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2012 APR 30 PM 2:33

LEGAL PROCESS #2

1 MENNEMEIER, GLASSMAN & STROUD LLP  
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5 Attorneys for Defendant and Respondent  
6 Elaine M. Howle, State Auditor of California

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

11 WARD CONNERLY, a citizen and taxpayer, )  
12 and AMERICAN CIVIL RIGHTS )  
FOUNDATION, a nonprofit public benefit )  
13 corporation, )

14 Plaintiffs and Petitioners, )

15 vs. )

16 STATE OF CALIFORNIA, ELAINE M. )  
17 HOWLE, in her official capacity as the )  
STATE AUDITOR OF CALIFORNIA, and )  
18 the CALIFORNIA CITIZENS )  
REDISTRICTING COMMISSION, )

19 Defendants and Respondents. )

CASE NO. 34-2011-80000966-CU-WM-GDS

**THE STATE AUDITOR'S NOTICE OF  
DEMURRER AND DEMURRER TO  
FIRST AMENDED COMPLAINT OF  
PLAINTIFFS AND PETITIONERS WARD  
CONNERLY AND THE AMERICAN  
CIVIL RIGHTS FOUNDATION**

Date: June 1, 2012

Time: 9:00 a.m.

Dept: 31

Judge: The Honorable Michael P. Kenny

Action Filed: October 4, 2011

21 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on June 1, 2012, at 9:00 a.m. or as soon thereafter as the  
23 matter may be heard, in Department 31 of the Gordon D. Schaber Sacramento County Courthouse,  
24 located at 720 9th Street, Sacramento, California, Defendant and Respondent Elaine M. Howle,  
25 State Auditor of California ("State Auditor") will and hereby does demur to each and every cause  
26 of action in Plaintiffs' and Petitioners' First Amended Complaint.

27 This demurrer is brought pursuant to Code of Civil Procedure sections 422.10 and 430.10,  
28 subdivision (e), and Rule 3.1320 of the California Rules of Court upon the ground that the First

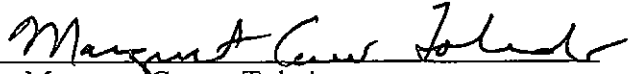
1 Amended Complaint in its entirety does not, and cannot, state facts sufficient to constitute a cause  
2 of action against the State Auditor. Alternatively, the demurrer is brought on the ground that the  
3 Second and Fourth causes of action do not, and cannot, state facts sufficient to constitute a cause  
4 of action against the State Auditor. Accordingly, the State Auditor prays that the demurrer be  
5 granted in its entirety without leave to amend.

6 Pursuant to Local Rule 3.04, the Court will make a tentative ruling on the merits of this  
7 matter by 2:00 p.m., the court day before the hearing. To receive the tentative ruling, you can  
8 access the Court's website at [www.saccourt.com](http://www.saccourt.com) or arrange to obtain the tentative ruling from the  
9 clerk of Department 31. If you do not call the court and the opposing party by 4:00 p.m. the court  
10 day before the hearing, no hearing will be held.

11 The demurrer is based upon this notice, the attached demurrer, the memorandum of points  
12 and authorities in support of the demurrer, all pleadings and papers on file herein, the hearing, and  
13 any other such matters as may properly come before this Court.

14 Dated: April 30, 2012

MENNEMEIER, GLASSMAN & STROUD LLP

16 By:   
17 Margaret Carew Toledo  
18 Attorneys for Defendant and Respondent  
19 Elaine M. Howle, State Auditor of California  
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1 **DEMURRER**

2 Defendant and Respondent Elaine M. Howle, State Auditor of California (“State  
3 Auditor”) demurs generally and specifically to the First Amended Complaint and the Second and  
4 Fourth Causes of Action therein pursuant to Code of Civil Procedure section 430.10, subdivision  
5 (e), on the following grounds:

6 **Demurrer to Entire Complaint**

7 Plaintiffs’ and Petitioners’ First Amended Complaint is barred pursuant to California Code  
8 of Civil Procedure section 430.10(e) because it fails to state facts sufficient to constitute a cause of  
9 action. The First Amended Complaint must be dismissed without leave to amend because the  
10 selection of members of the California Citizens Redistricting Commission (“Redistricting  
11 Commission”) is not “the operation of public employment, public education or public  
12 contracting,” and thus, Proposition 209 does not apply. (See Cal. Const., art. I, § 31, subd. (a).)  
13 The members of the Redistricting Commission are public officers, not public employees or  
14 contractors. By its express language, Proposition 209 is limited to discrimination and preferential  
15 treatment in public employment, public education, or public contracting. Accordingly, as a matter  
16 of law, Proposition 209 does not apply to the selection and appointment of members of the  
17 Redistricting Commission.

18 **Demurrer to Second Cause of Action and Fourth Cause of Action**

19 Alternatively, the Second Cause of Action and Fourth Cause of Action are barred pursuant  
20 to California Code of Civil Procedure section 430.10, subdivision (e), because both causes of  
21 action fail to state facts sufficient to constitute a cause of action. The Second Cause of Action and  
22 Fourth Cause set forth a facial challenge to Government Code section 8252, subdivision (g).  
23 Petitioners’ allegations in the Second Cause of Action and Fourth Cause of Action are completely  
24 at odds with the statute’s directive to the Applicant Review Panel on how it must conduct the  
25 selection process. (See Gov. Code, § 8252, subd. (d).) Because a facial challenge considers only  
26 the text of the statute itself, and not its application, Petitioners’ Second Cause of Action and  
27 Fourth Causes of Action fail to state a claim.

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1 Dated: April 30, 2012

MENNEMEIER, GLASSMAN & STROUD LLP

2  
3 By: Margaret Carew Toledo  
4 Margaret Carew Toledo  
5 Attorneys for Defendant and Respondent  
6 Elaine M. Howle, State Auditor of California  
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**PROOF OF SERVICE BY MAIL**  
(Code Civ. Proc. Secs. 1013(a), 2015.5)

I declare that I am employed with the law firm of Mennemeier, Glassman & Stroud LLP, whose address is 980 9<sup>th</sup> Street, Suite 1700, Sacramento, California 95814; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Mennemeier, Glassman & Stroud LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Mennemeier, Glassman & Stroud LLP's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Mennemeier, Glassman & Stroud LLP with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**STATE AUDITOR'S NOTICE OF DEMURRER AND DEMURRER TO FIRST AMENDED  
COMPLAINT OF PLAINTIFFS AND PETITIONERS WARD CONNERLY AND THE  
AMERICAN CIVIL RIGHTS FOUNDATION**

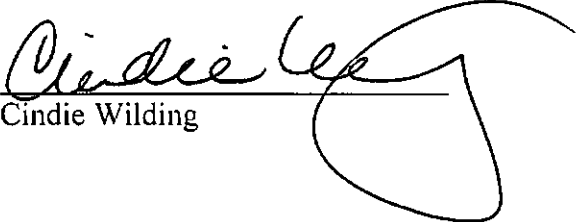
on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Mennemeier, Glassman & Stroud LLP, 980 9<sup>th</sup> Street, Suite 1700, Sacramento, California 95814, in accordance with Mennemeier, Glassman & Stroud LLP's ordinary business practices:

Sharon L. Browne  
Ralph W. Kasarda  
Joshua Thompson  
Adam R. Pomeroy  
Pacific Legal Foundation  
930 G Street  
Sacramento, CA 95814

Kamala D. Harris  
Attorney General of California  
Tamar Pachter  
Supervising Deputy Attorney General  
Daniel J. Powell  
Deputy Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Sacramento, California, this 30<sup>th</sup> day of April, 2012.

  
Cindie Wilding