

CALIFORNIA SUPREME COURT

MONA FIELD, RICHARD
WINGER, STEPHEN A.
CHESSIN, JENNIFER
WOZNIAK, JEFF
MACKLER, and RODNEY
MARTIN,

Petitioners,

vs.

SUPERIOR COURT FOR
THE COUNTY OF SAN
FRANCISCO,

Respondent;

DEBRA BOWEN, in only her
official capacity as California
Secretary of State; JOHN
ARNTZ, in only his official
capacity as Director of
Elections of the City and
County of San Francisco;
DAVE MACDONALD, in
only his official capacity as
Registrar of Voters of the
County of Alameda; JESSE
DURAZO, in only his official
capacity as Registrar of Voters
of the County of Santa Clara;
DEAN LOGAN, in only his
official capacity as Registrar-
Recorder / County Clerk of the
County of Los Angeles;
NEAL KELLEY, in only his
official capacity as Registrar
of Voters of the County of
Orange; RITA WOODARD,
in only her official capacity as

CASE NO.

**[Lodged] COMPLAINT IN
INTERVENTION**

Date of Lodging: Nov. 24, 2010

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Registrar of Voters of the
County of Tulare; and DOES
1-20;

*Real Parties in
Interest;*

ABEL MALDONADO; YES
ON 14 – CALIFORNIANS
FOR AN OPEN PRIMARY;
CALIFORNIA
INDEPENDENT VOTER
PROJECT;

Intervenors;

[LODGED] COMPLAINT IN INTERVENTION

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COMPLAINT IN INTERVENTION

Introduction

1. Intervenor Michael Chamness intends to run for the upcoming special election in Senate District 28, as a candidate stating a preference for the Coffee Party, a non-qualified (i.e., minor) party.
2. Unless his Motion to Intervene is granted, Intervenor Chamness faces imminent, irreparable harm; because, as he learned from media reports on November 5, 2010, he will be compelled to state that he has “No Party Preference” on the ballot for the looming election in Senate District 28.
3. On October 5, 2010, Respondent Superior Court mistakenly upheld the constitutionality of SB 6’s “party preference ban” (hereinafter the “Party Preference Ban”). Namely, Respondent ruled that SB 6 could lawfully ban candidates from stating a preference for a minor party.
4. On November 5, 2010, Intervenor Chamness learned from press accounts that the Secretary of State will implement SB 6 for the Senate District 28 special election.¹ On November 22, 2010, he also learned from press accounts that Intervenor California Independent Voter Project had funded a conference held in Maui, Hawaii. That conference was attended by 22 state

¹ See, e.g., “Lieu Announces Bid for Oropeza’s Seat,” Long Beach *Press-Telegram*, Nov. 5, 2010, Request for Judicial Notice, Exhibit A, at 1.

lawmakers, along with “lobbyists and corporate officials who want to influence California’s future policies.”²

5. Unlike Petitioners, Intervenor Chamness lives and is registered to vote in Senate District 28.
6. Unless the Court rules on the merits of the underlying Petition, the constitutionality of SB 6’s Party Preference Ban will not be resolved before candidate nomination papers must be filed for the special election in Senate District 28. Based on the statutory timeframe set forth in the Elections Code, the deadline for filing candidate nomination papers could be set for a date as early as December 20, 2010, and vote-by-mail requests must be processed as soon as January 3, 2011.

I. Definitions

7. Both Elections Code Section 338 and the California Supreme Court define the term “party” as “qualified party”.³ During oral argument before Respondent Superior Court, Real Party in Interest Secretary of State attached great importance to that definition: “Under the Elections Code – this is very important – the term “party” has a very specific definition. It’s defined under

² See, e.g., “Statehouse Insider: Lawmakers Confer with Lobbyists in Hawaii,” *The Desert Sun*, Nov. 21, 2010, Request for Judicial Notice, Exhibit L, at 1.

³ Elections Code §338; *Libertarian Party v. Eu* (1980) 28 Cal.3d 535, 540.

Elections Code 338 as qualified party.”⁴ Elections Code Section 5000 expressly applies Elections Code Section 338’s definition of “party” to Elections Code Division 5, which includes the voter-card-registration provisions of Sections 5002 and 5003.

8. The California Supreme Court defines an “independent” candidate as one who is “independent” of qualified political parties.⁵
9. To be deemed a qualified party, a political group or organization must meet stringent criteria set forth under Section 5100 of the Elections Code. If a political group or organization does not meet the criteria required of a qualified party, it will be deemed a non-qualified party.
10. The Elections Code divides non-qualified parties into two categories: political bodies and “miscellaneous” groups.⁶ Voters can indicate that they wish to affiliate with a political body or “miscellaneous” group on each county’s voter registration card, by writing in the name of the political body or “miscellaneous” group with which they identify. A sample voter registration card from San

⁴ Transcript of Sept. 14, 2010 Oral Argument, Petition Exhibit 15, at 21:23-26 (emphases added).

⁵ *Eu, supra* note 3, 28 Cal.3d at 540 (defining “independent” candidates as those who “are independent of qualified political parties”) (emphasis added).

⁶ Elections Code §5002 (requiring the Secretary of State to tabulate the number of voters declaring a preference for each political body); *see also id.* §5001 (setting criteria to be deemed a political body).

Francisco County has been attached as Exhibit H to the Request for Judicial Notice.

11. To be deemed a political body, a political group or organization must hold a convention, elect officers, and notify the Secretary of State that it intends to qualify as a qualified political party. If a non-qualified party does not meet the criteria required of a political body, it will be classified as a “miscellaneous” group.⁷

II. Existing Law for Qualified and Non-Qualified Parties

12. The Elections Code divides political groups and organizations into two categories: qualified parties (i.e., major parties) and non-qualified parties (i.e., minor parties).

13. Under existing law, only qualified parties (e.g., Democratic or Republican Parties) are entitled to hold party primaries.⁸ The top finisher from each qualified party’s primary becomes that party’s nominee. Those nominees then advance to the general election, where they square off against (1) “independent” candidates like Mr. Chamness who identify with either a non-qualified party or no party, and (2) write-in candidates (e.g., Senator Lisa Murkowski in the November 2010 Alaska race for the U.S. Senate).

⁷ *Id.* §5001; *see also id.* §5002.

⁸ *See Eu, supra* note 3, 28 Cal.3d at 540 (“[T]he Legislature ... defined ‘party’ as a political organization that has ‘qualified for participation in any primary election.’”) (emphases added).

14. In special elections, a different set of rules applies. All candidates for the same state or federal office run against one another in the primary (first-round) election. If a candidate receives a majority (50 percent plus 1) of the vote in the primary election, he or she will be declared the winner outright. But if no one receives a majority, the top votegetter from each qualified party – and all “independent” candidates – will automatically advance to the special general (runoff) election, where they may also be joined by write-in candidates.⁹

15. Under existing law, qualified-party candidates may state their party preference on the ballot. In contrast, all other candidates – including Mr. Chamness – are deemed by the California Supreme Court to have “independent” status, and may state on the ballot that they are “Independent”.¹⁰

III. SB 6’s “Top Two” Election System

16. SB 6, which is scheduled to become operative on January 1, 2011, eliminates the right of qualified parties to hold

⁹ Elections Code §§ 10705(a) & 10706(b). If two or more “independent” candidates are affiliated with the same “political body”, only the top votegetter among them will advance to the general election. *Id.* § 10706(b).

¹⁰ *Eu, supra* note 3, 28 Cal.3d at 540 (defining “independent” candidates as those who “are independent of qualified political parties”) (emphasis added); Elections Code §13105(c). Unless otherwise indicated, all of this Complaint’s citations to the Elections Code contemplate the existing Elections Code, and do not contemplate any amendments made to the Elections Code by SB 6.

party primaries. In regularly scheduled elections, all candidates for the same state or federal office – including major-party and minor-party candidates – will run against one another in the primary (first-round) election. The top two votegetters from the primary election will then advance to the general (runoff) election.

17. In special elections, all candidates for the same state or federal office will run against one another in the primary (first-round) election.

18. In contrast to regularly scheduled elections, if a candidate receives a majority (50 percent plus 1) of the vote in the special primary election, he or she will be declared the winner outright.¹¹ If no one receives a majority, the top two votegetters will advance to the special general (runoff) election.¹²

IV. SB 6’s Party Preference Ban

19. SB 6’s Party Preference Ban bans candidates of “independent status” – namely, those who do not identify with a qualified party – from stating on the ballot the name of the non-qualified party with which they identify. Instead, those candidates are compelled to state on the ballot that they have “No Party Preference.”¹³

¹¹ SB 6, Petition Exh. 2 §42 Pt. 10705.

¹² *Id.* §43 Pt. 10706.

¹³ If a candidate has indicated that he or she has “independent status”, Part 325 of SB 6 presumes that he or she has “No Party Preference” for purposes of his or her voter

20. One week after Petitioners filed their lawsuit, the Secretary of State's office publicly stated that SB 6's Party Preference Ban must be amended "prior to 2011"; because the Secretary of State anticipated that "there will be a special primary election to fill a legislative or congressional vacancy in 2011[.]"¹⁴ Specifically, the Secretary of State concluded that SB 6's Party Preference Ban was not "permissible", for Part 325 of SB 6 bans voters and candidates of independent (minor-party) status from stating and/or "imply[ing]" that they are "Independent".¹⁵

registration card. SB 6, Petition Exh. 2 §3 Pt. 325 (*citing* voter registration card provisions of § 9 Pt. 2151 and §11 Pt. 2154).

If a candidate's voter registration card states that he or she has "No Party Preference", his or her declaration of candidacy must also state that he or she has "No Party Preference." *Id.* §17 Pt. 8002.5(a) (a candidate "may indicate his or her party preference, or lack of party preference, as disclosed upon the candidate's most recent statement of registration, upon his or her declaration of candidacy.") (emphases added).

Finally, if a candidate's declaration of candidacy states that he or she has "No Party Preference", then "No Party Preference" must be printed beside his or her name on the ballot. *Id.* §46 Pt. 13105(a).

¹⁴ Aug. 3, 2010 email from Secretary of State's office to the the Lieutenant Governor's office, Aug. 18, 2010 Declaration of Intervenor Counsel Sean P. Welch Re: Application to Intervene, *attached as* Exhibit K to Request for Judicial Notice, at Exh. A, at 1 (emphases added).

¹⁵ *Id.* Exh. A, Attach. 1, at 1 [discussing Part 325 ("EC 325") of SB 6]; *see also* discussion of Part 325 at *supra* note 13.

21. In response, Intervenor Maldonado, the author of SB 6, publicly stated through his Chief of Staff that he opposed “tinkering with SB 6 ... in any way.”¹⁶

V. Ruling on Motion for Preliminary Injunction

22. Petitioners filed a Motion for Preliminary Injunction on July 29, 2010. Their Motion asked Respondent Superior Court (1) to enjoin Real Parties in Interest from implementing and enforcing SB 6, which was passed by the Legislature on February 19, 2009 in order to implement Proposition 14; and (2) to declare Proposition 14 inoperative, because it lacks a lawful statute to implement it.

23. On October 5, 2010, Respondent entered an order (the “Order”) that denied Petitioners’ Motion. A copy of the Order is attached as Exhibit A to the underlying Petition for Writ of Mandate.

24. The Order made two key rulings concerning SB 6’s treatment of minor-party candidates. First, the Order ruled that SB 6 imposed a “party preference ban”; that is, SB 6 banned candidates from non-qualified (minor) parties from stating their party preference on the ballot. Second, the Order ruled that SB 6’s Party Preference Ban did not violate either the U.S. or California Constitution.

¹⁶ “AM Alert: Prop 14 Case in Court”, Sacramento *Bee*, Sept. 14, 2010, Request for Judicial Notice, Exhibit C at 1.

25.The Order did not rule on whether candidates from non-qualified parties have a constitutional right to identify themselves on the ballot as “Independent”.

VI. The Imminent Threat of SB 6’s Implementation

26.SB 6 and Proposition 14 are scheduled to become operative on January 1, 2011.

27.As many as three special elections for the State Senate have been triggered by the November 2, 2010 general election. Those elections will be held shortly after SB 6 is scheduled to become operative. According to the Secretary of State, California has had an average of 4.8 special elections per year since 1990.¹⁷

28.If SB 6 is implemented for looming special election in Senate District 28, the rights of Intervenor Chamness and similarly situated candidates will be irreparably harmed.

VII. Senate District 28’s Special Election

29.On November 2, 2010, State Senator Jenny Oropeza was re-elected to Senate District 28, two weeks after she had unexpectedly died. Senate District 28, which contains nearly 1 million residents, extends southward from West Los Angeles to the Cities of Long Beach and Carson.

30.Had she survived, Senator Oropeza would have been sworn into office on December 6, 2010. On that date, her

¹⁷ “Just How ‘Special’ Are Special Elections?”, Secretary of State Debra Bowen’s News Release, Apr. 12, 2010, Request for Judicial Notice, Exh. I, *available at* <http://www.sos.ca.gov/admin/press-releases/2010/db10-048.pdf> (last visited Nov. 23, 2010).

Senate seat will officially fall vacant, and the Governor must call a special election within 14 days of that date.¹⁸ Thus, that special election must be called between December 6 and December 20, 2010.

31. Each primary (first-round) special election must be held on a Tuesday within 56 to 70 days of the date that the special election was called.¹⁹ Furthermore, candidate nomination papers must be must be filed with county election officials no later than 43 days before the date of that election, and sample ballots, and vote-by-mail requests must be processed beginning 29 days before the date of the election.²⁰

32. If no candidate receives a majority (50 percent plus 1) of the vote in primary (first-round) election, then a general (runoff) special election must be held on a Tuesday within 112 to 126 days of the date that the special election was called.²¹

33. In light of that statutory timeframe, the primary special election for Senate District 28 could be held as soon as February 1, 2011, and the general special election could be held as soon as March 29, 2011. Based on that

¹⁸ Elections Code §10700.

¹⁹ *Id.* §§10703 & 10704. Section 10703(a) requires that a special general (runoff) election be held within 112 to 126 days after the Governor has called that election; Section 10704(a) requires that a special primary (first-round) election be held the eighth Tuesday before the special general (runoff) election.

²⁰ *Id.* §10704 (a); §3001.

²¹ Elections Code §10703(a).

schedule, candidate nomination papers must be filed with county election officials no later than December 20, 2011 and vote-by-mail requests must be processed beginning January 3, 2011.

34. On November 5, 2010, the Secretary of State's office announced that Proposition 14 and SB 6 will be implemented for the special election in District 28.²²

VIII. Senate District 17's Special Election

35. On November 2, 2010, State Senator George Runner was elected to the State Board of Equalization, a state constitutional office. Currently, Senator Runner has served the first two years of his four-year term in Senate District 17, which extends westward from Ventura County through the San Fernando and Santa Clarita Valleys to San Bernardino County's Victor Valley.

36. On November 5, 2010, Senator Runner announced that he will resign from the State Senate on January 3, 2011, the date on which he will be sworn in as a Member of the State Board of Equalization.²³ When he resigns, his Senate seat will officially fall vacant, and the Governor must call a special election within 14 days of the

²² "Lieu Announces Bid for Oropeza's Seat," *Long Beach Press-Telegram*, Nov. 5, 2010, Request for Judicial Notice, Exhibit A, at 3.

²³ Natasha Lindstrom, "Special Election Will Decide Who Fills Runner's Senate Shoes," *Victorville Daily Press*, Nov. 5, 2010, Request for Judicial Notice, Exhibit E.

resignation date.²⁴ Thus, that special election could be called as soon as January 3, 2011 – two days after SB 6 is scheduled to become operative.

37.If the Governor calls the special election on January 3, 2011, the primary special election for Senate District 17 could be held as soon as March 1, 2011, and the general special election could be held as soon as April 26, 2011. Based on that schedule, candidate nomination papers must be filed with county election officials no later than January 17, 2011, and vote-by-mail requests must be processed beginning January 31, 2011.

IX. Assembly District 4’s Likely Special Election

38.On November 2, 2010, Ted Gaines was re-elected Assemblymember of State Assembly District 4, which extends across Alpine, Placer, El Dorado, and Sacramento Counties.

39.Also on November 2, 2010, Gaines finished first in a special election to fill a vacancy in Senate District 1. Gaines now advances to the January 4, 2011 general (runoff) election against one Democratic opponent.

40.Because Senate District 1 is considered “safely Republican”, the Republican Gaines is the heavy favorite to win the January 4, 2011 special general election for

²⁴ Elections Code §10700.

Senate District 1 over his Democratic opponent, Ken Cooley.²⁵

41.If Gaines wins the Senate District 1 special election, he will resign from the State Assembly as soon as he is sworn in as a Senator. When he resigns, his seat in Assembly District 4 will officially fall vacant, and the Governor must call a special election within 14 days of the resignation date.²⁶ Thus, that special election will be called in early January 2011, shortly after SB 6 is scheduled to become operative.

42.In light of the statutory timeline described above, the primary special election for Assembly District 4 could be held as early as March 2011, and the general special election could be held as early as May 2011. Based on that schedule, candidate nomination papers must be filed with county election officials as early as January 2011, and vote-by-mail requests must be processed beginning February 2011.

X. Introduction to Intervenor Michael Chamness

²⁵ “[Gaines opponent Ken] Cooley faces an uphill battle on Jan. 4 because the GOP enjoys a 10-point voter registration advantage in a district considered safely Republican.” (emphases added). Susan Ferris, “Gaines’ Victory Propels Him into Senate Runoff,” *Sacramento Bee*, Nov. 4, 2010, Request for Judicial Notice, Exhibit F. In 2003, voters in Senate District 1 voted in favor of recalling then-Governor Gray Davis by a two-to-one margin. Specifically, 243,640 voters voted to recall Gov. Davis, while 109,533 did not. *See* “SD 1 Information”, TotalCapitol.com, Request for Judicial Notice, Exhibit G.

²⁶ Elections Code §10700.

43. Intervenor Michael Chamness is a registered voter in Los Angeles County, and lives in California Senate District 28. He is serving as an Intervenor in his individual capacity.

44. Intervenor Chamness intends to run in the Senate District 28 race on January 4, 2011, as a candidate identifying with the Coffee Party, a non-qualified political party.

XI. The Imminent, Irreparable Harm Posed by SB 6

45. According to Respondent, SB 6 (a) bans candidates from stating a preference for a non-qualified party and (b) bans candidates from stating that they are of “Independent” political status.

46. Thus, Intervenor Chamness believes that, if he runs as a candidate in Senate District 28, he will be compelled to state on the ballot that he has “No Party Preference.”

47. Respondent’s mistaken interpretation of SB 6 has jeopardized the fundamental rights of Intervenor Chamness and similarly situated candidates.

48. Unless the Court grants the underlying Petition, Intervenor Chamness – along with similarly situated candidates in Senate Districts 28 and 17 and Assembly District 4 – will suffer imminent, irreparable harm. Specifically, their constitutional right to state a party preference on the ballot for a non-qualified party will be violated in the upcoming special election for Senate Districts 28 and 17 and Assembly District 4.

49. Unless the Court grants the underlying Petition, Intervenor Chamness and other minor-party candidates in Senate Districts 28, 17 and 4 face the threat of imminent, irreparable harm in the looming special elections in both districts.

XII. Right to Intervene

50. Intervenor Chamness fully agrees with Petitioners' litigation strategy, and have retained their attorney as their counsel. Intervenor Chamness does not seek to extend the briefing schedule for the underlying Petition. If permitted to intervene, he will join all arguments that have been and will be raised in Petitioners' papers, and he will not independently raise any other arguments. For this reason, his involvement as an Intervenor will not expand the scope of this litigation.

51. Intervenor Chamness qualifies for mandatory intervention under CCP Section 387(b), because (i) he has a significantly protectable interest in this action, and (ii) he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest.

52. Intervenor Chamness qualifies for permissive intervention under CCP Section 387(a), because (i) he has a direct and immediate interest in the outcome of this litigation, (ii) his intervention will not enlarge the issues in this action, and (iii) the reasons for his intervention outweigh any opposition from the parties.

53. This Motion to Intervene is timely. Intervenor Chamness brought this Motion shortly after he learned, via media coverage on November 5, 2010, that SB 6 would be implemented for the upcoming special election in Senate District 28.

Relief Sought

Intervenor Chamness requests the following relief from the Court:

- A. That the Court grant the underlying Petition.
- B. That the Court declare that SB 6's Party Preference Ban unconstitutionally bans Intervenor Chamness and similarly situated candidates from stating their preference for a non-qualified party on the ballot, in the upcoming special elections in Senate Districts 28 and 17, and Assembly District 4.
- C. That the Court declare that SB 6's Independent Status Ban unconstitutionally bans Intervenor Chamness and similarly situated candidates from stating the political status of "Independent" on the ballot, in the upcoming special elections in Senate Districts 17 and 28, and Assembly District 4.
- D. That the Court declare that SB 6's Party-Preference Ban is unenforceable, because it violates the Elections Clause of the U.S. Constitution, the Equal Protection Clause and Free Speech Clause of the California Constitution, and the First and Fourteenth Amendments of the U.S. Constitution.

- E. That the Court declare Proposition 14 inoperative as a matter of law, for it lacks lawful legislation to implement it.
- F. That the Court award Intervenor Chamness reasonable costs and expenses, including attorney's fees, pursuant to California Code of Civil Procedure §1021.5.
- G. That the Court award Intervenor Chamness reasonable costs and expenses, including attorney's fees, pursuant to 42 U.S.C. §1988(b).
- H. For all other relief that the Court deems just and equitable.

Respectfully submitted,

GAUTAM DUTTA

By: _____

Gautam Dutta

Attorney for

Intervenor Michael Chamness