 (1974) 415 U.S. 724, 737 n.8.)

16 However, Plaintiffs fail to show a likelihood of success on the merits.

17 First, it is constitutional to ban write-in voting under U.S. and California Supreme
18 Court precedent. (See *Burdick v. Takushi* (1992) 504 U.S. 428; *Edelstein v. City & County*
19 *of San Francisco* (2002) 29 Cal.4th 164.) When Election Code sections 8141.5 and 8606
20 are read together, it is apparent that the Legislature intended to ban write-ins in the
21 general election. (See also comments of the Secretary of State and the Assembly Bill
22 Analysis.)

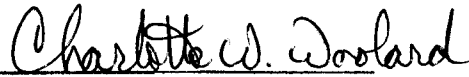
23 Moreover, insufficient evidence and case law support the argument that the party
24 preference ban violates the Equal Protection Clause or the Elections Clause. The state may
25 require candidates not affiliated with qualified parties to use the "independent" label. (See
26 *Libertarian Party v. Eu* (1980) 28 Cal.3d 535.) Several federal circuit courts have also
27 held that a state is not constitutionally obligated to permit candidates to list their preferred
28 party label on the ballot. (See *Schrader v. Blackwell* (6th Cir.) 241 F.3d 783, *cert. den.*

1 (2001) 534 U.S. 888; *McLaughlin v. No. Carolina Bd. of Elec.* (4th Cir. 1995) 65 F.3d 1215,
2 *cert. den.* (1996) 517 U.S. 1104; *Lightfoot v. Eu* (9th Cir. 1992) 964 F.2d 865, 871, *cert. den.*
3 (1993) 507 U.S. 919; *Rubin v. City of Santa Monica* (9th Cir. 2002) 308 F.3d 1008, *cert.*
4 *den.* (2003) 540 U.S. 875.)

5 Finally, Plaintiffs showing of imminent harm is not sufficient.

6 This order may be served by Interveners upon the parties and their counsel by fax or
7 by e-mail.

8 Dated: ~~September~~ ^{October 5} __, 2010


HON. CHARLOTTE WOOLARD
Judge of the Superior Court of the
City and County of San Francisco

12 APPROVED AS TO FORM:

13 Dated: September __, 2010

14 _____
GAUTAM DUTTA
Attorney for Plaintiffs

16 Dated: September __, 2010

18 _____
EDMUND G. BROWN, JR.
Attorney General of California
STEPHEN P. ACQUISTO
Supervising Deputy Attorney General
MARK R. BECKINGTON
Deputy Attorney General
Attorneys for Defendant
Secretary of State Debra Bowen

24 Dated: September 15, 2010

25 _____
NIELSEN, MERKSAMER, PARRINELLO,
MUELLER & NAYLOR, LLP



27 _____
MARGUERITE MARY LEONI
CHRISTOPHER E. SKINNELL
Attorneys for Interveners

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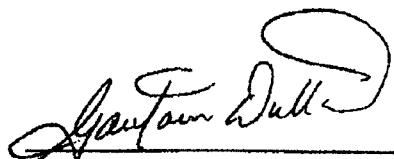
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 Attorney for Plaintiffs

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 19 STEPHEN P. ACQUISTO
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 20 MARK R. BECKINGTON
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 21 *Attorneys for Defendant*
 22 *Secretary of State Debra Bowen*

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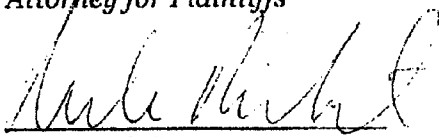
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