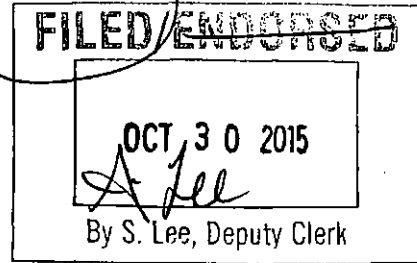


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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SACRAMENTO

15 *Filed By Fax*

16 WARD CONNERLY, a citizen and
taxpayer, and AMERICAN CIVIL
17 RIGHTS FOUNDATION, a nonprofit
public benefit corporation,

18 Plaintiffs,

19 vs.

20 STATE OF CALIFORNIA, ELAINE M.
21 HOWLE, in her official capacity as the
STATE AUDITOR OF CALIFORNIA,
22 and the CALIFORNIA CITIZENS
REDISTRICTING COMMISSION,

23 Defendants.

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

COMMON CAUSE AND LEAGUE OF
WOMEN VOTERS OF CALIFORNIA'S
[PROPOSED] COMPLAINT IN
INTERVENTION

Judge: Michael P. Kenny
Dept: 31

Amended Complaint Filed: Dec. 2, 2014
Trial Date: None Set



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[PROPOSED] COMPLAINT IN INTERVENTION

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1 By leave of court, proposed intervenors Common Cause and League of Women
2 Voters of California (collectively, "Intervenors") file this Complaint and thereby intervene in this
3 action. Intervenors seek to oppose Plaintiffs' claims and to preserve their rights with respect to
4 any relief that Plaintiffs may seek in this action.

5 **OVERVIEW**

6 1. In November 2008, California voters adopted Proposition 11, an initiative
7 that amended the California Constitution and added several provisions to the Government Code to
8 change the redistricting process to include greater citizen involvement and input. Specifically,
9 Proposition 11 created an independent body called the California Citizens Redistricting
10 Commission (the "Redistricting Commission" or "Commission"), composed of fourteen
11 individuals, to take responsibility for drawing California's State Senate, State Assembly, and
12 State Board of Equalization electoral district lines.¹

13 2. Proposition 11 intended that the Redistricting Commission would be a
14 representative body. For example, the initiative sought to achieve balance across the political
15 spectrum by establishing an application and selection system to ensure that the fourteen-member
16 Commission would include five members from each of California's two largest political parties
17 and four "who are not registered with either of the two largest political parties in California."
18 (Govt. Code §§ 8252(d), (f), (g).) Proposition 11 also provides that the Commission be
19 representative of other aspects of California's diversity as well. Among other things, the
20 initiative amended the California Constitution to provide that the Redistricting Commission be
21 "reasonably representative of this State's diversity." (Cal. Const. art. XXI, § 2(c)(1).)

22 3. To implement this constitutional diversity language, Proposition 11 also
23 codified the selection process for the Redistricting Commission in Government Code section
24 8252. Section 8252 provides that Commissioners must be drawn from a pool of the "most
25 qualified" 60 applicants, as selected by an independent Applicant Review Panel, based on
26

27 ¹ In November 2010, voters approved Proposition 20, which allowed the Redistricting
28 Commission to draw congressional districts as well.

1 "relevant analytical skills, ability to be impartial, and appreciation for California's diverse
2 demographics and geography." (Govt. Code § 8252(d).) The 60 applicants are then presented to
3 leaders of the State Senate and the State Assembly, who have an opportunity to strike up to 24
4 applicants before presenting the pool of remaining names to the State Auditor. (Govt. Code §
5 8252(e).) The State Auditor then randomly draws eight names — three each from the two largest
6 political parties and two that are not registered with either of the two largest political parties —
7 who are appointed to the Commission. (Govt. Code § 8252(f).) Finally, Section 8252,
8 subdivision (g) ("Section 8252(g)") delineates the process by which the first eight members
9 appointed to the Commission are to select the final six members, and provides that the final "six
10 appointees shall be chosen to ensure the commission reflects this state's diversity, including, but
11 not limited to, racial, ethnic, geographic, and gender diversity. . . ." (Govt. Code § 8252(g).)
12 Section 8252(g) further provides that "it is not intended that formulas or specific ratios be applied
13 for this purpose [of reflecting the state's diversity]. Applicants shall also be chosen based on
14 relevant analytical skills and ability to be impartial." (Govt. Code § 8252(g).)

15 4. By their Second Amended Complaint (the "Complaint") filed on or about
16 December 3, 2014, Plaintiffs Ward Connerly and the American Civil Rights Foundation
17 (collectively, "Plaintiffs") seek to invalidate Section 8252(g), which they contend is facially
18 unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United
19 States Constitution because it purportedly gives improper preferences to applicants for the
20 Redistricting Commission on the basis of race, ethnicity, and gender.

21 5. Defendants are the State of California, the California State Auditor, and the
22 California Citizens Redistricting Commission (collectively, "Defendants"). The Defendants filed
23 Answers to Plaintiffs' Complaint on or about February 9, 2015.

24 6. On or about February 23, 2015, Plaintiffs filed a Demurrer to the State
25 Auditor's Answer, arguing that each and every one of the affirmative defenses asserted therein
26 failed to state facts sufficient to constitute a defense. On May 29, 2015, the State Auditor filed an
27 Amended Answer.

28

1 repeatedly failed to pass a redistricting reform bill, in 2007, California Common Cause took the
2 lead in the drafting process for the initiative with thorough input from participating coalition
3 organizations. On or about October 27, 2007, California Common Cause submitted to the
4 Attorney General the language for the initiative, which was designated as Proposition 11. By
5 submitting the proposed language of the initiative, and by undertaking other official functions
6 provided for by the Elections Code with respect to initiative measures, including managing the
7 campaign and actively advocating for the initiative, California Common Cause became an official
8 proponent of Proposition 11. Following the passage and enactment of Proposition 11, California
9 Common Cause was also involved in the process of implementing the initiative. California
10 Common Cause provided input regarding the creation of implementing regulations and the State
11 Auditor's process for selecting Commissioners. California Common Cause also led a coalition of
12 organizations to develop education materials, coordinate outreach and public education, host
13 conferences and workshops, and otherwise ensure there was broad public engagement in the
14 selection and redistricting process.

15 10. The League of Women Voters of California (the "League") is a registered
16 501(c)(4) nonprofit, nonpartisan, political organization headquartered in Sacramento, California.
17 The League encourages informed and active participation in the democratic process and
18 influences public policy through education and advocacy.

19 11. The League served as a key member of the coalition that worked to
20 develop the framework and language for Proposition 11. From 2005 to 2007, the League was
21 involved in leading the effort to engage with the State Legislature and other interested
22 organizations to find a legislative solution to redistricting reform in California, with an eye
23 towards making the process more independent, representative, and transparent. In 2007, after it
24 became clear that the Legislature would not pass any redistricting reform bills, the League moved
25 forward with California Common Cause and other organizations to devise a redistricting
26 initiative. The League was integrally involved in drafting and finalizing the language of the
27 initiative, from its broad strokes to its finer details. The League was also a signatory to the
28 argument supporting the initiative in the ballot pamphlet. The League was part of the steering

1 committee that managed the campaign in favor of Proposition 11, and supported the campaign
2 effort in a variety of ways, including meeting with newspaper editorial boards, participating in
3 media events, providing input on flyers and mailers, presenting to other organizations, collecting
4 ballot qualification petition signatures, co-hosting public forums, and organizing volunteers to
5 phonebank for Proposition 11. After the voters enacted the initiative, the League also provided
6 input on Proposition 11's implementing regulations, including with respect to the application and
7 selection processes. The League and its education arm also engaged in education and outreach to
8 encourage members of the public to learn more about the Redistricting Commission and to apply
9 for positions, and also provided input to the Commission with respect to how to conduct its own
10 public outreach.

11 PROCEDURAL BACKGROUND

12 12. Plaintiffs instituted this action against the Defendants by filing an initial
13 complaint alleging that the selection process set forth in Section 8252(g) gave improper
14 preferences based on race, ethnicity, and gender under Article I, section 31 of the California
15 Constitution ("Section 31"), which provides in relevant part that "[t]he state shall not discriminate
16 against, or grant preferential treatment to, any individual or group on the basis of race, sex, color,
17 ethnicity or national origin in the operation of public employment, public education, or public
18 contracting." (Cal. Const., art. I, § 31, subd. (a).) Several months later, Plaintiffs filed their First
19 Amended Complaint, adding an allegation that members of the State Auditor's Applicant Review
20 Panel, which is charged under Section 8252(d) with creating a pool of 60 of the most qualified
21 applicants for the Redistricting Commission, were also required to give preferences to applicants
22 on the basis of their race, sex, and ethnicity.

23 13. Defendants filed demurrers to the Plaintiffs' First Amended Complaint.
24 Defendants argued, among other things, that the selection process for the Redistricting
25 Commission did not violate Section 31, because the appointment of members to the Redistricting
26 Commission — who serve as public officers — does not involve the operation of public
27 employment, public education, or public contracting. California Common Cause and the League,
28 as *Amici Curiae*, jointly filed an *amicus* brief in support of Defendants' demurrer.

1 codified in Section 8252(g). The League co-authored Proposition 11, actively supported the
2 campaign for the initiative, participated in various media and public outreach events in support of
3 the measure, was one of the signatories to the arguments in favor of the initiative in the ballot
4 pamphlet, and was also involved in providing input on its implementation.

5 20. Intervenors do not seek affirmative relief in this lawsuit, but rather seek to
6 defend against Plaintiffs' federal constitutional claim and to protect against the consequences of
7 the relief sought by Plaintiffs. Accordingly, the participation of the Intervenors as parties will not
8 enlarge the issues raised in this litigation.

9 21. Similarly, given that the Intervenors were proponents, authors, and
10 sponsors of Proposition 11 and thus are charged with protecting the People's right to exercise
11 their initiative power, the reasons for the Intervenors' participation are direct, immediate, and
12 significant and are in no way outweighed by the rights of the original parties to conduct the
13 lawsuit on their own terms.

14 22. In addition, Intervenors' involvement as parties in this action will aid the
15 Court in that Intervenors are able to provide helpful process on the initiative process and the
16 drafters' and voters' intent.

17 23. Moreover, Intervenors' participation in this action will not cause any
18 prejudice to the original parties or any delay in the action because Plaintiffs' federal constitutional
19 challenge to Proposition 11— which was alleged for the first time in their Second Amended
20 Complaint — is still in the pleading stages, no substantive briefing has been filed with respect to
21 those claims, and no discovery has ever been propounded in this action. Accordingly,
22 Intervenors' participation will not reopen any previously resolved matters, rehash any arguments
23 already made, or otherwise impose any serious additional burden on the original parties or the
24 Court.

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WHEREFORE, Intervenor's pray for relief as follows:

- (A) That Plaintiffs' Complaint be dismissed with prejudice and judgment entered against Plaintiffs' claims for declaratory and injunctive relief, and against every other prayer for relief contained in Plaintiffs' Complaint;
- (B) That Intervenor's be awarded their reasonable costs and expenses in this action;
- (C) That this Court grant such other and further relief as the Court deems just and equitable.

DATED: August 5, 2015

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