

SUPREME COURT OF CALIFORNIA

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. S188436

**VERIFIED MOTION TO  
INTERVENE BY CAROL  
WINKLER; MEMORANDUM OF  
POINTS AND AUTHORITIES**

[Arising from the denial of  
Petitioner's Motion for Preliminary  
Injunction on Oct. 5, 2010 by Hon.  
Charlotte Walter Woolard, Dept. 302,  
Superior Court for the County of San  
Francisco (Civic Center), 400  
McAllister St., San Francisco, CA  
94102; 415.551.3723; Case No. CGC-  
10-502018]

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*Attorney for Intervenor-Applicant  
Carol Winkler*

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;*

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VERIFIED MOTION TO INTERVENE BY  
CAROL WINKLER;  
MEMORANDUM OF POINTS AND AUTHORITIES

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Attorney for Intervenor-Applicant  
Carol Winkler

**VERIFICATION**

I, Carol Winkler, declare:

I have filed the accompanying Motion to Intervene (the “Motion”) in the action captioned above. I have read the Motion and know its contents. I am informed, believe, and allege based upon my information and belief that the contents are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Nov. 28, 2010, in Santa Clarita, California.

Signed: \_\_\_\_\_

Carol Winkler

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. Introduction**

Unless Carol Winkler is allowed to intervene, her fundamental right to run for political office will be irreparably harmed during a special election that may be called as early as January 3, 2011. For this compelling reason, Ms. Winkler asks the Court to grant this Motion to Intervene, on behalf of herself and similarly situated candidates across three legislative districts that will soon have special elections.

On January 3, 2011, the 17<sup>th</sup> District seat of State Senator George Runner will officially fall vacant. Ms. Winkler intends to run for that Senate seat, as a candidate running under the party label of “Independent”. However, a state statute – SB 6, which is scheduled to take effect on January 1, 2011 – has jeopardized her core constitutional right to run for office. Unless it is enjoined, SB 6 will ban candidates like Ms. Winkler from stating on the ballot that they are “Independent”. Instead, Ms. Winkler will be forced to misleadingly state on the ballot that she has “No Party Preference” (hereinafter, the “Party Preference Ban”).

Due to the shortness of time, Ms. Winkler has rushed to this Court to ask that she be heard. In fact, if the special election for Senate District 17 is called on January 3, 2011, candidates may have to file nomination papers as early as January 17, 2011, and vote-by-mail requests may have to be processed beginning January 31, 2011. By granting her Motion

to Intervene, the Court will ensure that it takes into account the plight of Ms. Winkler and all other candidates who are threatened with irreparable harm in three looming special elections.

## **II. Introduction to Carol Winkler**

Ms. Winkler – a Senate District 17 resident who is registered to vote as an “independent” – intends to run in that district’s special election as a candidate who identifies herself as an “Independent”. Unlike Ms. Winkler, none of the Petitioners live or vote in Senate District 17. If the Court does not grant the underlying Petition, Ms. Winkler will be banned from stating on the ballot that she identifies herself as an “Independent”. Instead, she will be forced to misleadingly state on the ballot that she has “No Party Preference”.

## **III. The Existing “Qualified Primary” Election System**

If the special election in Senate District 17 were held under existing law, Ms. Winkler could state on the ballot that she is “Independent”. Under the existing “qualified primary” election system, political parties are classified into two categories: qualified parties and non-qualified parties. Only “qualified” parties are entitled to hold party primaries.<sup>1</sup>

Under existing law, qualified-party candidates for state or federal office may state their party preference on the ballot. In

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<sup>1</sup> *Libertarian Party v. Eu* (1980) 28 Cal.3d 535, 540 (“[T]he Legislature ... defined ‘party’ as a political organization that has ‘qualified for participation in any primary election.’”) (emphases added).

contrast, all non-qualified-party candidates – who are deemed by this Court to have “independent” status<sup>2</sup> – may state on the ballot that they are “Independent”.<sup>3</sup>

In regularly scheduled elections, 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 Ms. Winkler who identify with either a minor party or with no specific party, and (2) write-in candidates (e.g., Senator Lisa Murkowski in the November 2010 Alaska race for the U.S. Senate).

In special elections, a different set of rules applies. All candidates for the same 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.<sup>4</sup>

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<sup>2</sup> *Id.* at 540 (defining “independent” candidates as those who “are independent of qualified political parties”) (emphasis added).

<sup>3</sup> Elections Code §13105(c). Unless otherwise indicated, all citations refer to the existing Elections Code, and do not refer to any amendments contemplated by SB 6.

<sup>4</sup> *Id.* §§ 10705(a) & 10706(b). If two or more “independent” candidates are affiliated with the same “political body” (i.e., a non-qualified party that is seeking to gain

#### IV. SB 6's "Top Two" Election System

In contrast to the "qualified party" election system, SB 6 compels candidates of "independent" status to state that they have "No Party Preference" on the ballot.<sup>5</sup> Thus, unless it is enjoined, SB 6 will ban Ms. Winkler from stating on the ballot that she is "Independent" in the looming special election for Senate District 17.

In regularly scheduled elections, all candidates for the same state or federal office – including both qualified-party and "independent" candidates – run against one another in the primary (first-round) election. The top two votegetters will automatically advance to the general (runoff) election, irrespective of their party preference.

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qualified status), only the top votegetter among them will advance to the general election. *Id.* § 10706(b).

<sup>5</sup> 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 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).

However, SB 6 applies a different set of rules for special elections. Like regularly scheduled elections, all candidates for the same state or federal office – including both qualified-party and “independent” candidates – run against one another in the primary (first-round) election. But unlike 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. If no one receives a majority, the top two votegetters will automatically advance to the special general (runoff) election.

#### **V. Three Looming Special Elections**

This Motion brings a matter of utmost urgency to the Court’s attention, for SB 6 is poised to be implemented for three special elections that will be called within a matter of weeks. In fact, the special election in Senate District 17 could be called as early as January 3, 2011.

Special elections have been a mainstay in California politics, and 2011 will prove no different. As the Secretary of State recently noted, California has held an average of 4.8 special elections per year for state and federal office since 1990.<sup>6</sup> Presciently, the California Association of Clerks and Election Officials called attention to the difficulties of having to implement SB 6 in such a short timeframe:

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<sup>6</sup> Secretary of State’s Apr. 12, 2010 News Release, Nov. 24, 2010 Request for Judicial Notice by Intervenor-Applicant Michael Chamness, Exhibit I, at 1.

Of greater concern is the possibility that the Governor *might proclaim a Special Vacancy Election* for an Assembly or Senate vacancy *as early as January 2011*.<sup>7</sup>

A. Senate District 17

Candidate nomination papers for the special election in Senate District 17 could be due as early as January 17, 2011. Between January 3 and 17, 2011, the Governor will call a special election for Senate District 17, which covers nearly 1 million residents from Ventura, Los Angeles, Kern, and San Bernardino Counties. On November 2, 2010, George Runner was elected to the State Board of Equalization, midway through his four-year term in Senate District 17.

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.<sup>8</sup> Thus, Runner's Senate seat will officially fall vacant on January 3, 2011 – giving the Governor

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<sup>7</sup> Mar. 20, 2010 Memorandum from Los Angeles Registrar-Recorder/County Clerk Dean Logan, Nov. 24, 2010 Request for Judicial Notice by Intevenor-Applicant Michael Chamness, Exh. J, Attach. 1, at 2 (attaching Mar. 2, 2010 letter from California Association of Clerks and Election Officials to the State Assembly Elections Committee) (emphases added).

<sup>8</sup> Natasha Lindstrom, "Special Election Will Decide Who Fills Runner's Senate Shoes," Victorville *Daily Press*, Nov. 5, 2010, Nov. 24, 2010 Request for Judicial Notice by Intervenor-Applicant Michael Chamness, Exhibit E.

until January 17, 2011 to call a special election (i.e., within 14 days of the resignation date).<sup>9</sup>

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.<sup>10</sup> Based on that schedule, candidate nomination papers will be due on January 17, 2011 (i.e., within 43 days of the date of the election), and requests for vote-by-mail ballots must be processed beginning January 31, 2011 (i.e., within 29 days of the date of the election).<sup>11</sup>

B. Senate District 28

On November 2, 2010, the late Jenny Oropeza was re-elected to Senate District 28, which covers nearly 1 million residents from West Los Angeles to Torrance to the City of Carson.<sup>12</sup> Sen. Oropeza's seat will officially fall vacant on December 6, 2010, the date on which all state lawmakers are sworn into office. Thus, the Governor must call an election by

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<sup>9</sup> Elections Code §10700.

<sup>10</sup> *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.

<sup>11</sup> *Id.* §§10704(a) & 3001.

<sup>12</sup> Sen. Oropeza unexpectedly died two weeks before the Nov. 2, 2010 general election.

December 20, 2010 (i.e., within 14 days of the date of the vacancy).<sup>13</sup>

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 Senate District 28. If the Governor calls the special election on December 6, 2010, the primary (first-round) election could be held as soon as February 1, 2011. Based on that schedule, candidate nomination papers will be due on December 20, 2010, and requests for vote-by-mail ballots must be processed beginning January 3, 2011.

C. Assembly District 4

Finally, candidate nomination papers could be due as soon as January 2011 for the likely special election in Assembly District 4, which stretches across Sacramento, Placer, El Dorado, and Alpine Counties. On November 2, 2010, State Assemblymember Ted Gaines won two elections. He was not only re-elected to State Assembly District 4, but finished first in a special primary (first-round) election to fill a vacancy in Senate District 1. In so doing, the Republican Gaines qualified for the January 4, 2011 special general (runoff) election in Senate District 1 – a “safely Republican” seat that Gaines is expected to win easily.<sup>14</sup>

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<sup>13</sup> Elections Code §10700.

<sup>14</sup> “[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

Once Gaines wins the special election for Senate District 1, he will resign from the State Assembly. When he resigns, the Governor must call a special election within 14 days of the resignation date.<sup>15</sup> Based on that schedule, 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. Thus, candidate nomination papers could be due as early as February 2011, and requests for vote-by-mail ballots may also have to be processed as soon as February 2011.

In short, the constitutional issues raised by the underlying Petition cannot wait, for SB 6 will be implemented for *three* special elections that will be called in a matter of weeks. Significantly, the special election in Senate District 17 could be called as early as January 3, 2011. Under that schedule, candidate nomination papers for Senate District 17 would be due on January 17, 2011, and requests for vote-by-mail ballots must be processed beginning January 31, 2011. In this light, Ms. Winkler, who intends to run for Senate District 17, will be immediately affected by any decision that this Court makes.

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for Judicial Notice by Intervenor-Applicant Michael Chamness, 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, Nov. 24, 2010 Request for Judicial Notice by Intervenor-Applicant Michael Chamness, Exhibit G.

<sup>15</sup> Elections Code §10700.

## **VI. SB 6 Threatens Ms. Winkler with Imminent, Irreparable Harm**

*There can be no dispute that candidate acquisition of party labels on [the] ballot ... is a means of garnering the support of those who trust and agree with the party.*

-- Justices Scalia and Kennedy<sup>16</sup>

Ms. Winkler brought this Motion to Intervene on November 17, 2010, shortly after learning that Senator George Runner would resign from his seat on January 3, 2011. Unless she is permitted to intervene, Ms. Winkler will suffer irreparable harm in that looming special election; for she will be banned from stating on the ballot that she is “Independent”.

Earlier, on July 29, 2010, Petitioners filed a motion for preliminary injunction (the “PI Motion”) to block SB 6 from being implemented. The PI Motion claimed, *inter alia*, that SB 6 unlawfully bans non-qualified-party candidates from stating any party preference on the ballot.<sup>17</sup>

On October 5, 2010, Respondent entered an order (the “Order”) denying the PI Motion. In a nutshell, the Order upheld the constitutionality of SB 6, and declined to strike down any part of the statute. In so doing, the Order thereby enabled the State to implement and enforce Part 325 of SB 6, which forces “independent” candidates like Ms. Winkler to

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<sup>16</sup> *Wash. State Grange v. Wash. Republican Party* (2008) 552 U.S. 442, 466 (Scalia & Kennedy, JJ., dissenting) (emphases added).

<sup>17</sup> Petitioners-Plaintiffs’ Motion for Preliminary Injunction has been attached as Exhibit 1 to the underlying Petition.

misleadingly state that they have “No Party Preference”.

Unless it is promptly vacated, the Order poses a grave threat to the very rights that Ms. Winkler seeks to exercise in the special election for Senate District 17.

#### **VI. Ms. Winkler Will Sharpen the Focus of This Case**

Because she will suffer irreparable harm if the underlying Petition is denied, Ms. Winkler’s participation will enable the parties and the Court to sharpen their focus on the overarching issue of this entire case. Namely, does SB 6’s Party Preference Ban violate the U.S. and California Constitutions? What is more, Ms. Winkler’s participation will ensure that Petitioners can assert their legal claims with respect to the imminent special election in Senate District 17.

Equally important, Ms. Winkler’s participation will neither delay nor expand the scope of the underlying litigation. Indeed, Ms. Winkler agrees with Petitioners’ legal strategy; in fact, she has retained Petitioners’ attorney as counsel. Moreover, she will join all arguments that have been and will be raised in Petitioners’ papers, and will not independently raise any other arguments. In this light, Ms. Winkler qualifies for both mandatory and permissive intervention.

#### **VIII. Ms. Winkler Qualifies for Mandatory Intervention**

*An intervenor of right has by definition ... an interest at stake which the other parties will not fully protect, and which the intervenor can fully protect only by joining the litigation.*

-- Justice Brennan<sup>18</sup>

Ms. Winkler unquestionably meets all the criteria for mandatory intervention. To qualify for mandatory intervention, successful applicants must satisfy two conditions. First, they must have “a significantly protectable interest” in “the property or transaction which is the subject of the action”.<sup>19</sup> Second, the applicants must show that they are “so situated that the disposition of the action may as a practical matter impair or impede that person’s ability to protect that interest.”<sup>20</sup> If the applicants satisfy both conditions, a court must permit them to intervene unless they are “adequately represented by other parties.”<sup>21</sup>

It is beyond question that Ms. Winkler has a “significantly protectable interest” in the “transaction” at issue: the underlying proceeding in which Petitioners seek a Writ of Mandate. Indeed, the term “transaction” includes “the act of transacting or conducting any ... proceeding[.]”<sup>22</sup> Thus, the underlying writ proceeding constitutes a “transaction” for purposes of mandatory intervention.

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<sup>18</sup> *Stringfellow v. Concerned Neighbors* (1987) 480 U.S. 370, 382 n.1 (concurring opinion) (quoted by *Siena Court Homeowners Ass’n v. Green Valley Corp.* (2008) 164 Cal.App.4<sup>th</sup> 1416, 1424).

<sup>19</sup> *Siena*, supra note 18, 164 Cal.App.4<sup>th</sup> at 1423-24 (citing *Donaldson v. U.S.* (1971) 400 U.S. 517).

<sup>20</sup> *Siena*, supra note 18, 164 Cal.App.4<sup>th</sup> at 1424 (citations omitted).

<sup>21</sup> *Id.*

<sup>22</sup> *California Physicians’ Service v. Superior Court* (1980) 102 Cal.App.3d 91, 96 (emphasis added).

Moreover, Ms. Winkler has a “significantly protectable interest” in the underlying writ proceeding, which asks the Court to whether Ms. Winkler may be banned from stating her party preference on the ballot. Indeed, the outcome of the underlying writ proceeding will “as a practical matter impair or impede” her ability “to protect that interest.”<sup>23</sup> Namely, if the underlying Petition is denied, Ms. Winkler will suffer irreparable harm, for she will be forced to misleadingly state on the ballot – and thereby tell voters – that she has “No Party Preference”.

Finally, Ms. Winkler’s participation will strengthen the ability of Petitioners to defend the rights of all non-qualified-party candidates who face imminent, irreparable harm in the looming special elections in Senate District 17, Senate District 28, and Assembly District 4. Therefore, Ms. Winkler amply qualifies for mandatory intervention.

#### **IX. Ms. Winkler Qualifies for Permissive Intervention**

As a practical matter, because Ms. Winkler qualifies for mandatory intervention, she should also qualify for permissive intervention.<sup>24</sup> Moreover, she independently meets the criteria for permissive intervention. Successful applicants must show, inter alia, that:

1. They have a “direct and immediate interest” in the action; and

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<sup>23</sup> *Siena*, *supra* note 18, 164 Cal.App.4<sup>th</sup> at 1424 (citations omitted).

<sup>24</sup> *See Royal Indemnity Co. v. United Enterprises, Inc.* (2008) 162 Cal.App.4<sup>th</sup> 194, 75 Cal.Rptr.3d 481, 487.

2. The intervention will not “enlarge the issues” in the proceeding; and
3. The reasons for the permissive intervention must “outweigh any opposition by the parties presently in the action.”<sup>25</sup>

Here, Ms. Winkler has a “direct and immediate” interest in this action; that is, she will “either gain or lose by the direct legal operation and effect of the judgment.”<sup>26</sup> If the underlying Petition is granted, Ms. Winkler’s constitutional rights will be respected during the special election for Senate District 17. But if the Petition is not granted, she will suffer immediate, irreparable harm.

Moreover, both federal and state courts have liberally permitted both candidates and individual voters (along with grassroots groups) to intervene in election cases. In the seminal *Cook v. Gralike*,<sup>27</sup> the U.S. Supreme Court unanimously permitted a federal candidate to intervene in a facial challenge to an election law. Similarly, California courts have a longstanding tradition of liberally permitting voters and grassroots groups to intervene in litigation.<sup>28</sup> In this light, both

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<sup>25</sup> *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4<sup>th</sup> 1030, 1036 (2005) *review denied*.

<sup>26</sup> *Id.* at 1038.

<sup>27</sup> *Cook v. Gralike* (2001) 531 U.S. 510, 516 n.6.

<sup>28</sup> *See, e.g., Simac Design v. Alciati* (1979) 92 Cal.App.3d 146, 154 Cal.Rptr. 676, 682 (grassroots voter group permitted to intervene on motion made during oral argument); *Baroldi v. Denni* (1961) 197 Cal.App.2d 472, 17 Cal.Rptr. 647, 651

federal and state case law strongly support permissive intervention, for it would enable Ms. Winkler to defend her fundamental rights as a political candidate.

Furthermore, Ms. Winkler's urgent need to defend her fundamental rights far outweighs any inconvenience or objection from the parties. Towards that end, Ms. Winkler brought her Motion to this Court in a timely manner, soon after learning that Senator Runner would resign from his Senate District 17 seat on January 3, 2011. Accordingly, Ms. Winkler amply qualifies for permissive intervention.

**X. Opposition to this Motion Would Be Misguided**

It would be misguided, if not disingenuous, for anyone to oppose this Motion. Nevertheless, one of the parties might claim that Ms. Winkler need not participate in the writ proceeding, ostensibly because Petitioners can adequately represent Ms. Winkler's interests. However, the positions already taken by Intervenors and the Secretary of State underscore the need for Ms. Winkler's participation. Indeed, they have asserted that Petitioners cannot assert their legal claims on behalf of candidates like Ms. Winkler, for none of the Petitioners live within her legislative district (Senate District 17).<sup>29</sup>

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(individual voter permitted to intervene); *see also Rominger v. County of Trinity* (1983) 147 Cal.App.3d 655 (grassroots environmental group permitted to intervene); *Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192 (same).

<sup>29</sup> See Intervenors opposition papers, Petition Exh. 10, at 11:10 n.17 ("Thus, Plaintiffs face no threat of harm in the

Intervenors may also oppose this Motion on two other grounds. First, they may argue that Ms. Winkler will not suffer any harm, because they insist that SB 6's Party Preference Ban is lawful. Second, Intervenors may seek to disavow their prior legal position, and try to argue that SB 6 does not impose a Party Preference Ban.<sup>30</sup> Both arguments would only bolster the case for Ms. Winkler's participation, for they go to the core issue raised in the underlying Petition: Does SB 6's Party Preference Ban violate the U.S. or California Constitution?

In any event, litigants like Ms. Winkler need not wait until their rights have been violated before seeking judicial relief.<sup>31</sup> As the U.S. Supreme Court has made clear, a court may adjudicate all claims where a litigant faces a "realistic danger" of imminent harm.<sup>32</sup> Here, if SB 6 is implemented for the looming special election in Senate District 17, Ms. Winkler will suffer immediate, irreparable harm. Therefore, Ms.

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conduct of that special election. Plaintiffs offer no evidence by sworn declaration that any of them is entitled to vote in this election[.]"). *See also* Real Party in Interest Secretary of State's oral argument testimony, Sept. 14, 2010 Transcript, Petition Exh. 15, at 19.

<sup>30</sup> As Section V(I) of the underlying Petition makes clear, the doctrine of judicial estoppel bars Intervenors from raising such an argument.

<sup>31</sup> *Babbitt v. United Farm Workers Nat'l Union* (1979) 442 U.S. 289, 299.

<sup>32</sup> *Id.* at 299; *see also Sandusky County Democratic Party v. Blackwell* (6<sup>th</sup> Cir. 2004) 387 F.3d 565, 574 (voters challenging an election law need only show that it threatens them with "real and imminent" harm); *ACLU v. Santillanes* (10<sup>th</sup> Cir. 2008) 546 F.3d 1313, 1318-19 (same).

Winkler has abundantly shown that she is entitled to both mandatory and permissive intervention.

**XI. Conclusion**

*One does not have to await the consummation of a threatened injury to obtain preventive relief.*

-- U.S. Supreme Court, *Babbitt v. United Farm Workers*<sup>33</sup>

Like Intervenor-Applicant Michael Chamness, Ms. Winkler makes a simple, urgent plea. As a civic leader whose rights are gravely threatened, she asks that her voice be heard in the underlying writ proceeding. By virtue of her timely and proactive efforts, Ms. Carol Winkler has earned the opportunity to participate in this case – and to fight for the quintessentially American right to run for office. Accordingly, Ms. Winkler respectfully asks this Court for leave to intervene.

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<sup>33</sup> *Babbitt, supra* note 31, 442 U.S. at 299 (quoting *Penn. v. W. Va.* (1923) 262 U.S. 553, 593).

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately 1.5-spaced, 14-point Times New Roman typeface. According to the Word Count feature in my Microsoft Word for Windows software, this brief contains 3,801 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on Nov. 29, 2010.

GAUTAM DUTTA

By: \_\_\_\_\_

Gautam Dutta

*Attorney for Intervenor-Applicant*

*Carol Winkler*

PROOF OF SERVICE

I, Gautam Dutta, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action.

On Nov. 29, 2010, I served the following document(s):

(1) Motion To Intervene by Carol Winkler, on the following persons at the locations specified:

A. Mark Beckington, Esq., Office of the Attorney General, 300 South Spring St., Suite 1702, Los Angeles, CA 90013; 213.879.1096.

B. Steve Mitra, Esq., Office of Santa Clara County Counsel, 70 W. Hedding St., 9<sup>th</sup> Floor, East Wing, San Jose, CA 95110; 408.299.5916.

C. Raymond Lara, Esq., Office of Alameda County Counsel, 1221 Oak St., Ste. 450, Oakland, CA 94612; 510.272.6700.

D. Mollie Lee, Esq., Office of the San Francisco City Attorney, 1 Dr. Carlton B. Goodlet Place, Ste. 234, San Francisco, CA 94102; 415.554.4705.

E. Wendy J. Phillips, Esq., Office of Orange County Counsel, 333 W. Santa Ana Blvd., Ste. 407, Santa Ana, CA 92702; 714.834.6298.

F. Kathleen Taylor, Esq., Office of Tulare County Counsel, 2900 W. Burrel St., Visalia, CA 93291; 559.636.4950.

G. Patrice J. Salseda, Esq., Office of Los Angeles County Counsel, 500 W. Temple St., Rm. 648, Los Angeles, CA 90012-2713; 213.974.1895.

H. Marguerite Mary Leoni, Esq., Nielsen Merksamer,  
2350 Kerner Blvd., Ste. 250, San Rafael, CA 94901;  
415.389.6800.

I. The Honorable Charlotte Walter Woolard,  
Superior Court for the County of San Francisco, Dept. 302, 400  
McAllister St., San Francisco, CA 94102; 415.551.3723.

Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelopes and placed them, postage prepaid, for collection and mailing with the U.S. Postal Service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed Nov. 29, 2010, in Fremont, California.

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Gautam Dutta