1	BRADLEY S. PHILLIPS (State Bar No. 085) Bradley.Phillips@mto.com	263)		
2	GRANT A. DAVIS-DENNY (State Bar No. 2 Grant.Davis-Denny@mto.com	229335)		
3	SORAYA C. KELLY (State Bar No. 252993) Soraya.Kelly@mto.com			
4	THOMAS P. CLANCY (State Bar No. 29519 Thomas.Clancy@mto.com	95) FILED/ENDORGED		
5	MUNGER, TOLLES & OLSON LLP 355 South Grand Avenue, Thirty-Fifth Floor			
6	Los Angeles, CA 90071-1560 Telephone: (213) 683-9100	OCT 3 0 2015		
7.	Facsimile: (213) 687-3702	By S. Lee, Deputy Clerk		
8	Attorneys for Intervenors			
9	COMMON CAUSE and LEAGUE OF WOMEN VOTERS OF CALI	FORNIA		
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11	ADDITIONAL COUNSEL ON FOLLOWIN	IG PAGE		
12				
13	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
14	COUNTY C	OF SACRAMENTO		
15	Filed By Fax			
16	WARD CONNERLY, a citizen and taxpayer, and AMERICAN CIVIL	CASE NO. 34-2011-80000966-CU-WM-GDS		
17	RIGHTS FOUNDATION, a nonprofit public benefit corporation,	COMMON CAUSE AND LEAGUE OF WOMEN VOTERS OF CALIFORNIA'S		
18	Plaintiffs,	[PROPOSED] COMPLAINT IN INTERVENTION		
19	VS.	1		
20	STATE OF CALIFORNIA, ELAINE M.	Judge: Michael P. Kenny Dept: 31		
21	HOWLE, in her official capacity as the STATE AUDITOR OF CALIFORNIA,			
22	and the CALIFORNIA CITIZENS REDISTRICTING COMMISSION,	Amended Complaint Filed: Dec. 2, 2014 Trial Date: None Set		
23	Defendants.			
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1	Additional Counsel:	
2	EVA PATERSON (State Bar No. 67081)	
3	EPaterson@equaljusticesociety.org	ľ
4	ALLISON S. ELGART (State Bar No. 241901) AElgart@equaljusticesociety.org	
5	EQUAL JUSTICE SOCIETY 1999 Harrison Street, Suite 800	
6	Oakland, CA 94612 Telephone: (415) 288-8700	
7	Facsimile: (510) 338-3030	
8	JENNIFER WEISER BEZOZA (State Bar No. 247548) JBezoza@lccr.com	
9	LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA	
10	131 Steuart Street, Suite 400 San Francisco, CA 94105 Talana (115) 512 0607	
11	Telephone: (415) 543-9697 Facsimile: (415) 543-0296	
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	[PROPOSED] COMPLAINT IN INTERVENTION	1

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

OVERVIEW

In November 2008, California voters adopted Proposition 11, an initiative
 that amended the California Constitution and added several provisions to the Government Code to
 change the redistricting process to include greater citizen involvement and input. Specifically,
 Proposition 11 created an independent body called the California Citizens Redistricting
 Commission (the "Redistricting Commission" or "Commission"), composed of fourteen
 individuals, to take responsibility for drawing California's State Senate, State Assembly, and
 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, $\S 2(c)(1)$.)

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

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

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ł "relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography." (Govt. Code § 8252(d).) The 60 applicants are then presented to 2 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

December 3, 2014, Plaintiffs Ward Connerly and the American Civil Rights Foundation
(collectively, "Plaintiffs") seek to invalidate Section 8252(g), which they contend is facially
unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United
States Constitution because it purportedly gives improper preferences to applicants for the
Redistricting Commission on the basis of race, ethnicity, and gender.

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

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

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[PROPOSED] COMPLAINT IN INTERVENTION

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1 7. Intervenors are two organizations that served as proponents, authors, and 2 sponsors of Proposition 11, which was enacted as Section 8252(g). As such, Intervenors were 3 directly involved in drafting and campaigning for Proposition 11, and in working to ensure its 4 passage. Accordingly, Intervenors have a direct and immediate interest in defending the validity 5 of the initiative measure they drafted and sponsored, and in guarding the right of the People of 6 California to exercise the initiative power. Intervenors are therefore intervening in this action to 7 defend against Plaintiffs' claims and challenges to Section 8252(g). For these reasons, 8 Intervenors' intervention is proper under Code of Civil Procedure section 387, subdivision (a).

THE INTERVENORS

10 8. Common Cause is a 501(c)(4) nonprofit, nonpartisan, grassroots advocacy 11 organization incorporated and headquartered in Washington, D.C. Founded in 1968, Common 12 Cause is dedicated to restoring the core values of American democracy; reinventing an open, 13 honest and accountable government that serves the public interest; and empowering ordinary 14 people to make their voices heard in the political process. California Common Cause is the California branch of the Common Cause 501(c)(4) corporate entity. On a national level, 15 16 Common Cause works to create better ways to draw districts that more fairly represent the states' 17 communities and better reflect their electoral needs. Through its California branch, Common 18 Cause was the leading proponent and primary drafter of Proposition 11, which was passed by 19 voters in 2008 and created the California Citizens Redistricting Commission.

9. 20 California Common Cause has long been involved in facilitating 21 redistricting reform efforts in California, including leading an effort from 2005 to 2007 to engage 22 and negotiate with the State Legislature and other interested organizations to draft a legislative 23 redistricting reform bill. To inform this process, between 2004 and 2008, California Common 24 Cause organized a diverse coalition of organizations that were interested in redistricting reform. 25 The organizations met on a regular basis to, among other things, establish the overarching 26 principles of the reform effort, direct research and polling, provide input and proposals with 27 respect to various iterations of legislative and eventually initiative language, and develop 28 strategies for engaging voters and other members of the public on the issue. After the Legislature

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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
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 argument supporting the initiative in the ballot pamphlet. The League was part of the steering 28

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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.

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 Panel, which is charged under Section 8252(d) with creating a pool of 60 of the most qualified 20 21 applicants for the Redistricting Commission, were also required to give preferences to applicants 22 on the basis of their race, sex, and ethnicity.

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

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1 14. The Court sustained Defendants' demurrers without leave to amend, 2 concluding as a matter of law that Plaintiffs had failed to state a cause of action because the 3 appointment of members of the Redistricting Commission does not fall within the scope of "the 4 operation of public employment, public education, or public contracting," which are the objects of Section 31. The Court dismissed Plaintiffs' action with prejudice. 5 6 15. Plaintiffs appealed the judgment, abandoning their state constitutional 7 claims in the appellate court and arguing instead that the Redistricting Commission selection 8 process violated the federal equal protection clause. Plaintiffs sought a resolution on the merits of

9 their federal equal protection claim. Alternatively, they sought leave to amend their First
10 Amended Complaint to allege for the first time a federal constitutional claim.

11 16. Defendants filed appellate briefs opposing on procedural grounds 12 Plaintiffs' request that their federal constitutional claims be decided on appeal. Once again, 13 California Common Cause and the League jointly filed an amicus brief in support of Defendants. 14 17. On September 3, 2014, the appellate court issued its ruling declining to 15 resolve Plaintiffs' federal equal protection challenge on appeal, but determining that Plaintiffs 16 could amend their First Amended Complaint to state a federal claim. The appellate court thus 17 directed the Superior Court to grant Plaintiffs leave to amend to clarify their federal claim, which Plaintiffs did on or about December 3, 2014, by the filing of their Second Amended Complaint. 18

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GROUNDS FOR INTERVENTION

18. Intervenors contend that Section 8252(g) is valid and that Plaintiffs are not
entitled to a declaration that the statute violates the Fourteenth Amendment of the United States
Constitution. In addition, Intervenors contend that Plaintiffs are not entitled to any of the other
relief they seek in their Complaint, including without limitation a writ of mandate, injunctive
relief, costs, expenses, or attorneys' fees.

19. The Intervenors have a direct and immediate interest in the outcome of this
litigation. California Common Cause was the primary author and leading proponent of
Proposition 11 and, as such, was instrumental in conceptualizing, campaigning for, and helping to
implement the California Citizens Redistricting Commission and its selection process, which is

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

20. Intervenors do not seek affirmative relief in this lawsuit, but rather seek to
defend against Plaintiffs' federal constitutional claim and to protect against the consequences of
the relief sought by Plaintiffs. Accordingly, the participation of the Intervenors as parties will not
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. 25 111 26 111

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- 7 [PROPOSED] COMPLAINT IN INTERVENTION

1	WHEREFORE, Intervenors pray for relief as follows:			
2	(A)	(A) That Plaintiffs' Complaint be dismissed with prejudice and judgment entered		
3		against Plaintiffs' claims for declaratory and injunctive relief, and against every		
4		other prayer for relief contained in Plaintiffs' Complaint;		
5	(B)	That Intervenors be awarded their reasonable costs and expenses in this action;		
6	(C)	That this Court grant such other and further relief as the Court deems just and		
7		equitable.		
8	DATED: Au	gust 5, 2015 Munger, Tolles & Olson LLP		
9 10		BRÁDLEY S. PHILLIPS GRANT A. DAVIS-DENNY SORAYA C. KELLY		
11		THOMAS P. CLANCY		
12 13		Equal Justice Society EVA PATERSON ALLISON S. ELGART		
14 15		Lawyers' Committee for Civil Rights of the San Francisco Bay Area JENNIFER WEISER BEZOZA		
16 17		By: Junt Jun fr. (Sac) GRANT A. DAVIS-DENNY		
18 19		Attorneys for Intervenors COMMON CAUSE and LEAGUE OF WOMEN VOTERS OF CALIFORNIA		
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		- 8 - [PROPOSED] COMPLAINT IN INTERVENTION		

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