

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

Case No. CV 11-01479 ODW (FFMx) Date March 7, 2011

Title *Chamness v. Debra Bowen, et al.*

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 GRANTING in Part and DENYING in Part Proposed Intervener-Defendants' Ex Parte Application to Intervene [25] [Filed 03/01/11]**

## I. INTRODUCTION

Pending before the Court is Proposed Intervener-Defendants, California Independent Voter Project ("CAIVP"), David Takashima ("Takashima"), Abel Maldonado ("Maldonado"), and Californians to Defend the Open Primary's ("CADOP") (collectively, the "Proposed Intervener-Defendants"), March 1, 2011 *Ex Parte* Application to Intervene. (Dkt. No. 25.) Plaintiff, Michael Chamness ("Plaintiff") filed an Opposition on March 1, 2011, (Dkt. No. 15), to which the Proposed Intervener-Defendants filed a Reply on March 2, 2011 (Dkt. No. 33). Having considered the papers filed in support of and in opposition to the instant Application, the Court **GRANTS in Part** and **DENIES in Part** Proposed Intervener-Defendants' Application.

## II. FACTUAL BACKGROUND

This lawsuit challenges the constitutionality of the provisions of California Senate Bill 6 ("SB6"), the legislation implementing California's Proposition 14 ("Proposition 14"). Proposition 14 effectively replaces traditional California party primary elections with a type of "open primary" known as "top two" or "voter-nominated" primary elections. In doing so, Proposition 14 allows any candidate to run in primary elections held for congressional or state elective office, regardless of whether that candidate is affiliated with a California qualified party. Additionally, Proposition 14 permits any voter to vote in primary elections

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regardless of political party preference.

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 Election Clause. The gravamen of Plaintiff’s Complaint is that, as a result of SB6 and Proposition 14, when Plaintiff runs for political office, he is not permitted to state his party affiliation on the ballot, but rather, is required to falsely state that he has “No Party Preference.” As a remedy, Plaintiff asks this Court to enjoin SB6 and Proposition 14.

The Proposed Intervener-Defendants seek to intervene, claiming that they have significant protectable interests in the action. CAIVP is a non-profit organization that represents the interests of “Decline-to State” (“DTS”) candidates and voters. (Takashima Decl. ¶¶ 3-12.) CAIVP also drafted the proposal that became Proposition 14. (*Id.*) Takashima is a registered DTS voter, unaffiliated with any political party, who, as a result of Proposition 14 and SB6, was afforded the opportunity to vote in California primary elections. (*Id.* at ¶ 2.) Maldonado is a former California State Senator and Lt. Governor, who supported and substantially authored Proposition 14. Maldonado has also announced his candidacy for Congress in 2012. (Maldonado Decl. ¶¶ 2-3, 13-17.) CADOP is a California non-profit corporation, formed before Proposition 14 was passed by California’s voters. Its purpose was and is to educate the public about and to advocate for open, nonpartisan primary elections in California. (Zaremborg Decl. ¶ 2.) Yes on 14-Californians for an Open Primary, a campaign committee created and controlled by CADOP, was primarily formed to support Proposition 14. (*Id.* at ¶¶ 2-4.)

The constitutionality of Proposition 14 and SB6 has been previously challenged in three California courts: the San Francisco County Superior Court, the California Court of Appeal for the 1st Appellate District, and the California Supreme Court. In each of those cases, the courts have denied efforts by persons other than Plaintiff to enjoin SB6 and Proposition 14.<sup>1</sup> Each of the Proposed Intervener-Defendants, with the exception of Takashima, was permitted to intervene in the abovementioned state court actions and participated in those proceedings. (*See Field v. Bowen*, Case No. 10-502018 (San Francisco Super. Ct.); *Field v. Superior Court*, Case No. A129829 (Cal. Ct. App. 1st Dist.); *Field v.*

<sup>1</sup> The action in the San Francisco County Superior Court is now on appeal.

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*Superior Court*, Case No. S188436 (Cal.); Zaremburg Decl. ¶¶ 2, 3.)

### III. DISCUSSION

#### A. *Legal Standard*

The Ninth Circuit requires an applicant for intervention as of right under Federal Rule of Civil Procedure 24(a)(2) to demonstrate that “(1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant’s interest.” *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)). “Rule 24 traditionally receives liberal construction in favor of applicants for intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir.), *cert. denied sub nom. Hoohuli v. Lingle*, 540 U.S. 1017 (2003).

#### B. *Intervention is Appropriate as to CAIVP, Maldonado, and CADOP<sup>2</sup>*

CAIVP has committed substantial resources and effort toward advocating for the ability of DTS voters to participate in primary elections. That participation would be severely hampered if the Court grants Plaintiff’s requested relief and enjoins Proposition 14. Therefore, the Court finds that CAIVP has a direct interest in this litigation and should be permitted to intervene.

Maldonado’s interest in the pending litigation is two-fold. First, he has announced his candidacy for Congress in 2012 and consequently has a direct interest in determining

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<sup>2</sup> Plaintiff’s allegation that Proposed Intervener-Defendants’ *Ex Parte* Application is untimely is unfounded. “Timeliness is a flexible concept; its determination is left to the district court’s discretion. . . . Courts weigh three factors in determining whether a motion to intervene is timely: ‘(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay.’” *Alisal Water Corp.*, 370 F.3d at 921. Here, the Application was made less than two weeks after the filing of the Complaint, an early stage in the litigation with virtually no delay. Further, Plaintiff has not demonstrated prejudice to him justifying denial of the Application based on timeliness.

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whether he will run in Proposition 14's top-two candidate open primary, or under the pre-existing party primary system. Second, as an author and proponent of Proposition 14, he has an interest in protecting the legislation. Proposition 14 was one of the key achievements of Maldonado's tenure and thus a determination that it is unconstitutional could affect his reputation and his campaign. Hence, the Court finds that Maldonado has a direct interest in this litigation and should be permitted to intervene.

CADOP created Yes on 14-Californians for an Open Primary, which was formed primarily to support Proposition 14. CADOP stands to lose, among other things, its monetary investment if Plaintiff attains the relief he seeks. Accordingly, the Court finds that CADOP has a direct interest in this litigation and should be permitted to intervene.

*C. Intervention is Not Appropriate as to Takashima*

Proposition 14 granted DTS voters like Takashima a new constitutional right to vote in primary elections. That right may be eliminated if Plaintiff succeeds in this litigation. Nevertheless, the Court finds that Takashima's interests will be adequately represented by CAIVP and the other Proposed Intervener-Defendants. CAIVP's primary purpose is to advocate for DTS voters, including Takashima. There is no reason to conclude that his interests will not be adequately protected in his absence.

#### IV. CONCLUSION

In light of the foregoing, the Court finds that intervention is appropriate as to California Independent Voter Project, Abel Maldonado, and Californians to Defend the Open Primary and therefore **GRANTS** Proposed Intervener-Defendants' *Ex Parte* Application as to these parties. Conversely, the Court finds that intervention is not appropriate as to David Takashima and therefore **DENIES** Proposed Intervener-Defendants' *Ex Parte* Application as to him.

**IT IS SO ORDERED.**

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