

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 11-01479 ODW (FFMx)	Date	March 30, 2011
Title	<i>Chamness v. Bowen, et al.</i>		

Present: The Honorable Otis D. Wright II, United States District Judge

Raymond Neal	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s):
Not Present

Attorneys Present for Defendant(s):
Not Present

Proceedings (In Chambers): Order DENYING Plaintiff’s Motion for Preliminary Injunction [4] [Filed 02/18/11]

I. INTRODUCTION

Pending before the Court is Plaintiff, Michael Chamness’s (“Plaintiff” or “Chamness”), February 18, 2011 Motion for a Preliminary Injunction. (Dkt. No. 4.) Defendants, Debra Bowen (“Bowen”), California Independent Voter Project (“CAIVP”), Abel Maldonado (“Maldonado”), and Californians to Defend the Open Primary (“CADOP”) (collectively, “Defendants”),¹ filed their respective Oppositions on March 4, 2011, (Dkt. Nos. 38, 41), to which Plaintiff filed a Reply on March 11, 2011 (Dkt. No. 49).² The matter

¹ With respect to the instant Motion, Defendant, Dean Logan, filed a Statement of No Position expressing his intention to be bound by the ruling of the Court. (Dkt. No. 35.)

² On March 4, 2011, CAIVP, Maldonado, and CADOP (collectively, “Intervener-Defendants”) filed a provisional Opposition to Plaintiff’s Motion for a Preliminary Injunction. (Dkt. No. 38.) Plaintiff objected to the provisional filing, claiming that if the Court considered the document, he would suffer “severe prejudice.” (Dkt. No. 42.) Subsequently, on March 7, 2011, the Court granted Intervener-Defendants *Ex Parte* Application to intervene. (Dkt. No. 43.) Because the Intervener-Defendants filed their provisional Opposition prior to the deadline for oppositions, Plaintiff had ample time to respond in writing and was certainly able to orally respond to any of Intervener-Defendants’ arguments at the March 21, 2011 Hearing. He did neither. Furthermore, if Plaintiff felt that his time to respond was insufficient, he could have requested that the Court allow him additional time to file his Reply. Plaintiff, however, failed to do so. As a result, the Court finds that Plaintiff has not suffered any prejudice. Therefore, the Court will consider Intervener-Defendants’ Opposition in making its determination on the instant Motion.

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came on for hearing before the Court on March 21, 2011. Having considered the parties' presentations at oral argument, the parties' papers in support of and in opposition to the instant Motion, and the evidence filed in conjunction therewith, the Court **DENIES** Plaintiff's Motion for a Preliminary Injunction for the reasons discussed below.

II. BACKGROUND

A. HISTORY OF PROPOSITION 14, SENATE BILL 6, AND THE CURRENT CALIFORNIA "OPEN PRIMARY" SYSTEM

This lawsuit challenges the constitutionality of certain provisions of California Senate Bill 6 ("SB6"), the legislation implementing California's Proposition 14. On February 19, 2009, SB6, which contained numerous revisions to the California Elections Code, was introduced and passed by the California Legislature. (FAC ¶ 26.)³ Subsequently, on June 8, 2010, Proposition 14 was passed by California voters. (FAC ¶ 27.)

Prior to the passage of Proposition 14, California's primary and general election scheme was as follows:

California generally holds two statewide elections in even-numbered years to elect candidates to state and federal offices – a primary election (in June) and a general election (in November). These elections . . . are partisan, which means that most candidates are associated with a political party. For these partisan offices, the results of a primary election determine each party's nominee for the office. The candidate receiving the most votes in a primary election is that party's nominee for the general election. In the general election, voters choose among all of the parties' nominees, as well as any independent candidates. (Independent candidates – those not associated with a political party – do not participate in primary elections.) The winner of the general election then serves a term in that office.

³ Plaintiff's Motion cites to the Complaint. (Dkt. No. 1.) On March 10, 2011, however, Plaintiff filed a First Amended Complaint ("FAC"), which rendered the Complaint inoperative. (Dkt. No. 46.) Nevertheless, because the Court finds no substantive differences with respect to Plaintiff Chamness's claims, it will rule on Chamness's Motion for a Preliminary Injunction. In doing so, the Court cites to the FAC.

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(Waters Decl., Exh. A-4.) Proposition 14, however, amended the California Constitution to change the election process for most state and federal offices. In essence, Proposition 14 effectively replaced traditional California party primary elections with a type of “open primary” known as a “top two” or “voter-nominated” primary election. (FAC ¶¶ 28-35, 45, 50-52.) In doing so, Proposition 14 made it possible for any candidate to run in a primary election, regardless of whether that candidate is affiliated with a California “qualified party.”⁴ (FAC ¶ 51.) Proposition 14’s “top two” system was described in the June 8, 2010 Official Voter Information Guide as follows:

This measure creates a single ballot for primary elections for [certain] congressional and state elective offices. . . . Candidates would indicate for the ballot either their political party (the party chosen on their voter registration) or no party preference. All candidates would be listed—including independent candidates, who now would appear on the primary ballot. Each voter would cast his or her vote using this single primary ballot. . . . The two candidates with the highest number of votes in the primary election—regardless of their party preference—would advance to compete in the general election. In fact, the two candidates in the general election could have the same party preference.

(Waters Decl., Exh. A-5.) When a candidate runs under the Proposition 14 scheme, he may state his “political party preference, or lack of political party preference . . . in a manner provided by statute.” CAL. CONST. art. II, § 5(b). The relevant statute, California Elections Code § 8002.5(a), which was added by SB6, provides that “[a] candidate for a voter-nominated office may indicate his or her party preference, or lack of party preference, as disclosed upon the candidate’s most recent statement of registration” CAL. ELEC. CODE

⁴ California recognizes both political parties that have qualified to participate in primary elections (“qualified parties”) and political bodies seeking to qualify for political party status (“non-qualified parties”). See CAL. ELEC. CODE §§ 338, 5001. A party becomes qualified to participate in a primary election by meeting at least one of three statutory tests, which involve polling sufficient votes at the preceding gubernatorial election, having sufficient voters affiliate with the party, or petitioning for qualification. CAL. ELEC. CODE § 5100. A group becomes a political body (a “non-qualified” party) by electing temporary officers at a caucus or convention, selecting a party name, and filing a formal notice with the Secretary of State. CAL. ELEC. CODE § 5001. Presently there are six “qualified parties” in California: American Independent, Democratic, Green, Libertarian, Peace and Freedom, and Republican. (See Def. Bowen’s Opp’n at 2 n.2 (citing http://www.sos.ca.gov/elections/elections_f_non.htm.)

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§ 8002.5(a). The manner in which the candidate’s preference appears on the ballot is set forth in California Elections Code section 13105(a), which was amended by SB6, and provides:

In the case of candidates for a voter-nominated office in a primary election, a general election, or a special election to fill a vacancy in the office of United States Senator, Member of the United States House of Representatives, State Senator, or Member of the Assembly, immediately to the right of and on the same line as the name of the candidate, or immediately below the name if there is not sufficient space to the right of the name, there shall be identified in eight-point roman lowercase type the name of the political party designated by the candidate pursuant to Section 8002.5. The identification shall be in substantially the following form: “My party preference is the _____ Party.” If the candidate designates no political party, the phrase “No Party Preference” shall be printed instead of the party preference identification. If the candidate chooses not to have his or her party preference listed on the ballot, the space that would be filled with a party preference designation shall be left blank.

CAL. ELEC. CODE § 13105(a). In her capacity as the Secretary of State, Defendant Bowen has apparently interpreted the phrase “political party” in the first portion of this section to mean only a “qualified party.” (*See* FAC, Exh. 1 at 26.) She has further concluded that candidates who prefer a “non-qualified” party may not state the term “Independent” on the ballot. (*See id.*) Rather, as evidenced by the ballot from the February 15, 2011 California Senate District 28 special primary election, candidates who prefer “non-qualified parties” must state that they have “No Party Preference” or must leave the space blank. (*Id.*)

B. ATTEMPTS TO ENJOIN SENATE BILL 6 IN CALIFORNIA STATE COURTS

The instant case is not the first to challenge the constitutionality of Proposition 14 and SB6. On July 28, 2010, six plaintiffs (“State Court Plaintiffs”) filed a complaint in the San Francisco County Superior Court (“Superior Court”) and requested a preliminary injunction against the enforcement of SB6. (Waters Decl., Exh. C at 1; Chamness Decl. ¶ 6.) The State Court Plaintiffs claim that SB6’s “party preference ban” violates their rights under the Equal Protection Clause and the Elections Clause. (Waters Decl., Exh. D at 2.) On October 5, 2010, the Superior Court denied the State Court Plaintiffs’ motion for a preliminary

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injunction, finding that the plaintiffs were not likely to succeed on the merits of their claims and that the showing of imminent harm was insufficient. (Waters Decl., Exhs. C at 7, D at 2-3; Chamness Decl. ¶ 6.)

Seeking immediate review of the Superior Court's denial of their motion, the State Court Plaintiffs filed a petition for writ of mandate in both the California Court of Appeal for the First Appellate District ("Court of Appeal") and the California Supreme Court. (Waters Decl., Exhs. F at 1, G at 1; Chamness Decl. ¶¶ 7, 10.) Both writs were denied. (Waters Decl., Exhs. F at 1, G at 3; Chamness Decl. ¶ 10.) Plaintiff requested to intervene in the California Supreme Court mandamus proceeding; however, his request was denied. (Waters Decl., Exh. G at 3; Chamness Decl. ¶¶ 9, 10.)

Additionally, the State Court Plaintiffs regularly appealed the Superior Court's Order denying their preliminary injunction to the Court of Appeal. (Waters Decl., Exh. E at 1; Chamness Decl. ¶ 13.) Plaintiff requested permission to intervene in the appellate proceeding; however, the Court of Appeal denied his request. (Waters Decl., Exh. E at 2-3; Chamness Decl. ¶¶ 13-14.) The parties informed the Court during the March 21, 2011 Hearing that the appeal is now being briefed and a hearing for oral argument has not yet been set.

C. PLAINTIFF MICHAEL CHAMNESS'S CASE BEFORE THIS COURT

Because he was not permitted to intervene in the actions brought by the State Court Plaintiffs, Plaintiff brings the instant case under 28 U.S.C. § 1983, alleging violations of the First and Fourteenth Amendments of the United States Constitution, along with violations of the Elections Clause of the United States Constitution. The gravamen of Plaintiff's First Amended Complaint is that, as a result of SB6 and Proposition 14, Plaintiff is not permitted to state his affiliation with the "Coffee Party" nor that he is "Independent" on the ballot when he runs for political office. Rather, he is required to state that he has "No Party Preference."

Because of this limitation, Plaintiff brings both an as-applied claim and a facial challenge to SB6 and Proposition 14. (FAC ¶ 66.) Plaintiff's as-applied challenge arises from the special primary election for California Senate District 28 ("SD 28"), which was held on February 15, 2011. (FAC ¶ 53.) There, Plaintiff sought to run as a candidate

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affiliated with the “Coffee Party.” (FAC ¶ 70.) However, Plaintiff appeared on the ballot as follows:

MICHAEL CHAMNESS
No Party Preference
Non-Profit Organization Consultant

(FAC, Exh. 1 at 26.) In the SD 28 election, Plaintiff received 0.55% of the vote. (See Def. Bowen’s Opp’n at 7 (citing Election Results at <http://www.sos.ca.gov>.)

Plaintiff’s facial challenge arises from his intention to run as a candidate in the May 17, 2011 special primary election to fill the recent vacancy for the United States House of Representatives 36th Congressional District (“CD 36”). (FAC ¶ 97.) It is not apparent in Plaintiff’s papers whether he is seeking the right to state “Coffee Party” or the right to state “Independent” on the ballot in the upcoming election. Plaintiff, however, made it clear at oral argument that he only objects to Defendants’ refusal to place the term “Independent” on the ballot. To avoid having to state that he has “No Party Preference” in the CD 36 election, Plaintiff now asks this Court to enjoin SB6 in its entirety, an action which would suspend Proposition 14 and render it inoperative.

III. THRESHOLD ISSUES

Before the Court discusses the substantive issues regarding the preliminary injunction, it will first address two preliminary issues raised by the parties – abstention and the parties’ requests for judicial notice.

A. ABSTENTION

The Intervener-Defendants assert that this Court should abstain from ruling on Plaintiff’s Motion for a Preliminary Injunction under *Railroad Community v. Pullman Company*, 312 U.S. 496, 500 (1941). (See Intervener-Defs.’ Opp’n at 24-25.) “[F]ederal courts should abstain from decision when difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided.” *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 236 (1984). “By abstaining in such cases, federal courts will avoid both unnecessary adjudication of federal questions and ‘needless friction

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with state policies. . . .” *Id.* Federal courts need not abstain on *Pullman* grounds, however, when a state statute is not “fairly subject to an interpretation which will render unnecessary” adjudication of the federal question. *Id.* Indeed, “*Pullman* abstention is limited to uncertain questions of state law because “[a]bstention from the exercise of federal jurisdiction is the exception, not the rule.”” *Id.* (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976)).

The Ninth Circuit has adopted a three-part test for deciding when *Pullman* abstention is warranted: “First, the proper resolution of the state law question at issue must be uncertain. Second, a definitive ruling on the state issue must potentially obviate the need for constitutional adjudication by the federal court. Third, the complaint must touch upon ‘a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open.’” *Burdick v. Takushi*, 846 F.2d 587, 588 (9th Cir. 1988).

With respect to the third criterion, it is undisputed that challenges to state election laws “touch upon ‘a sensitive area of social policy’ into which federal courts should intrude with great reluctance.” *Id.* Thus, this factor weighs in favor of abstention. The other two requirements, however, weigh against *Pullman* abstention. Intervener-Defendants assert that

there is a hotly-debated question of statutory construction pending in the California courts: whether SB6 actually provides that only “qualified” party labels can appear on the ballot for voter-nominated offices. If the state courts conclude that this limitation does not exist, and that candidates may use any party label they wish, it would entirely moot Plaintiff’s action.

(Intervener-Defs.’ Opp’n at 24-25.) Intervener-Defendants claim to have tendered this very issue to the Court of Appeal in the pending state action. (*Id.* at 6.) The Court finds, however, that the underlying issue is not so uncertain to warrant abstention and postpone needed federal adjudication. In the abstract, it is possible for the Court of Appeal to determine that a candidate may identify any party label he wishes on the ballot. It is equally possible, however, that the Court of Appeal may decline to address the issue or may determine that a candidate may only identify a “qualified party.” “[T]he relevant inquiry is not whether there is a bare, though unlikely, possibility that state courts might render adjudication of the federal question unnecessary. Rather, ‘[w]e have frequently emphasized

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that abstention is not to be ordered unless the statute is of an uncertain nature, and is obviously susceptible of a limiting construction.” *Hawaii Housing Auth.*, 467 U.S. at 237 (quoting *Zwickler v. Koota*, 389 U.S. 241, 251 n.14 (1967)). Moreover, the instant case concerns the potential violation of First Amendment rights. “[C]onstitutional challenges based on the [F]irst [A]mendment right of free expression are the kind of cases that the federal courts are particularly well-suited to hear. That is why abstention is generally inappropriate when [F]irst [A]mendment rights are at stake.” *Wolfson v. Brammer*, 616 F.3d 1045, 1066 (9th Cir. 2010) (quoting *Porter v. Jones*, 319 F.3d 483, 492-93 (9th Cir. 2003)). In light of the foregoing, the Court declines to abstain.

B. THE PARTIES’ REQUESTS FOR JUDICIAL NOTICE

In support of their respective filings, the parties request that the Court take judicial notice of several documents, most of which are public records such as sample ballots, official voter guides, official candidate lists, and the dockets of the proceedings in the abovementioned California state court actions. (*See* Pl.’s RJN at 2; Def. Bowen’s RJN at 2; Intervener-Defs.’ RJN at 2.)

Federal Rule of Evidence 201 provides that “[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” FED. R. EVID. 201(b). “A court shall take judicial notice if requested by a party and supplied with the necessary information.” FED. R. EVID. 201(d). Because a court “may presume that public records are authentic and trustworthy[.]” *Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999), the Court takes judicial notice of the abovementioned public records as far as it considers them in its reasoning as set forth below.

Plaintiff also asks the Court to take judicial notice of an email sent from a member of Defendant Bowen’s staff to Defendant Maldonado’s staff. (Pl.’s RJN at 2.) Plaintiff contends that language in the email, specifically that “SB6’s Party Preference Ban Is Not ‘Permissible,’” constitutes a “binding admission” that “SB6’s Party Preference Ban violates the First and Fourteenth Amendments.” (Mot. at 10, 11-12.) The email and the attachment thereto, however, merely suggest “technical changes/clarifications” to SB6. (FAC, Exh. A at 30.) Specifically, the attachment states:

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EC 325. Changing the term “No Party Preference Disclosed” to “No Party Preference Selected.” Using the term “disclosed” implies that a candidate, or a voter, actually has selected a party preference but is not disclosing it. That is permissible for candidates in certain circumstances (see Item 12 in this summary), but not in all instances. What the term should imply is that the voter has not chosen, made or state[d] a party preference and is therefore “independent.” We think “selected” achieves that goal much better than “disclosed.”

(See Pl.’s RJN, Exh. 4 at 22.) While the document was sent between government employees, it is not a public record and its authenticity has not been conclusively established. Furthermore, even if the document could be considered a public record, disputed facts stated in public records are not typically subject to judicial notice. See *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001). It is certainly disputed whether Defendant Bowen admitted that SB6 violates the First and Fourteenth Amendments. Indeed, while the email suggests changes to SB6, the Court cannot find any language that constitutes such an admission. Therefore, the Court declines to take judicial notice of the email as a party admission and turns to the merits of Plaintiff’s Motion for a Preliminary Injunction.

IV. LEGAL STANDARD

A plaintiff seeking a preliminary injunction must establish: (1) that he is likely to succeed on the merits; (2) that he is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Nat’l Res. Def. Council*, 129 S. Ct. 365, 374 (2008). Following *Winter*, the Ninth Circuit requires courts to balance these four elements in the form of a sliding scale test. *Alliance for the Wild Rockies v. Cottrell*, No. 09-35756622, 2011 WL 208360, at *4 (9th Cir. Jan. 25, 2011) (holding that the “serious questions” version of the sliding scale test remains viable). The relevant Ninth Circuit test is formulated as follows:

A preliminary injunction is appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships

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tips sharply in the plaintiff’s favor. . . . [P]laintiffs must also satisfy the other *Winter* factors, including the likelihood of irreparable harm [and that an injunction is in the public interest].

Id. at *7. This test “requires the plaintiff to make a showing on all four prongs.” *Id.*

A plaintiff seeking a preliminary injunction “face[s] a difficult task in proving that [he is] entitled to this ‘extraordinary remedy.’” *Earth Island Inst. v. Carlton*, No. 09-16914, 2010 WL 4399138, *3 (9th Cir. 2010) (citing *Winter*, 129 S. Ct. at 376). Indeed, “[a] preliminary injunction is . . . never awarded as of right.” *Winter*, 129 S. Ct. at 376 (citing *Munaf v. Geren*, 553 U.S. 674, 676 (2008)). Thus, a district court should enter a preliminary injunction only “upon a clear showing that the plaintiff is entitled to such relief.” *Earth Island Inst.*, 2010 WL 4399138, at *3 (quoting *Winter*, 129 S. Ct. at 375). Furthermore, “district courts must be sensitive to concerns of equity, federalism, and comity when considering injunctive relief against State agencies. A strong factual record . . . [and] a showing of pervasive and intentional misconduct [are required] before a district court may enjoin a State agency.” *Cupolo v. Bay Area Rapid Transit*, 5 F. Supp. 2d 1078, 1085 (N.D. Cal. 1997) (internal citations omitted).

V. DISCUSSION

The Court now turns to the merits of Plaintiff’s Motion for a Preliminary Injunction and will analyze the facts presented as they relate to each *Winter* element.

A. LIKELIHOOD OF SUCCESS ON THE MERITS

“The Constitution grants to the States a broad power to prescribe the ‘Times, Places and Manner of holding Elections for Senators and Representatives,’ Art. I, § 4, cl. 1.” *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 217 (1986). “This power is not absolute, but is ‘subject to the limitation that [it] may not be exercised in a way that violates . . . specific provisions of the Constitution.’” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008) (quoting *Williams v. Rhodes*, 393 U.S. 23, 29 (1968)). However, “[a]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); *see also Timmons v.*

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Twin Cities Area New Party, 520 U.S. 351, 358 (1997) (“States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder”). Against this backdrop, the Court examines Plaintiff’s First Amendment, Fourteenth Amendment, and Elections Clause claims.

1. Plaintiff’s First and Fourteenth Amendment Claims

In election regulation cases, the Supreme Court employs a balancing test “to resolve the tension between a candidate’s First Amendment rights and the state’s interest in preserving the fairness and integrity of the voting process.” *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1014 (9th Cir. 2002). When deciding whether a state election law violates a candidate’s First and Fourteenth Amendment rights, courts must “weigh the character and magnitude of the burden the State’s rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State’s concerns make the burden necessary.” *Id.* (quoting *Burdick*, 504 U.S. at 434). “Regulations imposing severe burdens on [a candidate’s] rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State’s ‘important regulatory interests’ will usually be enough to justify reasonable, nondiscriminatory restrictions.” *Id.* (citations omitted). “No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms,” and courts are required to make “hard judgments” given the interests involved. *Id.* Before turning to the State’s interests, the Court will first examine the “character and magnitude of the burden the State’s rule imposes” on Plaintiff’s rights.

Under the provisions of SB6, a candidate has three options with respect to designating his party affiliation. First, if the candidate designates a political party pursuant to California Elections Code section 8002.5, the name of that party will appear on the ballot. Second, if a candidate does not designate a party, the phrase “No Party Preference” will appear next to the candidate’s name. Third, if a candidate wishes, he may leave the space designated for party affiliation blank. *See* CAL. ELEC. CODE § 13105(a). As stated above, Defendant Bowen has interpreted the phrase “political party” in the first part of this section to mean a “qualified party” and has therefore precluded “non-qualified parties” from stating their preference on the ballot. Additionally, Defendant Bowen has precluded the use of the term “Independent” for “non-qualified parties.” Consequently, Plaintiff, who prefers the “Coffee Party,” cannot state that preference or that he is “Independent.” Rather, he must state that

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he has “No Party Preference.” Plaintiff only objects to Defendants’ refusal to place the term “Independent” on the ballot, contending that the First and Fourteenth Amendments give minor-party candidates the right to use the ballot label of “Independent.” (FAC ¶ 104; Mot. at 10.) Consequently, Plaintiff concludes that the designation of “No Party Preference” violates his constitutional rights. (*Id.*)

There is little doubt that Plaintiff’s speech is burdened because he is not able to state that he is “Independent” on the ballot. “It is the severity of that burden, however, that determines the standard of review by which we judge the state’s interest and, accordingly, decide whether the restriction is unconstitutional.” *Rubin*, 308 F.3d at 1014. “Courts will uphold as ‘not severe’ restrictions that are generally applicable, even-handed, politically neutral, and which protect the reliability and integrity of the election process.” *Id.* “This is true even when the regulations ‘have the effect of channeling expressive activities at the polls.’” *Id.* (quoting *Timmons*, 520 U.S. at 369). Indeed, “[c]ourts will strike down state election laws as severe speech restrictions only when they significantly impair access to the ballot, stifle core political speech, or dictate electoral outcomes.” *Id.* at 1015. Moreover, a restriction is particularly unlikely to be considered severe when a candidate is given other means of disseminating the desired information. *Id.* at 1014.

Here, Supreme Court, Ninth Circuit, and California case law suggests that refusing to allow Plaintiff to state the term “Independent” on the ballot is not a severe burden on Plaintiff’s rights. *See Rubin*, 308 F.3d at 1015 (stating that a prohibition on ballot labels such as “activist” does not severely burden a candidate’s First Amendment rights); *Timmons*, 520 U.S. at 364 (finding that a statute prohibiting candidates from appearing on a ballot as a candidate of more than one party does not impose a severe burden on First Amendment rights); *Lightfoot v. Eu*, 964 F.3d 865, 871 (9th Cir. 1992) (holding that requiring write-in candidates to meet certain thresholds before identifying party affiliation on the ballot was a “slight” burden); *Libertarian Party v. Eu*, 28 Cal. 3d 535, 545 (1980) (finding that preventing a candidate from an “unqualified” party from designating his party affiliation on a ballot is a “clearly insubstantial” burden). Plaintiff purports to cite case law in which the right to use the term “Independent” was allegedly deemed a fundamental right. As set forth in detail below, however, these cases are distinguishable. Furthermore, Plaintiff fails to point the Court to any binding authority in support of his position, and instead cites to Sixth Circuit and Massachusetts Supreme Court decisions.

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The first case on which Plaintiff relies is, in fact, contrary to his position. In *Schrader v. Blackwell*, the Sixth Circuit held that an Ohio statute that prohibited party labels to candidates of unqualified parties did not violate the candidate's constitutional rights. 241 F.3d 783 (6th Cir. 2001). The court recognized the premise that "party labels provide a shorthand designation of the views of party candidates on matters of public concern [and] the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise." *Id.* at 789 (quoting *Tashjian*, 479 U.S. at 220). The court found, however, that because reasonable means existed for a party to become recognized, the statute denying party labels on the general election ballot to candidates of unqualified political parties did not impose a severe burden on candidates' First Amendment rights. *Id.* at 787, 791 ("Ohio's ballot scheme places a burden on political parties to become recognized under Ohio law[,] . . . this burden is not unreasonable in light of Ohio's legitimate interests and is not so onerous as to make the law unconstitutional under the *Anderson* balancing test.").

Next, Plaintiff relies on *Bachrach v. Secretary of the Commonwealth*, 415 N.E. 2d 832 (Mass. 1981). In *Bachrach*, candidates were permitted to place any label on the ballot, up to three words long, but state legislation prohibited them from using the term "Independent." *Id.* at 833. The Massachusetts Supreme Court held the legislation invalid, finding that "Independent is a customary title long availed of in American politics, having a 'positive connotation' despite an unequivocal meaning" and ultimately that candidates were entitled to use the term "Independent." *Id.* at 836. However, *Bachrach* is factually distinguishable. There, the Massachusetts Legislature permitted any other word to be used as a designation and singled out only the word "Independent" resulting in what the court determined was "invidious discrimination." *Id.* Here, the California Legislature treats all candidates who are not affiliated with a "qualified party" equally. The only distinction is between those belonging to "qualified parties" and those belonging to "non-qualified parties," an issue that is not being challenged here. Moreover, the California Legislature has not singled out one ideology or one word for reasons of "invidious discrimination." Therefore, the logic of *Bachrach* is informative, but not dispositive.

Finally, in *Rosen v. Brown*, the Sixth Circuit found in favor of a candidate and several others who challenged an Ohio statute that prohibited placement of the term "Independent" on the ballot in conjunction with the candidate's name. 970 F.2d 169 (6th Cir. 1992). Because the ruling was in the context of a motion for summary judgment, the plaintiffs were

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able to present the affidavits of three experts, who each noted the disadvantage that the candidate would receive if he could not place “Independent” next to his name. *Id.* at 172-73. Notably, however, because the candidate in *Rosen* previously used the specific term “Independent” to publically represent his position, one of the experts found that denying him the ability to use the term “Independent” on the ballot would deprive him of “the identification he had worked to establish.” *Id.* at 173. Here, Plaintiff has not provided any expert testimony regarding the harm he allegedly suffers because he cannot state “Independent” on the ballot. Nor has Plaintiff alleged that he has publically used the term “Independent” and that because of this effort, the public readily associates his platform as one that is “Independent.” Additionally, the *Rosen* court considered the discriminatory history of Ohio election laws, *id.* at 177, but here, Plaintiff has not presented any evidence that California has a similar history. Finally, the *Rosen* court stated that without the “Independent” ballot designation, “the voter has no clue as to what the candidate stands for.” *Id.* at 172. Here, however, Plaintiff fails to show that California voters will not understand his position if he cannot use the “Independent” designation. In fact, this brings the Court to its next point.

In *Rubin v. City of Santa Monica*, the Ninth Circuit stated that “[a] restriction is particularly unlikely to be considered severe when a candidate is given other means of disseminating the desired information.” 308 F.3d at 1014. Here, Plaintiff has alternate means other than the ballot itself to advertise or otherwise explain his party affiliation to voters. Indeed, Plaintiff may express his preference for the “Coffee Party” or his “independence” from the “qualified parties” through various means, such as campaign mailings and candidate statements printed in the voter information pamphlet. *See* CAL. ELEC. CODE § 13307.5 (allowing candidates to “purchase the space to place a statement in the voter information portion of the sample ballot that does not exceed 250 words”); CAL. GOV’T CODE § 85601; *Rubin*, 308 F.3d at 1016 (stating that the ability of candidate to publish a statement in voter pamphlet “greatly decreases the burden imposed by” prohibition on the use of the term “activist” as the candidate’s occupation).⁵ Plaintiff’s ability to

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While Plaintiff submitted an untimely declaration stating that the cost for the statement could range from \$15,600 to \$62,400 for the SD 28 special primary election, the cost for such a statement during the November 2, 2010 general election ranged from \$75 to roughly \$8600. *See* <http://www.sos.ca.gov/elections/candidate-stmts/nov-2010/cost-est-leg-congressional.pdf>. Because of this conflicting evidence, the Court is not in a position to decide, nor have the parties properly raised, the issue of whether these costs impose unconstitutional burdens on Plaintiff’s rights. Thus, the Court focuses on the

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communicate his views to the electorate through other reasonable means greatly reduces any burden he might bear.

The Court has primarily considered the binding Supreme Court and Ninth Circuit case law and Plaintiff's ability to use alternative means of communication. It has also considered and distinguished the non-binding case law Plaintiff has presented. Additionally, the Court recognizes that Defendants apply the ballot designation restrictions to all "non-qualified parties," in a "generally applicable, even-handed, [and] politically neutral" way. *See Rubin*, 308 F.3d at 1014. In light of the forgoing discussions on all of these issues, the Court concludes that the burden on Plaintiff's rights is not severe. Thus, the Court turns to the State's interests.

Because Plaintiff's rights are not severely burdened, important regulatory interests will suffice to justify the State's restriction. *See Rubin*, 308 F.3d at 1014. California has at least two important interests in using the phrase "No Party Preference" rather than "Independent" to designate candidates affiliated with "non-qualified parties." First, Defendant Bowen argues that the State has a legitimate interest in maintaining the distinction between "qualified" political parties and "non-qualified" political organizations. (Def. Bowen's Opp'n at 13.) The Court agrees with Defendant Bowen that this interest is, at least, important. *See, e.g., Libertarian Party*, 28 Cal. 3d at 546 ("The maintenance of the integrity of the distinction between qualified and nonqualified parties serves a compelling state interest"); *Jenness v. Fortson*, 403 U.S. 431, 442 (1971) ("There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot-the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election."). Second, Defendant Bowen maintains that the State has an important interest in avoiding confusing or misleading party preference ballot designations. Again, the Court agrees with Defendant Bowen. *See Norman v. Reed*, 502 U.S. 279, 290 (1992) (to prevent "misrepresentation and electoral confusion," a state may prevent candidates from using party label if they are not affiliated with that party). While Plaintiff prefers the term "Independent," using this term to designate candidates affiliated with "non-qualified parties" may create confusion with those affiliated with the "American Independent" party, one of the six qualified political parties in California. In light of the foregoing, the Court finds that

fact that Plaintiff is permitted to provide a statement, and does not consider the prospective cost to do so.

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both interests presented by Defendants are important, if not compelling, to justify the State's restriction.

Because the burden on Plaintiff's constitutional rights is not severe, and California's interests are sufficiently important, the Court finds that Plaintiff is not likely to succeed on the merits of his First Amendment and Fourteenth Amendment claims.

2. Plaintiff's Elections Clause Claim

"[T]he Elections Clause grants to the States 'broad power' to prescribe the procedural mechanisms for holding congressional elections." *Cook v. Gralike*, 531 U.S. 510, 523 (2001) (citing *Tashjian*, 479 U.S. at 217). Indeed, the Framers of the Constitution "understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." *Id.* (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 833-34 (1995)).

Plaintiff claims that "SB6 grants a party label to candidates . . . who identify with the viewpoints of a major party, while forcing candidates . . . who identify with the viewpoints of a minor party to falsely state that they have 'No Party Preference.'" (Mot. at 15.) Thus, Plaintiff concludes that "SB6 was 'plainly designed to favor' candidates who identify with the viewpoints of major party, and was designed to 'disfavor' and 'handicap' candidates who identify with the viewpoints of a minor party. Furthermore, Plaintiff asserts that because it places disfavored candidates at a political disadvantage, SB6 also aims to 'dictate electoral outcomes.'" (*Id.*) In essence, Plaintiff claims that "qualified parties" are receiving benefits that are denied to "non-qualified parties."

In support of his position, Plaintiff cites to *Cook v Gralike*, 531 U.S. 510, 514 (2001). This case, however, is distinguishable. In *Cook*, the Missouri Constitution affirmatively instructed members and prospective members of the congressional delegation to support congressional term limits. *Id.* Those who failed to comply were to have statements such as "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" and "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" placed next to their names on the ballot. *Id.* at 524. The Court found that such "adverse labels" were "plainly designed to favor candidates who [were] willing to support the particular form of a term limits amendment and to disfavor

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those who either oppose[d] term limits entirely or would [have] preferr[ed] a different proposal” and “attached a concrete consequence to noncompliance.” *Id.* There is nothing of the sort present in the instant case. Plaintiff has not presented any evidence that his ability to state “Independent” on the ballot is restricted because he supports or opposes a particular measure, bill, or proposition. Rather, it appears to be limited for legitimate State reasons – namely, the State’s important regulatory and procedural interest in maintaining the distinction between “qualified” and “non-qualified” parties. That “non-qualified parties” do not receive all of the benefits to which “qualified parties” are entitled is presumably a natural and intended consequence of this distinction. Thus, *Cook*, which effectively imposed binding instructions on a candidate and punished failure to comply with such restrictions, is not dispositive here.

In light of the foregoing, the Court finds that SB6 is not designed to “dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints[,]” but rather to serve the important State interests. *See Cook*, 531 U.S. at 523. Consequently, Plaintiff is not likely to succeed on the merits of his claim for violation of his rights under the Elections Clause.

Plaintiff has not shown that he is likely to succeed on his First Amendment, Fourteenth Amendment, or Election Clause claims. Thus, the Court turns to the remaining *Winter* elements, beginning with the likelihood of irreparable harm.

B. LIKELIHOOD OF IRREPARABLE HARM

Under *Winter*, Plaintiff must *demonstrate* that the harm is real, imminent and significant, not just speculative or potential. 129 S. Ct. at 374. Plaintiff claims that because he intends to run as a candidate from the “Coffee Party,” or at least prefers to state that he is “Independent,” in the looming CD 36 Primary, he will suffer imminent, irreparable harm unless his Motion for a Preliminary Injunction is granted. (Mot. at 18.) Moreover, Plaintiff claims that injunctive relief is appropriate because such claims are “capable of repetition, yet evading review.” (*Id.*) Plaintiff, however, fails to substantively address this factor and instead only alleges, in a conclusory fashion, that he will be harmed. Plaintiff claims that he will be forced to “lie to voters” if he is required to state that he has “No Party Preference.” However, Plaintiff is not required to lie because section 13105(a) allows him to leave this space blank. Furthermore, Plaintiff has not provided any evidence to allow the Court to

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distinguish why he is significantly harmed by stating that he has “No Party Preference” when he would suffer no harm by stating that he is “Independent.” Because Plaintiff fails to present such evidence, the Court views his harm as speculative.

Notwithstanding Plaintiff’s failure to demonstrate real, imminent, and significant harm, the Court recognizes the fundamental value of First Amendment and Fourteenth Amendment rights. It has been shown, however, that it is unlikely Plaintiff will succeed in showing that his rights have been violated. Consequently, the Court does not find that Plaintiff is likely to suffer irreparable injury if his Motion is denied.

C. BALANCE OF EQUITIES

“In each case, courts ‘must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.’” *Winter*, 129 S. Ct. at 376 (quoting *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 542 (1987)). The Court has found the asserted harms to Plaintiff speculative at this juncture. Defendants also assert several harms, which the Court finds speculative, and consequently declines to discuss. However, Defendants raise one harm that the Court considers dispositive. “[I]t is clear that a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined.” *Coalition for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997). If SB6 is enjoined, it is clear that Defendants, as representatives of the State, will suffer irreparable harm. Thus, the Court finds the balance tips in favor of Defendants.

D. PUBLIC INTEREST

In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Winter*, 129 S. Ct. at 376 (quoting *Weinberger v. Romero Barcelo*, 456 U.S. 305, 312 (1982)). Plaintiff “bear[s] the initial burden of showing that [issuance of an] injunction is in the public interest.” *Aurora World, Inc. v. Ty, Inc.*, 719 F. Supp. 2d 1115, 1126 (C.D. Cal. 2009). In evaluating the public interest factor, district courts “should weigh the public interest in light of the likely consequences of the injunction. Such consequences must not be too remote, insubstantial, or speculative and must be supported by evidence.” *Id.*

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Plaintiff contends that granting an injunction will “protect the fundamental interests of minor-party candidates and the voters who support them.” (Mot. at 19.) However, while the Court certainly considers protection of fundamental rights to be in the public interest, whether the rights at issue are fundamental or are being violated is questionable. Plaintiff further asserts that an injunction will prevent millions of taxpayer dollars from being illegally spent on costly changes that may not need to be made.” (*Id.*) Plaintiff, however, offers no credible evidence to support this contention. Indeed, contrary to Plaintiff’s assertions, granting a preliminary injunction in this instance would be counterproductive to the public interest. Indeed, it was the public – namely, the California voters – who passed Proposition 14. Enjoining SB6 would therefore undermine the will of the electorate. Accordingly, this Court declines to take such drastic action based on the facts before it. *See Legislature v. Eu*, 54 Cal. 3d 492, 511-12 (1991) (stating that invalidating a voter-enacted legislative reform measure threatened to “insulate the Legislature from any severe reform measures directed at that branch . . .”).

VI. CONCLUSION

Having found that Plaintiff failed to establish a likelihood of success on the merits, that Plaintiff failed to establish a likelihood of irreparable harm, that the balance of equities tips sharply in Defendants’ favor, and that the public interest favors denial of the preliminary injunction, the Court hereby **DENIES** Plaintiff Michael Chamness’s Motion for a Preliminary Injunction.

IT IS SO ORDERED.

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