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11 Committee, and Re-Elect Senator Carole  
12 Migden Committee

13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA

15 CAROLE MIGDEN, et al.,  
16 Plaintiffs,

17 vs.

18 CALIFORNIA FAIR POLITICAL PRACTICES  
19 COMMISSION, et al.,  
20 Defendants.

) No.: 2:08-CV-00486-EFB

) **DECLARATION OF CAROLE MIGDEN  
) IN SUPPORT OF PLAINTIFFS' MOTION  
) FOR PRELIMINARY INJUNCTION**

) Hearing:

) Date: April 16, 2008  
) Time: 10:00 a.m.  
) Crtrm.: 25

21 (The Honorable Edmund F. Brennan)

**DECLARATION OF CAROLE MIGDEN**

I, Carole Migden, declare under penalty of perjury as follows:

1. I am a resident and registered voter of the City and County of San Francisco, California. I am an incumbent Senator of the State of California representing the 3rd Senate District, which encompasses Marin County and parts of the City and County of San Francisco and Sonoma County. My current term of office ends in December 2008. I am running for re-election and am seeking the nomination of the Democratic Party in the statewide primary election scheduled for June 3, 2008. Prior to becoming a state Senator, I served on the State Board of Equalization from 2002 through 2004, and I represented San Francisco in the State Assembly from 1996 through 2002. I am very familiar with the voters and issues in my district, and know first-hand what it takes to run a successful campaign for state office in my district.

2. It was not necessary for my 2000 State Assembly re-election committee to spend all of its funds in connection with the November 2000 general election. At that same election, however, the voters passed Proposition 34 which, among other things, imposes contribution limits on state candidates who run for office after January 1, 2001. It can be harder to raise funds under a contribution limit, or to amass left over funds from prior election efforts. Proposition 34 allowed candidates to retain whatever funds they had on hand as of December 2000, and to use them in a future election for state office even though the funds were raised before the advent of contribution limits. As a result, I knew that the funds I had on hand in the Assembly Committee as of December 2000 might be especially valuable were I to find myself in a contested state election sometime in the future. Because I wanted to retain those funds for use in a future election, in early 2001, I directed my campaign treasurer, Roger Sanders, to set aside \$900,000 of the Assembly Committee's funds and move them to a separate interest bearing account that we could tap for use in a future election. He subsequently assured me that he had done so. For purposes of public disclosure we initially continued to report those funds on my Assembly Committee campaign reports, although I did not intend to use them in any way for that committee.

3. I did not use my pre-Proposition 34 funds when I ran for State Board of Equalization in 2002 largely because the Democratic primary election for that seat was uncontested. I

1 also did not use my pre-Proposition 34 funds during my initial successful bid for a state Senate seat  
2 in 2004. Beginning in 2003, we reported the pre-Proposition 34 funds on the campaign reports I filed  
3 in connection with my Senate 2004 Committee so that the public could keep track of the funds while I  
4 held that office. However, I did not spend any of the money on that 2004 election and the money  
5 remained in a separate interest-bearing account until 2006.

6 4. In late October 2006, I transferred approximately \$350,000 of those pre-  
7 Proposition 34 funds from the separate interest-bearing account to my Senate 2008 Committee  
8 checking account. At the time I did not know that there was any legal impediment to transferring the  
9 funds because I did not know or suspect that the FPPC would consider those funds surplus. I am  
10 unaware of any other candidate with pre-Proposition 34 funds who has been told not to use those funds  
11 on another election campaign.

12 5. In the spring of 2007, I transferred the remaining balance of pre-Proposition 34  
13 funds from the separate interest-bearing account to my regular Senate 2004 Committee checking  
14 account. That balance of pre-Proposition 34 funds in my Senate 2004 Committee account is now  
15 \$647,000. I intended to transfer those pre-Proposition 34 funds to my Senate 2008 Committee on an  
16 as-needed basis and would have done so had I not received the FPPC's October 29, 2007 letter  
17 ordering me to refrain from transferring those funds or otherwise spending them on my upcoming  
18 primary election.

19 6. The committee that I established for the 2008 Senate election, "Re-Elect Senator  
20 Carole Migden," currently has a balance of approximately \$150,035.34 available for the June primary  
21 election. If I could transfer the \$647,000 in pre-Proposition 34 funds that I have in my Senate 2004  
22 Committee to my 2008 Committee for use in the primary election, I would have more than four times  
23 the amount I currently have to engage in communications with the voters in my district. Those funds  
24 would make a tremendous difference in how I conduct my campaign.

25 7. Three well-known challengers have announced that they intend to challenge me  
26 in the June primary election. Voter registration in the 3rd Senate District leans heavily democratic,  
27 making the June primary the critical race in the election cycle. Given the crowded field, it is essential  
28 that I have the resources to communicate with voters from San Francisco to Sonoma. If I could use the

1 pre-Proposition 34 funds in my 2004 Committee for this election, I would spend the funds on, among  
2 other things, campaign mail, events, cable television and radio advertisements, and get-out-the-vote  
3 activities. Some of these activities, such as producing the mailings and securing time on radio, must  
4 begin as soon as possible, and certainly no later than early April, in order to reach voters before  
5 absentee ballots are mailed. If I do not have access to those funds, then instead of planning my direct  
6 mail activities, I will be planning and appearing at additional fundraising events to secure the funds  
7 necessary to effectively communicate with my constituents. Given the contested nature of my race and  
8 the number of other very important races occurring this year, including the presidential campaign, I  
9 can say with confidence that I will not be able to make up in fundraising over the next two months  
10 anywhere near the \$647,000 that I already have accumulated but cannot use.

11 8. The campaign is already under way, and it is essential for campaign planning  
12 purposes that I know as soon as possible whether I can use my pre-Proposition 34 funds. My access to  
13 these funds will dictate many of the strategy decisions I make and whether I spend the next weeks  
14 fundraising or campaigning. If I am not able to use the pre-Proposition 34 funds in my 2004 Senate  
15 Committee, my ability to communicate with the voters in my district and secure their votes in the June  
16 primary will be severely hindered.

17 I declare under penalty of perjury, under the laws of the State of California, that the  
18 foregoing is true and correct and that this declaration was executed on March 9, 2008 at  
19 San Francisco, California.

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21   
22 CAROLE MIGDEN

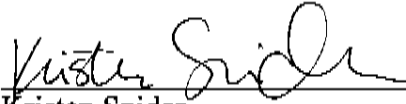
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7 accept service by email. No electronic message or other indication that the  
8 transmission was unsuccessful was received within a reasonable time after the  
9 transmission.

10 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on  
11 March 7, 2008, in San Leandro, California.

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14 Kristen Snider  
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