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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PEACE AND FREEDOM PART, PETA	)	Case No. 12-00853-GEB-EFB
LINDSAY, and RICHARD BECKER,	)	
	)	<b>PLAINTIFF'S OPPOSITION TO</b>
Plaintiffs,	)	<b>DEFENDANT'S MOTION TO DISMISS</b>
	)	<b>PURSUANT TO FEDERAL RULE OF</b>
vs.	)	<b>CIVIL PROCEDURE 12(b)(6)</b>
	)	
DEBRA BOWEN, in her official	)	Date: August 27, 2012
capacity as Secretary of the	)	Time: 9:00 am
State of California	)	Dept: 10
	)	Judge: The Hon. Garland E.
Defendant.	)	Burrell, Jr.
	)	Action Filed: April 3, 2012,
	)	2012

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**INTRODUCTION**

After activist and political leader Peta Lindsay received the requisite support to qualify, Secretary Bowen refused to place her on the ballot as the Peace & Freedom Party's nominee for the President of the United States in both California and across the

1 United States. In the instant case, all the criteria necessary for  
2 Peta Lindsay to be placed on the ballot as the Peace and Freedom  
3 Party's presidential candidate were met and she unquestionably  
4 qualified as being "generally recognized" for the party.

5 Nonetheless, Secretary Bowen refuses to put Ms. Lindsay on the  
6 ballot in spite of past precedent illustrating that Ms. Lindsay  
7 must still be placed on the ballot, not disqualified.

8 Furthermore, Secretary Bowen has refused to do so in defiance of  
9 the Twentieth Amendment to the United States Constitution, which  
10 clearly acknowledges the acceptability of nominees like Ms.

11 Lindsay to be on the ballot.  
12

13 Through acknowledging that a President-elect may fail to  
14 qualify at the time of presidency, the Twentieth Amendment implies  
15 that the President-elect would have been on the ballot unqualified  
16 as well, and that there is no ban on presidential nominees from  
17 running unqualified. Thus, by refusing to include Ms. Lindsay on  
18 the ballot, Secretary Bowen violated the rights of Ms. Lindsay,  
19 the Peace and Freedom Party, and Richard Becker, amongst others,  
20 to express their associational political speech.  
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22 Furthermore, Secretary Bowen, who previously said she *lacked*  
23 authority to review Senator McCain's name on the ballot when his  
24 birthplace was challenged as disqualifying him as a Presidential  
25 candidate, now claims that she *does* possess the authority to  
26 exclude Peta Lindsay from the ballot based on her age. This is an  
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28

1 unequal application of the laws in the case of candidates who  
2 should have been treated alike, as both areas are supposed to be  
3 handled by Congress exclusively, and clearly violates the Equal  
4 Protection clause of the United States Constitution.

5 **ARGUMENT**

6 **I. PLAINTIFFS HAVE NOT FAILED TO STATE A CLAIM AS A MATTER OF**  
7 **LAW**

8 **a. Plaintiffs' First and Fourteenth Amendment Claims Do Not**  
9 **Fail**

10  
11 The Secretary's May 25, 2012 Motion to Dismiss claims that  
12 although Plaintiffs allege violations of First Amendment speech,  
13 association, and voting rights, that the "Complaint is actually  
14 devoid of any factual allegations to support Plaintiffs' claims."  
15 This could not be further from the truth. In this case, the facts  
16 are few, but clear: despite qualifying, Peta Lindsay was denied a  
17 place on the ballot for the Peace and Freedom Party. There is no  
18 lawful authority granted to Secretary Bowen allowing her to  
19 withhold Ms. Lindsay's name from the ballot.  
20

21 In fact, Election Code Sec. 6041 states that Secretary Bowen  
22 "*shall* (emphasis added) place the name of a candidate upon the  
23 presidential primary ballot when he or she has determined that the  
24 candidate is generally advocated for or recognized throughout the  
25 United States or California as actively seeking the nomination."  
26  
27  
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1 It is undisputed that Peta Lindsay qualified as "generally  
2 advocated for or recognized" within the meaning of the law.

3 By restricting Plaintiffs' access to the ballot, the  
4 Secretary interfered with their freedom to associate with others  
5 for the common advancement of their political beliefs and ideas,  
6 which is unquestionably protected by the First and Fourteenth  
7 Amendments. *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973). The  
8 Plaintiff's were denied their right to present and support an  
9 alternative to the two-party system.  
10

11 The Secretary's assertion that there are no facts to support  
12 the Plaintiffs' claims is therefore a fallacy. The Secretary's  
13 actions and the resulting effect they had on the Plaintiffs is  
14 sufficient: A candidate who met the California statutory standards  
15 of cabined discretion afforded the Secretary for presidential  
16 primary candidates was denied access to the ballot.  
17

18 **b. Plaintiffs' Equal Protection Claim Does Not Fail**

19 The Equal Protection clause of the Fourteenth Amendment is  
20 meant to protect against state officers' unlawful administration  
21 of laws that result in unequal application of those laws to those  
22 who should be treated alike. The Secretary poorly attempts to  
23 evade Equal Protection in this instance by saying that Plaintiffs'  
24 Equal Protection claim fails because her "lack of eligibility"  
25 based on her age "fundamentally differentiates her" from the other  
26 candidates. Motion to Dismiss, *supra*, at 9. Thus, the Secretary  
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28

1 claims that Ms. Lindsay is not similarly situated to the other  
2 candidates, and the Equal Protection clause is not triggered.

3 First, this assumes facts outside the pleadings, which is not  
4 appropriate at this stage of the case.

5 Secondly, Ms. Lindsay is similarly situated to the other  
6 candidates because she qualified for and won the support of the  
7 Peace and Freedom Party as well as supporters such as Plaintiff  
8 Richard Becker. Distinguishing Ms. Lindsay as not similarly  
9 situated because of her age, Secretary Bowen is making a mockery  
10 of the Equal Protection Clause. The Secretary merely concocted a  
11 reason to show that a specific candidate did not deserve equal  
12 protection. However, the Secretary has not been given the lawful  
13 authority to make that determination because the Twentieth  
14 Amendment to the Constitution gives this authority to Congress.  
15  
16

17 The Secretary's argument that the Equal Protection Clause is  
18 not violated fails because it undermines the *very purpose* of Equal  
19 Protection. As such, the Plaintiffs' Equal Protection Claim  
20 should not be dismissed.

21 **c. Plaintiffs' Qualification Clause Claim Does Not Fail**

22 The Qualifications clause claims manifestly suffice.  
23 Specifically, the Twentieth Amendment says,  
24

25 *...if the **President elect shall have failed to***  
26 ***qualify, then the Vice President elect shall act***  
27 ***as President until a President shall have***  
28 ***qualified; and the Congress may by law provide***

for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified. (Emphasis added).

The Qualifications clause of the Twentieth Amendment delegates to Congress, not individual state officers, the proper role of an underage Presidential candidate, a role that does not allow or authorize exclusion from a primary ballot, exclusion from a general election ballot, or even continued exclusion from the recognition of elected office. As such, the claim suffices to pursue at this preliminary pleadings stage of the litigation, and is, in fact, supported by the plain language of the Amendment itself.

## II. CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court refuse to honor the Secretary's request that the court dismiss the Complaint without leave to amend.

DATED: August 13, 2012

Robert E. Barnes  
Attorney for Plaintiffs