

1 GAUTAM DUTTA, ESQ. (State Bar No. 199326)
2 39270 Paseo Padre Parkway # 206
3 Fremont, CA 94538
4 Telephone: 415.236.2048
5 Email: Dutta@BusinessandElectionLaw.com
6 Fax: 213.405.2416

7 Attorney for Intervenor-Applicant
8 LINDA HALL

COPY

ENDORSED
FILED
San Francisco County Superior Court

NOV 23 2011

CLERK OF THE COURT
~~COURT ANNIE PASCUAL~~
Deputy Clerk

9 CALIFORNIA SUPERIOR COURT
10 COUNTY OF SAN FRANCISCO

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

15 *Plaintiffs,*

16 LINDA HALL,

17 *Intervenor-Applicant,*

18 vs.

19 DEBRA BOWEN, et al.

20 *Defendants,*

21 vs.

22 ABEL MALDONADO, et al.

23 *Intervenors-Defendants.*

CASE NO. CGC-10-502018

DECLARATION OF GAUTAM DUTTA

HEARING DATE: Dec. 2, 2011
HEARING TIME: 9:30 am
JUDGE: Hon. Harold E. Kahn
DEPARTMENT: 302

24 I, Gautam Dutta, declare that the following is true:

INTRODUCTION

25 1. I am an attorney licensed to practice in the State of California, and have been a
26 member of the State Bar of California since 1998 (Bar No. 199326). I represent Intervenor-
27 Applicant Linda Hall.
28

DECLARATION OF GAUTAM DUTTA

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2. I have attached copies of the following documents:

Exhibit 1: The Court's Oct. 5, 2010 Order denying Plaintiffs' Motion for Preliminary Injunction

Exhibit 2: Plaintiffs' Nov. 17, 2011 Letter to the Ninth Circuit in *Chamness v. Bowen* (9th Cir. Case No. 11-56449)

Exhibit 3: Plaintiffs' May 6, 2011 Motion for Summary Judgment in *Chamness v. Bowen* (C.D. Cal. Case No. 2:11-CV-01479 (ODW-FFMx)).

I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct and are based on my personal knowledge, except for matters stated on information and belief; and, as to those matters, I believe them to be true. If called as a witness, I could competently testify thereto.

DATED: Nov. 20, 2011


GAUTAM DUTTA, ESQ.

DECLARATION OF GAUTAM DUTTA

EXHIBIT 1

Gautam Dutta, Esq. (SB #199326)
39270 Paseo Padre Pkwy. #206
Fremont, CA 94538

FILED
San Francisco County Superior Court

OCT 05 2010

CLERK OF THE COURT

By: Jana Gonzales
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

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

Plaintiffs,

vs.

DEBRA BOWEN, et al.,

Defendants.

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

Intervener-Defendants.

Case No.: CGC-10-502018

**[Proposed] ORDER
DENYING PLAINTIFFS'
MOTION FOR
PRELIMINARY
INJUNCTION**

DATE: September 14, 2010

TIME: 9:30 a.m.

DEPT: 302

JUDGE: Hon. Charlotte Woolard

1 This matter came for hearing before the Court pursuant to Plaintiffs' motion for a
2 preliminary injunction, filed July 29, 2010.

3 Defendant Secretary of State Debra Bowen and Interveners Abel Maldonado, Yes on
4 14-Californians for an Open Primary, and the California Independent Voter Project oppose
5 Plaintiffs' motion. The remaining defendants, registrars of San Francisco, Los Angeles,
6 Orange, Santa Clara, Alameda, and Tulare Counties, filed statements of non-opposition
7 expressing their intention to be bound by the ruling of this Court.

8 This matter was heard at 9:30 a.m. on September 14, 2010, in Department 302 of
9 the Superior Court, the Honorable Charlotte Walter Woolard, Judge of the Superior Court
10 of the City & County of San Francisco presiding.

11 The Court, having considered the admissible documentary evidence and the
12 arguments of counsel, and the matter having been submitted for decision, **DENIES**
13 Plaintiffs' motion for preliminary injunction.

14 Plaintiffs have standing to file their claims and bring this motion. (*Storer v. Brown*
15 (1974) 415 U.S. 724, 737 n.8.)

16 However, Plaintiffs fail to show a likelihood of success on the merits.

17 First, it is constitutional to ban write-in voting under U.S. and California Supreme
18 Court precedent. (See *Burdick v. Takushi* (1992) 504 U.S. 428; *Edelstein v. City & County*
19 *of San Francisco* (2002) 29 Cal.4th 164.) When Election Code sections 8141.5 and 8606
20 are read together, it is apparent that the Legislature intended to ban write-ins in the
21 general election. (See also comments of the Secretary of State and the Assembly Bill
22 Analysis.)

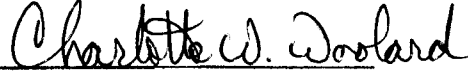
23 Moreover, insufficient evidence and case law support the argument that the party
24 preference ban violates the Equal Protection Clause or the Elections Clause. The state may
25 require candidates not affiliated with qualified parties to use the "independent" label. (See
26 *Libertarian Party v. Eu* (1980) 28 Cal.3d 535.) Several federal circuit courts have also
27 held that a state is not constitutionally obligated to permit candidates to list their preferred
28 party label on the ballot. (See *Schrader v. Blackwell* (6th Cir.) 241 F.3d 783, cert. den.

1 (2001) 534 U.S. 888; *McLaughlin v. No. Carolina Bd. of Elec.* (4th Cir. 1995) 65 F.3d 1215,
2 *cert. den.* (1996) 517 U.S. 1104; *Lightfoot v. Eu* (9th Cir. 1992) 964 F.2d 865, 871, *cert. den.*
3 (1993) 507 U.S. 919; *Rubin v. City of Santa Monica* (9th Cir. 2002) 308 F.3d 1008, *cert.*
4 *den.* (2003) 540 U.S. 875.)

5 Finally, Plaintiffs showing of imminent harm is not sufficient.

6 This order may be served by Interveners upon the parties and their counsel by fax or
7 by e-mail.

8 Dated: ~~September~~ ^{October 5} __, 2010


HON. CHARLOTTE WOOLARD
Judge of the Superior Court of the
City and County of San Francisco

12 APPROVED AS TO FORM:

13 Dated: September __, 2010

14 _____
GAUTAM DUTTA
Attorney for Plaintiffs

16 Dated: September __, 2010

18 _____
EDMUND G. BROWN, JR.
Attorney General of California
STEPHEN P. ACQUISTO
Supervising Deputy Attorney General
MARK R. BECKINGTON
Deputy Attorney General
Attorneys for Defendant
Secretary of State Debra Bowen

24 Dated: September 15, 2010

25 _____
NIELSEN, MERKSAMER, PARRINELLO,
MUELLER & NAYLOR, LLP



27 _____
MARGUERITE MARY LEONI
CHRISTOPHER E. SKINNELL
Attorneys for Interveners

1 (2001) 534 U.S. 888; *McLaughlin v. No. Carolina Bd. of Elec.* (4th Cir. 1995) 65 F.3d 1215,
 2 *cert. den.* (1996) 517 U.S. 1104; *Lightfoot v. Eu* (9th Cir. 1992) 964 F.2d 865, 871, *cert. den.*
 3 (1993) 507 U.S. 919; *Rubin v. City of Santa Monica* (9th Cir. 2002) 308 F.3d 1008, *cert.*
 4 *den.* (2003) 540 U.S. 875.)

5 Finally, Plaintiffs showing of imminent harm is not sufficient.

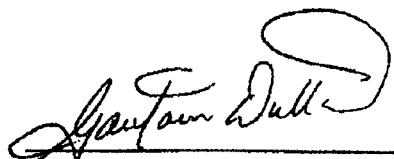
6 This order may be served by Interveners upon the parties and their counsel by fax or
 7 by e-mail.

8 Dated: September __, 2010

9 _____
 10 HON. CHARLOTTE WOOLARD
 11 Judge of the Superior Court of the
 12 City and County of San Francisco

12 APPROVED AS TO FORM:

13 Dated: September 15, 2010

14 
 15 _____
 16 GAUTAM DUTTA
 17 Attorney for Plaintiffs

16 Dated: September __, 2010

18 _____
 19 EDMUND G. BROWN, JR.
 20 Attorney General of California
 21 STEPHEN P. ACQUISTO
 22 Supervising Deputy Attorney General
 23 MARK R. BECKINGTON
 24 Deputy Attorney General
 25 Attorneys for Defendant
 26 Secretary of State Debra Bowen

24 Dated: September __, 2010

25 _____
 26 NIELSEN, MERKSAMER, PARRINELLO,
 27 MUELLER & NAYLOR, LLP

27 _____
 28 MARGUERITE MARY LEONI
 CHRISTOPHER E. SKINNELL
 Attorney for Interveners

1 (2001) 534 U.S. 888; *McLaughlin v. No. Carolina Bd. of Elec.* (4th Cir. 1995) 65 F.3d 1215,
2 *cert. den.* (1996) 517 U.S. 1104; *Lightfoot v. Eu* (9th Cir. 1992) 964 F.2d 865, 871, *cert. den.*
3 (1993) 507 U.S. 919; *Rubin v. City of Santa Monica* (9th Cir. 2002) 308 F.3d 1008, *cert.*
4 *den.* (2003) 540 U.S. 875.)

5 Finally, Plaintiffs showing of imminent harm is not sufficient.

6 This order may be served by Interveners upon the parties and their counsel by fax or
7 by e-mail.

8 Dated: September __, 2010

9
10

HON. CHARLOTTE WOOLARD
Judge of the Superior Court of the
City and County of San Francisco

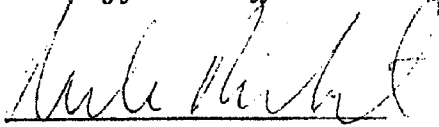
11
12 APPROVED AS TO FORM:

13 Dated: September __, 2010

14
15

GAUTAM DUTTA
Attorney for Plaintiffs

16 Dated: September 15, 2010

17 
18 EDMUND G. BROWN, JR.
Attorney General of California
19 STEPHEN P. ACQUISTO
Supervising Deputy Attorney General
20 MARK R. BECKINGTON
Deputy Attorney General
21 *Attorneys for Defendant*
22 *Secretary of State Debra Bowen*

23
24 Dated: September __, 2010

25
26

NIELSEN, MERKSAMER, PARRINELLO,
MUELLER & NAYLOR, LLP

27
28

MARGUERITE MARY LEONI
CHRISTOPHER E. SKINNELL
Attorney for Interveners

DECLARATION OF GAUTAM DUTTA

EXHIBIT 2

GAUTAM DUTTA, Attorney-at-Law

39270 Paseo Padre Pkwy. # 206 • Fremont, CA 94538 • 415.236.2048 • 213.405.2416 fax

~~~~~  
November 17, 2011

Molly Dwyer, Clerk of the Court  
U.S. Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

Re: *Chamness v. Bowen* (Case No. 11-56449)  
*Relevant California Election Deadline*

Dear Ms. Dwyer:

Our office represents Plaintiffs in the case captioned above. Yesterday, the Court re-affirmed the briefing schedule for Plaintiffs' appeal. In so doing, the Court took judicial notice of the 2012 California election calendar (attached as Exhibit 1).<sup>1</sup>

As the Court considers an appropriate date on which to calendar this case, Plaintiffs wish to call its attention to a relevant election deadline. Namely, no later than **March 29, 2012**, the Secretary of State must send a final, certified list of federal and state candidates to voting officials in all 58 counties, along with the *ballot label* ("party preference") that must appear next to each candidate's name.<sup>2</sup>

The Secretary of State has told the Court that she will abide by its ruling.<sup>3</sup> Thus, if the Court rules that minor-party candidates may not be banned from using the ballot label of "Independent", the Court can assume that the Secretary of State will allow them to use that ballot label *in the 2012 statewide election*.

Thank you for your time and attention.

Sincerely,

/s/

Gautam Dutta, Esq.

---

<sup>1</sup> Court's Nov. 16, 2011 Order, Dkt. No. 22 (*granting* Plaintiffs' Oct. 11, 2011 RJN, Dkt. No. 16).

<sup>2</sup> Plaintiffs' Oct. 11, 2011 RJN Exh. 1, Dkt. No. 16-4 (*attached as* Exh. 1 to this Letter), at 10.

<sup>3</sup> "[T]here is *no reason to suspect* that the Secretary of State would 'refuse' to follow a federal court order." Secretary of State's Oct. 24, 2011 Opp'n, Dkt. No. 12, at 5 (quotations in original, italics added).

GAUTAM DUTTA, Attorney-at-Law

39270 Paseo Padre Pkwy. # 206 • Fremont, CA 94538 • 415.236.2048 • 213.405.2416 fax  
~~~~~

CERTIFICATE OF SERVICE

On Nov. 17, 2011, I electronically filed, via CM/ECF, a copy of the foregoing Letter with the Clerk of the Court of the U.S. Court of Appeals for the Ninth Circuit. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ _____


GAUTAM DUTTA

Letter to the Court

EXHIBIT 1

STATEWIDE DIRECT PRIMARY ELECTION CALENDAR
JUNE 5, 2012

All section references are to the California Elections Code unless stated otherwise. Gov't references the California Government Code; Ed. references the California Education Code.

Proposition 14, the Top Two Candidate Open Primary Act passed by the voters in June 2010, provides for a "voter-nominated primary election" for state elective and congressional offices without regard to political party preference disclosed by either the candidate or the voter. The two candidates receiving the two highest vote totals for each office, regardless of party preference, would then compete at the ensuing General Election. **There are several changes to this calendar due to its enactment. Look for the changes indicated by this icon:**  **These changes may not be final. Watch for updates.**

December 30, 2011
through
February 8, 2012
(E-158 – 118)

SIGNATURES IN LIEU OF FILING FEE PETITIONS
(JUDICIAL OFFICES OF THE SUPERIOR COURT

ONLY): Dates between which all candidates for judicial offices of the Superior Court may obtain from the Registrar of Voters office petitions for securing Signatures-In-Lieu of paying for all of, or any part of, the Filing Fee for an office. **§§ 8061, 8105(b), 8106**

Only registered voters who are qualified to vote for the candidate may sign the petition. No voter shall sign more petitions for candidates than there are offices to be filled. **§ 8106**

The Registrar of Voters' office will issue petitions for obtaining the minimum number of Signatures-In-Lieu of paying the Filing Fee. If the candidate requires an additional quantity of petitions, the candidate may duplicate a blank petition to obtain the desired quantity. **§ 8106**

Signatures on Petitions In-Lieu of Filing Fee may be applied to and combined with the valid number of signatures on Nomination Papers to satisfy the signature requirement for the office. **§ 8061**

The last day to file Signatures-In-Lieu of Filing Fee Petitions for candidates for judicial office of the Superior Court is **February 8, 2012, 5:00 p.m.** **§§ 8105(b), 8106**

SIGNATURES IN LIEU OF FILING FEE PETITIONS
(NOT JUDICIAL OFFICES OF THE SUPERIOR COURT):

Dates between which all candidates for offices, other than judicial offices of the Superior Court, may obtain from the Registrar of Voters' office petitions for securing Signatures-In-Lieu of paying for all of, or any part of, the Filing Fee for an office.


§§ 8061, 8105, 8106

December 30, 2011
through
February 23, 2012
(E-158 – 103)

January 30, 2012
through
February 8, 2012
(E-127 - 118)

Only registered voters who are qualified to vote for the candidate may sign the petition. No voter shall sign more petitions for candidates than there are offices to be filled. **§ 8106**

For **party-nominated/partisan offices**, signers shall be registered voters who disclosed on their registration affidavits a preference for the party in which the nomination is proposed. **§ 8068**

 **For the June 5, 2012 Statewide Direct Primary Election, voter-nominated offices are Member of the United States Senate, Member of Congress, Member of the State Senate, and Member of the State Assembly.** For voter-nominated offices, signers shall be registered voters in the district in which the candidate is to be voted on. **Signers do not need to be affiliated with the same party as the candidate or have disclosed a preference for any party on their registration affidavits.**** **§ 8068**

The Registrar of Voters' office will issue petitions for obtaining the minimum number of Signatures-In-Lieu of paying the Filing Fee. If the candidate requires an additional quantity of petitions, the candidate may duplicate a blank petition to obtain the desired quantity. **§ 8106**

Signatures on Petitions In-Lieu of Filing Fee may be applied to and combined with the valid number of signatures on Nomination Papers to satisfy the signature requirement for the office. **§ 8061**

The last day to file Signatures In-Lieu of Filing Fee Petitions for all candidates for offices, other than judicial offices of the Superior Court, who must pay a Filing Fee is **February 23, 2012, 5:00 p.m.** **§§ 8105, 8106**

DECLARATION OF INTENTION (JUDICIAL OFFICES OF THE SUPERIOR COURT ONLY): Dates between which candidates for judicial offices of the Superior Court must file a Declaration of Intention to become a candidate for office. **§ 8023**

EXCEPTION: If an incumbent fails to file a Declaration of Intention by **February 8, 2012, 5:00 p.m.**, persons other than the incumbent have until **February 13, 2012*, 5:00 p.m.** to file a Declaration of Intention. **§§ 8022, 8023(b)**

The Filing Fee, or Signatures-In-Lieu of Filing Fee Petition, all or part, must be submitted at the time the Declaration of Intention

***If date falls on a Sunday or holiday, use next business day.**

**** This change may not be final. Watch for updates.**

January 31, 2012
 (Date fixed by law)
 (E-126)

February 9, 2012
 through
 February 13, 2012*
 (E-117 - 113)

February 6, 2012
 through
 March 7, 2012
 (E-120 - 90)

February 13, 2012*
 through
 March 9, 2012
 (E-113 - 88)

is filed. **The Filing Fee is non-refundable.** This applies to all candidates who are required to file a Declaration of Intention.
§ 8105(b)

SEMI-ANNUAL CAMPAIGN DISCLOSURE STATEMENTS DUE: Last day to file semi-annual campaign disclosure statements for all candidates and slate mailer organizations for the period ending **December 31, 2011.**
Gov't §§ 84200, 84218

EXTENDED FILING PERIOD FOR DECLARATION OF INTENTION (JUDICIAL OFFICES OF THE SUPERIOR COURT ONLY): Extension of period for persons other than the incumbent where the incumbent fails to file a Declaration of Intention by **February 8, 2012, 5:00 p.m.** **§§ 8022, 8023(b)**

NOTICE OF ELECTION: The Registrar of Voters must publish once in a newspaper of general circulation the Notice of Election. The notice shall contain the date of the election; the offices for which candidates may file; the qualifications for each office; when and where nomination papers may be obtained; and that appointment to each elective office will be made as prescribed by Elections Code Section 10515 in the event there are no nominees or an insufficient number of nominees for such office and a petition for an election is not filed within the time period prescribed by Elections Code Section 10515. **§ 12112(a)**

Between these dates, the Registrar of Voters shall issue a general press release which shall set forth the district elective offices to be filled and a telephone number that voters may use to obtain information. **§ 12112(b)**

DECLARATION OF CANDIDACY AND NOMINATION PAPERS -- CANDIDATE FILING (ALL OFFICES, INCLUDING JUDICIAL OFFICES OF THE SUPERIOR COURT): Nomination Papers and Declaration of Candidacy forms for all offices may be obtained from and must be delivered for filing to the Registrar of Voters' office from **February 13, 2012 through March 9, 2012, 5:00 p.m.** No person shall be considered a legally qualified candidate for any office unless that person has filed a Declaration of Candidacy or Statement of Write-in Candidacy with the elections official.
§§ 8020, 8041, 8061, 8100, 8105, 8106, 10407

***If date falls on a Sunday or holiday, use next business day.**

EXCEPTION: If an incumbent, (see below regarding Judges of the Superior Court), fails to file Nomination Papers and a Declaration of Candidacy by **March 9, 2012**, the filing period is extended through **March 14, 2012** for all qualified persons other than the incumbent. However if the incumbent's failure to file nomination documents is because he/she has already served the maximum number of terms permitted by the California Constitution for that office, there shall be no extension of the period for filing the nomination documents. **§§ 8022, 8024**

If an incumbent Judge of the Superior Court files a Declaration of Intention, but fails to qualify for the nomination by **March 9, 2012**, there is a 5-day extension allowed for all qualified persons other than the incumbent to file for such office, notwithstanding that he/she has not filed a written and signed Declaration of Intention to become a candidate for the office. **§ 8204**

Signers shall be registered voters in the district in which the candidate is to be voted on. For **party-nominated/partisan offices (President/Vice President and Member of County Central Committee)**, signers shall be registered voters who disclosed a preference on their registration affidavits for the party in which the nomination is proposed. **§ 8068**

NEW For the **June 5, 2012 Statewide Direct Primary Election**, voter-nominated offices are **Member of the U.S. Senate, Member of Congress, Member of the State Senate, and Member of the State Assembly**. For voter-nominated offices, signers shall be registered voters in the district in which the candidate is to be voted on. **Signers do not need to be affiliated with the same party as the candidate or have disclosed a preference for any party on their registration affidavits.**** **§ 8068**

NEW For voter-nominated offices, a candidate may indicate his or her party preference, or lack of party preference, as disclosed upon the candidate's most recent registration affidavit, upon his or her Declaration of Candidacy. If a candidate indicates his/her party preference on his/her Declaration of Candidacy, it shall appear on the Primary and General Elections' ballots in conjunction with his/her name. The candidate's designated party preference on the ballot shall not be changed between the Primary and General Elections. A candidate for voter-nominated office may also choose not to have the party preference disclosed upon his/her most recent affidavit of registration indicated upon the ballot.** **§§ 8002.5, 13105**

****This change may not be final. Watch for updates.**



A candidate designating a party preference for a voter-nominated office shall not be deemed to be the official nominee of the party designated as preferred by the candidate. The party preference is shown for the information of the voters only.**§ 8002.5

For party-nominated/partisan offices (county central committee offices), Registrar of Voters' staff will verify on the candidate's Declaration of Candidacy his/her party preference as disclosed upon his/her most recent registration affidavit. His/her name and Ballot Designation, if applicable, will be listed on that party's ballot.

§§ 8068, 8081



CANDIDATE PARTY PREFERENCE HISTORY:

Under the Top Two Candidate Open Primary Act (Proposition 14) which was approved by California voters in June of 2010, the Secretary of State is required to provide the political party preference history for the preceding 10 years for candidates for voter-nominated offices. A candidate is responsible for providing his/her party preference history on his/her Declaration of Candidacy filed by **March 9, 2012.****

§ 8121(b)

FILING FEES: Filing Fees must be paid at the time the Nomination Papers are obtained from the Registrar of Voters. This fee is nonrefundable. **(Candidates for judicial offices of the Superior Court pay the Filing Fee at the time of filing the Declaration of Intention to become a candidate.)** Signatures appearing on a filed Petition In- Lieu of Filing Fee can be counted toward the number of signatures required for the candidate's Nomination Papers. If the candidate's Signatures-In-Lieu of Filing Fee Petition contains the requisite number of valid signatures required for his/her Nomination Papers, the Registrar of Voters shall not require the candidate to circulate a Nomination Papers to be signed by qualified registered voters.

§§ 8061, 8105, 8106

Candidates who submit Signatures-In-Lieu of Filing Fee Petitions that do not contain the requisite number of signatures for the Nomination Papers are still entitled to file Nomination Papers during the nomination period provided the Filing Fee has been paid.

§§ 8061, 8106

STATEMENT OF ECONOMIC INTERESTS: Every candidate for an office specified in Government Code section 87200, other than a Justice of an Appellate or the Supreme Court, shall file no later than the final filing date for a Declaration of Candidacy, a statement disclosing his/her investments and his/her interests in real property and any income received during the immediately

February 13, 2012*
through
March 9, 2012
(E-113 - 88)

February 13, 2012*
through
March 9, 2012
(E-113 - 88)

*If date falls on a Sunday or holiday, use next business day.

**This change may not be final. Watch for updates.

February 13, 2012*
through
March 9, 2012
(E-113 - 88)

preceding 12 months. Such statement is not required if the candidate has filed, within 60 days prior to the filing of his/her Declaration of Candidacy, a statement for the same jurisdiction.

Gov't §§ 87200, 87201, 87500

CANDIDATES' STATEMENTS OF QUALIFICATIONS FOR NONPARTISAN OFFICES:

Each candidate for a nonpartisan office may prepare a statement on a form provided by the Registrar of Voters office. The statement may contain no more than 200 words, unless the governing body of the local agency has authorized the statement to contain 400 words. The statement must be filed at the same time the Declaration of Candidacy is filed. **The statement may be withdrawn, but not changed, during the nomination period and until 5:00 p.m. of the next working day after the close of the nomination period.** If the nomination period is extended because an incumbent eligible for reelection failed to file a Declaration of Candidacy, a candidate filing during the extended filing period may file a Candidate's Statement. The next working day after the close of the extended filing period for the office is the last day that a Candidate's Statement may be withdrawn. **A Candidate's Statement may not be changed.**

§ 13307

The Registrar of Voters' office will estimate the total cost of printing and handling the Candidate's Statement and will require each candidate filing a statement to pay in advance his/her estimated pro rata share as a condition of having his/her statement included in the voter's pamphlet. This amount must be paid at the time the Candidate's Statement is filed. If there is an underpayment, the candidate shall be required to pay the balance of the cost incurred. Overpayments will be refunded within 30 days of the election.

§ 13307

The Candidate's Statement is confidential until after the expiration of the filing period. Copies of all Candidates' Statements will be available for public inspection at the Registrar of Voters' office and on its website for 10 calendar days prior to being submitted for printing.

§§ 13311, 13313

CANDIDATES' STATEMENTS OF QUALIFICATIONS FOR CONGRESSIONAL OFFICES:

All candidates for Congressional offices may prepare a Candidate's Statement, not to exceed 250 words. The statement must be filed no later than 5:00 p.m. on the 88th day prior to the election, or in the event the

February 13, 2012*
through
March 9, 2012
(E-113 - 88)

***If date falls on a Sunday or holiday, use next business day.**

February 13, 2012*
through
March 9, 2012
(E-113 – 88)

February 13, 2012*
through
March 9, 2012
(E-113 – 88)

February 23, 2012
(E-103)

nomination period has been extended, until 5:00 p.m. on the 83rd day prior to the election, whichever is applicable. All statements may be submitted on the form provided by the county elections official of each county in which the candidate wishes to have his/her statement printed. Costs of providing statements to voters shall be paid by the candidates. **Congressional candidates do not need to voluntarily agree to expenditure limits to prepare a Candidate’s Statement.** § 13307.5

CANDIDATES’ STATEMENTS OF QUALIFICATIONS FOR LEGISLATIVE OFFICES: Pursuant to Proposition 34 adopted by the voters in November of 2000, all candidates for State elective offices as specified in Government Code section 82053 **who have voluntarily agreed to expenditure limits may prepare a Candidate’s Statement.** Gov’t § 85601

The statement must be filed no later than 5:00 p.m. on the 88th day prior to the election, or in the event the nomination period has been extended, until 5:00 p.m. on the 83rd day prior to the election, whichever is applicable. All statements may be submitted on the form provided by the county election official of each county in which the candidate wishes to have his/her statement printed. Costs of providing statements to voters shall be paid by the candidates. **Gov’t § 85601**

CANDIDATES’ STATEMENTS OF QUALIFICATIONS MAY MAKE NO REFERENCE TO ANOTHER CANDIDATE: In addition to the restrictions set forth in Section 13307, a Candidate’s Statement for any office submitted pursuant to Section 13307 shall be limited to a recitation of the candidate’s own personal background and qualifications, and **shall not in any way make reference to other candidates for that office or to another candidate’s qualifications, character, or activities.** The elections official shall not cause to be printed or circulated any statement that the elections official determines is not so limited or that includes any reference prohibited by this section. **§ 13308**

LAST DAY TO FILE SIGNATURES IN-LIEU OF FILING FEE PETITIONS (NOT JUDICIAL OFFICES OF THE SUPERIOR COURT): The last day for filing Signatures-In-Lieu of Filing Fee Petitions for candidates, other than those seeking nomination for judicial offices of the Superior Court, is **February 23, 2012, 5:00 p.m.** §§ 8105, 8106

***If date falls on a Sunday or holiday, use next business day.**

<p>March 9, 2012 (E-88)</p>	<p><u>LAST DAY TO REQUEST CONSOLIDATION OF ELECTION WITH PRIMARY ELECTION:</u> Resolution requesting consolidation with Statewide Direct Primary Election must be filed no later than this date. § 10403</p>
<p>March 9, 2012 (E-88)</p>	<p><u>DEADLINE FOR FILING SUPPLEMENTAL SIGNATURES IN LIEU OF FILING FEE PETITIONS:</u> Last day to file with the Registrar of Voters' office supplemental signatures or pay a pro rata portion of the Filing Fee to cover any deficiency. § 8106(b)(3)</p>
<p>March 9, 2012 (E-88)</p>	<p><u>DEADLINE – CIRCULATION OF NOMINATION DOCUMENTS:</u> Last day to circulate and to file nomination documents and a Candidate's Statement of Qualifications with the Registrar of Voters' office. §§ 8020, 13307</p>
<p>March 10, 2012 through March 14, 2012 (E-87 – 83)</p>	<p><u>EXTENSION OF NOMINATION PERIOD IF INCUMBENT FAILS TO FILE:</u> If an incumbent for voter-nominated offices – Member of United States Senate, Member of Congress, Member of the State Senate, and Member of the State Assembly – who is eligible for re-election fails to file his/her nomination documents by March 9, 2012, there is a 5-day extension allowed for any qualified person other than the incumbent to file for such office. However, no 5-day extension occurs if the incumbent's failure to file is because he/she has already served the maximum number of terms permitted by the California Constitution for that office. § 8022</p> <p>Notwithstanding Section 8020 or any other provision of the law, if nomination documents for an incumbent officer of a county are not delivered by 5:00 p.m. on the 88th day before the Statewide Direct Primary Election, any person other than the person who was the incumbent on the 88th day shall have until 5:00 p.m. on the 83rd day before the election to file nomination documents for the elective office. § 8024</p> <p>If an incumbent Judge of the Superior Court files a Declaration of Intention, but fails to qualify for the nomination by March 9, 2012, there is a 5-day extension allowed for all qualified persons other than the incumbent to file for such office, notwithstanding that he/she has not filed a written and signed Declaration of Intention to become a candidate for the office. § 8204</p> <p>NOTE: There is no extension of the filing period for any office where there is no incumbent eligible to be elected. §§ 10516, 10604</p>

March 10, 2012
through
March 19, 2012
(E-87 – 78)

PETITION INDICATING WRITE-IN CAMPAIGN WILL BE CONDUCTED FOR A JUDICIAL OFFICE OF THE SUPERIOR COURT: In any county in which only the incumbent has filed Nomination Papers for the office of Superior Court Judge, his/her name will not appear on the ballot unless there is filed with the Registrar of Voters' office, within 10 days **(March 10 through March 19, 2012, 5:00 p.m.)** after the final date for filing Nomination Papers for the office, a petition indicating that a write-in campaign will be conducted for the office and signed by 100 registered voters qualified to vote with respect to the office. **§ 8203**

March 10, 2012
through
March 23, 2012
(E-87 – 74)


NOMINATION PERIOD EXTENSION WHEN THE ONLY PARTY-NOMINATED/PARTISAN OR VOTER-NOMINATED OFFICE CANDIDATE DIES: If only one candidate has filed Nomination Papers for a partisan nomination at the Statewide Direct Primary Election for a party qualified to participate at that election or for nomination at the Statewide Direct Primary Election for a voter-nominated office, and that candidate dies between **March 10 and March 14, 2012**, any person qualified under § 8001 may circulate and deliver nomination documents for the contest to the Registrar of Voters' office not later than **5:00 p.m. on March 23, 2012.** **§ 8025**

March 10, 2012
through
March 29, 2012
(E-87 – 68)


DEATH OF INCUMBENT CANDIDATE OR LONE OPPONENT – NONPARTISAN, NON-JUDICIAL OFFICE; NOMINATION PERIOD REOPENS: Death of an incumbent or lone opponent between these dates causes filing to reopen between the day following the death and E-68. Any person qualified to be a candidate for the office may circulate and return nomination documents by **March 29, 2012, 5:00 p.m.** **§ 8027**

March 10, 2012
through
March 19, 2012
(E-87 – 78)

PUBLIC REVIEW FOR CANDIDATES' STATEMENTS OF QUALIFICATIONS AND BALLOT DESIGNATIONS: During this period, Candidates' Statements of Qualifications and Ballot Designations will be available for public examination. These Candidates' Statements and Ballot Designations will be available at the Registrar of Voters' office on Monday through Friday, from 8:00 a.m. to 5:00 p.m., and will be posted on the Registrar of Voters' website. **§ 13313**

<p>March 14, 2012 (E-83)</p>	<p><u>ONLY ONE NOMINEE – COUNTY BOARD OF EDUCATION:</u> If by 5:00 p.m. on March 14, 2012, only one person has been nominated for each trustee area for County Board of Education, or no one has been nominated for the offices, and a petition signed by 10% of the voters or 50 voters, whichever is the smaller number, in the district or trustee area, if elected by trustee area, requesting that an election be held has not been presented to the Registrar of Voters, appointment will be made in lieu of election. Ed. §§ 5326, 5328</p>
<p>March 15, 2012 (11:00 a.m.) (E-82) (Secretary of State & Registrar of Voters)</p>	<p><u>RANDOMIZED ALPHABET DRAWING:</u> On this day, the Secretary of State shall conduct a drawing of the letters of the alphabet, the result of which shall be known as the randomized alphabet, to determine the order in which candidates appear on the Statewide Direct Primary Election ballot. The Registrar of Voters shall also conduct a drawing of the letters of the alphabet to determine the ballot order for candidates for State legislative offices when the district includes more than one county. §§ 13111(i), 13112</p>
<p>March 15, 2012 through March 23, 2012 (E-82 – 74)</p>	<p><u>PUBLIC REVIEW FOR CANDIDATES’ STATEMENTS OF QUALIFICATIONS AND BALLOT DESIGNATIONS IF NOMINATION PERIOD HAS BEEN EXTENDED:</u> Public review period for Candidates’ Statements of Qualifications and Ballot Designations filed during the extended filing period. § 13313</p>
<p>March 22, 2012 (Date fixed by law) (E-75)</p>	<p><u>FIRST PRE-ELECTION CAMPAIGN DISCLOSURE STATEMENTS DUE:</u> The last day to file campaign disclosure statements for candidates and committees for the period ending March 17, 2012. Gov’t §§ 84200.5, 84200.7</p>
<p>March 29, 2012 (E-68)</p>	<p> <u>CERTIFIED LIST OF CANDIDATES AND ROTATION LIST:</u> The last day for the Secretary of State to prepare and send to the Registrar of Voters a certified list of candidates arranged according to the randomized alphabet drawn on March 15, 2012. This list will show the name of every person eligible to receive votes within the county at the Statewide Direct Primary Election, their addresses, their Ballot Designations, the offices for which each person is a candidate, and, if the office is partisan, the party each person represents. With respect to candidates for voter-nominated offices, the party preference designation indicated on his/her Declaration of Candidacy shall be listed.** §§ 8120, 8122, 8123, 8124, 8125, 8149</p>

****This change may not be final. Watch for updates.**

<p>March 29, 2012 (E-68)</p>	<p><u>UNCONTESTED COUNTY CENTRAL COMMITTEE OFFICE:</u> If on this day, no petition signed by 25 registered voters affiliated with the political party involved is filed with the Registrar of Voters' office indicating a write-in campaign where regularly filed candidates are fewer than, or equal to the number to be elected from that assembly or supervisorial district, names will be omitted from the ballot and candidates will be declared elected. §§ 7228, 7423, 7673, 7772.1</p>
<p>March 29, 2012 (E-68)</p>	<p><u>DEATH OF CANDIDATE:</u> Last day for Registrar of Voters to remove deceased candidate's name from Statewide Direct Primary Election ballot. § 8809</p>
<p>April 6, 2012 (E-60)</p>	<p><u>SPECIAL ABSENTEE VOTERS' BALLOT APPLICATIONS:</u> The first day the county elections official may process applications for special absentee voters' ballots. Any applications received by the county elections official prior to this day shall be kept and processed on or after this date. If the applicant is not a resident of the county to which he or she has applied, the elections official receiving the application shall forward it immediately to the proper county. §§ 300(b), 3100, 3103</p>
<p>April 6, 2012 through June 5, 2012 (E-60 - 0)</p>	<p><u>LIST OF VOTE-BY-MAIL VOTERS:</u> First day CDs are available for purchase indicating all voters who have been issued a vote-by-mail ballot.</p>
<p>April 9, 2012 through May 22, 2012 (E-57 - 14)</p>	<p> <u>WRITE-IN CANDIDATES:</u> First day Statement of Write-in Candidacy and Nomination Papers are available for a write-in candidate. Must be filed with the Registrar of Voters' office by May 22, 2012, 5:00 p.m. A person seeking a voter-nominated office may become a write-in candidate only for the Statewide Direct Primary Election; there are no write-in candidates for voter-nominated offices on the General Election ballot. A person whose name has been written on the ballot as a write-in candidate for a voter-nominated office at the General Election shall not be counted.** § 8601</p>
<p>April 26, 2012 through May 26, 2012 (E-40 - 10)</p>	<p><u>STATE AND COUNTY SAMPLE BALLOT PAMPHLET MAILINGS:</u> Between these dates, State Ballot Pamphlets will be mailed directly to voters by the Secretary of State (April 26 through May 15) and the Registrar of Voters will mail County Sample Ballot Pamphlets (April 26 through May 26). §§ 9094(a), 13300, 13304</p>

****This change may not be final. Watch for updates.**

<p>May 7, 2012 through May 29, 2012 (E-29 – 7)</p>	<p><u>VOTE-BY-MAIL VOTING</u>: Applications for vote-by-mail ballots available during this period from the Registrar of Voters' office. §§ 3001, 3003, 3006</p>
<p>May 20, 2012 through June 4, 2012 (E-16 – 1)</p>	<p><u>LATE CAMPAIGN CONTRIBUTION REPORTING PERIOD</u>: Contributions received of \$1,000 or more per source must be reported within 24 hours during this period. Gov't § 84203</p>
<p>May 21, 2012 (E-15)</p>	<p><u>LAST DAY TO REGISTER TO VOTE IN PRIMARY ELECTION</u>: Closing date of registration for this election. §§ 2102, 2107</p>
<p>May 22, 2012 (E-14)</p>	<p><u>DEADLINE FOR WRITE-IN CANDIDATES TO FILE</u>: Last day for write-in candidate to file Statement of Write-in Candidacy and Nomination Papers by 5:00 p.m. §§ 8601, 8604</p>
<p>May 22, 2012 through May 29, 2012 (E-14 – 7)</p>	<p><u>NEW CITIZEN REGISTRATION PERIOD</u>: Any person who becomes a citizen after the 15th day prior to the election may register to vote beginning on the 14th day prior to an election and ending on the 7th day prior to Election Day. This registration must be executed in the county elections office. §§ 331, 3500</p> <p>A new citizen registering to vote after the close of registration shall provide the county elections official with proof of citizenship prior to voting and shall declare that he or she has established residency in California. §§ 331, 3500, 3501</p> <p>The ballots of new citizens shall be received and canvassed at the same time and under the same procedure as vote-by-mail voter ballots. § 3502</p>
<p>May 24, 2012 (E-12)</p>	<p><u>SECOND PRE-ELECTION CAMPAIGN DISCLOSURE STATEMENTS DUE</u>: The last day to file campaign disclosure statements for candidates and committees covering the period ending May 19, 2012. Gov't §§ 84200.5, 84200.7</p>

May 30, 2012
through
June 5, 2012
(E-6 - 0)

May 30, 2012
through
June 5, 2012
(E-6 -- 0)

June 5, 2012
(E-0)

June 5, 2012
(E-0)

June 5, 2012
(E-0)

June 5, 2012
(E-0)

SPECIAL ABSENTEE VOTER - RECALLED TO MILITARY SERVICE: A registered special absentee voter recalled to service **after May 29, 2012, but before 5:00 p.m. on June 4, 2012**, may appear before the county elections official and obtain a vote-by-mail ballot which may be voted in, or outside, the county elections official's office on or before the close of the polls and returned as are other voted vote-by-mail ballots. **§ 3110**

VOTE-BY MAIL VOTING - LATE CONDITIONS: During this period, vote-by-mail ballots are available when conditions prevent voting at the polling place. Written application signed under penalty of perjury is required unless the vote-by-mail voter's ballot is voted in the office of the elections official. **§ 3021**

ELECTION DAY: Polls will be open from 7:00 a.m. to 8:00 p.m. Ballots will be centrally counted at the Registrar of Voters' office. **§§ 1000, 14212, 15260**

VOTE-BY-MAIL VOTER BALLOTS RETURNED: Deadline for the Registrar of Voters to receive vote-by-mail ballots by mail or in person is **June 5, 2012, 8:00 p.m.** A voter may deliver his/her vote-by-mail ballot in person to any polling place in the county by the close of the polls on Election Day. **§§ 3017, 3020**

SEMI-OFFICIAL CANVASS OF ELECTION RETURNS: Beginning at 8:00 p.m. and continuously until completed, the Registrar of Voters shall conduct the semi-official canvass of votes and report totals to the Secretary of State. **§§ 15150, 15151**

SPECIAL ABSENTEE VOTERS: Any registered special absentee voter who has returned to their county of registration on or before this day, and to whom a vote-by-mail ballot has been mailed but not voted, may apply to vote in the county elections official's office or in a polling place. **§§ 300(b), 3108**

An unregistered special absentee voter who was released from service after the close of registration and who has returned to his or her county of residence may apply in person to register with the county elections official and vote in the election. Documentary proof of release from service is required. On or before the day of the election, the county elections official shall deliver to the precinct board a list of special absentee voters registered under Elections Code section 3107. **§ 3107**

June 6, 2012
(E+1)

July 3, 2012
(E+28)

July 3, 2012
(E+28)

July 31, 2012
(Date fixed by law)
(E+56)

A special absentee voter who returns to the county after **May 29, 2012** may appear before the county elections official and apply for registration, a vote-by-mail ballot, or both. The county elections official shall register the voter, if not registered, and shall deliver a vote-by-mail ballot which may be voted in, or outside, the county elections official's office on or before the close of the polls on the day of the election and returned as are other voted vote-by-mail ballots. **§ 3109**

COMMENCE OFFICIAL CANVASS OF ELECTION RETURNS: The Registrar of Voters will begin the official canvass of the precinct returns. **§ 15301**

COMPLETE CANVASS OF OFFICIAL RETURNS AND CERTIFY RESULTS BY THIS DATE: Following submission of the certified statement of results by the Registrar of Voters by this date, the Board of Supervisors declares the results of the election. **§§ 15372, 15400**

CERTIFICATE OF ELECTION: Approximately on this date, the elections official shall make and deliver to each person elected or nominated, a certificate of election or nomination, signed by the elections official. **§ 15401**

SEMI-ANNUAL CAMPAIGN DISCLOSURE STATEMENTS DUE: Last day to file semi-annual campaign disclosure statements for all candidates and committees for the period through **June 30, 2012**. **Gov't §§ 84200, 84218**

NOTE: Candidates for federal office should contact the Federal Elections Commission at the address or toll-free telephone number below to obtain information regarding campaign disclosure filing requirements and the forms on which to file.

Federal Elections Commission
999 E Street N.W.
Washington, D.C. 20463
Phone 800-424-9530
Fax 202-501-3413
info@fec.gov

DECLARATION OF GAUTAM DUTTA

EXHIBIT 3

1 GAUTAM DUTTA, ESQ. (State Bar No. 199326)
39270 Paseo Padre Parkway # 206
2 Fremont, CA 94538
Telephone: 415.236.2048
3 Email: dutta@businessandelectionlaw.com
Fax: 213.405.2416

4 Attorney for Plaintiffs

5 MICHAEL CHAMNESS, DANIEL FREDERICK,
6 and RICH WILSON

7
8 IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

9
10 MICHAEL CHAMNESS, DANIEL
FREDERICK, RICH WILSON,

CASE NO. 2:11-CV-01479 ODW
(FFMx)

11 *Plaintiffs,*

12 vs.

13 **NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT**

14 DEBRA BOWEN, in only her
official capacity as California
Secretary of State; DEAN LOGAN,
15 in only his official capacity as
Registrar-Recorder / County Clerk
of the County of Los Angeles; and
16 DOES 1-10;

HEARING DATE: June 6, 2011
HEARING TIME: 1:30 pm
JUDGE: Hon. Otis D. Wright II
COURTROOM: 11

17 *Defendants,*

18 ABEL MALDONADO, an
individual; CALIFORNIA
19 INDEPENDENT VOTER
PROJECT; and CALIFORNIANS
20 TO DEFEND THE OPEN
PRIMARY;

21 *Intervenors-
Defendants*

1 NOTICE OF MOTION

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 *Please take notice* that, on June 6, 2011, 1:30 pm (or as soon as this matter
4 may be heard before the Honorable Otis D. Wright II in Courtroom 11), U.S.
5 District Court for the Central District of California, 312 North Spring Street, Los
6 Angeles, California 90012, Plaintiffs Michael Chamness, Daniel Frederick, and
7 Rich Wilson will move this Court to grant them summary judgment that:

- 8 1. Declares Senate Bill 6 unconstitutional and unenforceable, because it
9 violates the U.S. Constitution;
- 10 2. Declares that Proposition 14 is not self-executing;
- 11 3. Declares Proposition 14 inoperative, because its implementing statute
12 (SB 6) has been declared unenforceable;
- 13 4. Declares that Proposition 14 shall not become operative until a lawful
14 implementing statute has been enacted and become operative;
- 15 5. Declares that Defendant Bowen violated Plaintiff Frederick's
16 fundamental rights under the First Amendment and Due Process
17 Clause;
- 18 6. Declares that Defendant Bowen violated Plaintiff Wilson's
19 fundamental right to have his lawfully cast vote counted under the
20 First and Fourteenth Amendments, the Due Process Clause, and the
21 Elections Clause;
- 22 7. Declares that Defendants Bowen and Logan imposed a severe burden
23 on Plaintiff Chamness' fundamental rights under the First and
24 Fourteenth Amendments, by (a) stifling his core political speech, and
25 (b) dictating electoral outcomes;
- 26 8. Declares that Defendants Bowen and Logan violated Plaintiff
27 Chamness' fundamental rights under the Elections Clause;
- 28 9. Declares that every citizen has the right to run as a write-in candidate
for state or federal office;
10. Declares that every citizen has the right to cast a write-in vote and
have that vote counted;
11. Awards every Plaintiff all reasonable costs and expenses, including
attorney's fees, pursuant to 42 U.S.C. §1988(b).

Pursuant to Local Rule 7-3, this Motion is made following the conference of
counsel, which took place on April 6, 2011.

1 Plaintiffs’ Motion is based on this Notice of Motion and Motion, along with
2 the accompanying (1) Memorandum of Points and Authorities, (2) Plaintiffs’
3 Statement of Uncontroverted Facts and Conclusions of Law, (3) Declaration of
4 Michael Chamness, (4) Declaration of Daniel Frederick, (5) Declaration of Rich
5 Wilson, (6) Declaration of Gautam Dutta, (7) Request for Judicial Notice, (8) all
6 the other papers, documents, or exhibits on file or to be filed in this action, and (9)
7 oral argument made at the hearing on this Motion.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 *The right to vote includes the right to have the ballot counted.*

3 -- U.S. Supreme Court, *Reynolds v. Sims*¹

4 *Indeed, it seems clear that the adverse labels handicap candidates at the*
5 *most crucial stage in the election process – the instant before the vote is cast.*

6 -- U.S. Supreme Court, *Cook v. Gralike*²

7 **I. Introduction**

8 Last summer, California voters were lured into an insidious trap. Eager to
9 reform the way our elections are conducted, a slim majority of voters approved
10 Proposition 14, which promised to “protect and preserve the right of every
11 Californian to vote for the candidate *of his or her choice*.”³ However, voters were
12 not told one critical fact. Namely, by voting for Proposition 14, they would also be
13 foisted with Senate Bill 6: an unjust law that has already (1) disenfranchised
14 Plaintiff Rich Wilson, (2) disqualified Plaintiff Daniel Frederick from running as a
15 write-in candidate, and (3) forced Plaintiff Michael Chamness to *lie to voters* that
16 he has “No Party Preference”.

17 Senate Bill 6 (“SB 6”) tramples on our fundamental right to vote and run for
18 office in two egregious ways. First, SB 6 *throws away all votes cast for write-in*
19 *candidates* in the general election. Specifically, SB 6’s Vote Counting Ban allows
20 voters to vote for write-in candidates in the general election, but then bans their
21 votes from being counted. As even Secretary Bowen has admitted, SB 6’s Vote
22 Counting Ban gives voters the “illusion” that their votes would be counted. Equally
23 troubling, SB 6 bans candidates from using the ballot label of “Independent” – a
24 ban that even the Secretary of State has admitted is *not “permissible”*. Instead, SB
25 6’s Party Preference Ban forces minor-party candidates like Plaintiff Chamness to

26 ¹ *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (emphasis added).

27 ² *Cook v. Gralike*, 531 U.S. 510, 525 (2001) (emphasis added, quotations omitted) (*quoting*
Anderson v. Martin, 375 U.S. 399, 402 (1964)).

28 ³ Senate Constitutional Amendment 4 (styled on the June 8, 2010 ballot as Proposition 14),
Statement of Purpose §2(a), *codified at* Res. Ch. 2, Stat. 2009 (emphases added).

1 falsely state on the ballot that they have “No Party Preference”.

2 As this Motion will show, SB 6’s Vote Counting Ban and Party Preference
3 Ban violate the First Amendment, Fourteenth Amendment, Due Process Clause,
4 and Elections Clause. Plaintiffs recognize that the Court has declined to issue a
5 preliminary injunction against SB 6’s Party Preference Ban. However, a
6 preliminary injunction “is not a preliminary adjudication on the ultimate merits.”⁴
7 Thus, the Court may consider the constitutionality of SB 6’s Party Preference Ban
8 *de novo*.⁵ Because Plaintiffs are entitled to summary judgment as a matter of law,
9 they ask the Court for a judgment that (1) declares SB 6 unconstitutional and
10 unenforceable, (2) and declares Proposition 14 inoperative until a new law has been
11 passed to replace SB 6.

12 **II. Legal Standard**

13 According to the U.S. Supreme Court, “[s]ummary judgment is appropriate
14 when it is demonstrated that there exists no genuine issue as to any material fact,
15 and that the moving party is entitled to judgment as a matter of law.”⁶ If a party has
16 “properly submitted” a motion for summary judgment, the “burden shifts to the
17 opposing party to set forth specific facts showing that there is a genuine issue for
18 trial.”⁷ Toward that end, the opposing party “may not rely on denials in the
19 pleadings but must produce specific evidence ... to show that the dispute exists.”⁸

20 **III. Introduction to Plaintiffs Chamness, Frederick, and Wilson**

21 Coffee Party candidate Michael Chamness, who is registered to vote in
22 Congressional District 36 and Senate District 28, has qualified for and appeared on
23 the ballot of two elections: (1) the February 15, 2011 special primary election for
24 Senate District 28 (the “SD 28 Primary”), and (2) the May 17, 2011 special primary

25 ⁴ *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1423 (9th Cir. 1984).

26 ⁵ *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); *S. Or. Barter Fair v. Jackson*
27 *County*, 372 F.3d 1128, 1136 (9th Cir. 2004), *cert. denied*, 546 U.S. 826 (2005).

28 ⁶ *Nebraska v. Wyoming*, 507 U.S. 584, 590 (1993).

⁷ *Albarran v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008).

⁸ *Id.* at 707 (emphasis added).

1 election for Congressional District 36 (the “CD 36 Primary”).⁹ In both elections,
2 SB 6 barred Plaintiff Chamness from using the ballot label of “Independent”, and
3 instead forced to use the ballot label of “No Party Preference”.¹⁰

4 Daniel Frederick, who is registered to vote in Assembly District 4, sought to
5 run as a write-in candidate in the May 3, 2011 special general (runoff) election for
6 Assembly District 4 (the “AD 4 Runoff”), but was barred from doing so.¹¹

7 Rich Wilson, who is registered to vote in Assembly District 4, cast a write-in
8 vote for Plaintiff Frederick in the AD 4 Runoff.¹² On May 3, 2011, Plaintiff
9 Wilson’s vote for Plaintiff Frederick was not counted.¹³

10 **IV. Issues Presented**

11 This case raises five weighty constitutional issues:

- 12 1. Did SB 6, as applied, violate Plaintiff Frederick’s constitutional rights
13 under the Due Process Clause and the First Amendment, when it
banned him from running as a write-in candidate in the AD 4 Runoff?
- 14 2. Did SB 6, as applied, violate Plaintiff Wilson’s fundamental right to
15 have his lawfully cast vote counted (under the First and Fourteenth
16 Amendments, the Due Process Clause, and the Elections Clause),
when it banned the write-in vote that he had cast for Plaintiff Frederick
from being counted?
- 17 3. Did SB 6, as applied, “stifle” Plaintiff (and minor-party candidate)
18 Chamness’ core political¹⁴ speech under the Ninth Circuit case *Rubin v.*
City of Santa Monica,¹⁴ when it banned him from using the ballot label
19 of “Independent” in the CD 36 Primary and SD 28 Primary?
- 20 4. Did SB 6, as applied, unlawfully “dictate electoral outcomes” under
21 *Rubin*,¹⁵ when it forced Plaintiff (and Coffee Party candidate)
Chamness to use the ballot label of “No Party Preference” while
22 allowing his Democratic and Republican rivals to list their party’s
name on the ballot in the CD 36 Primary and the SD 28 Primary?
- 23 5. Did SB 6, as applied, violate the U.S. Constitution’s Elections Clause
24 under the U.S. Supreme Court’s unanimous ruling in *Cook v.*
Gralike,¹⁶ when it forced Plaintiff (and Coffee Party candidate)

9 Statement of Uncontroverted Facts and Conclusions of Law (“Pl. Statement”) ¶¶ 1-2.

10 Pl. Statement ¶ 3.

11 Pl. Statement ¶ 4-5.

12 Pl. Statement ¶ 7.

13 Pl. Statement ¶ 8.

14 *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1015 (9th Cir. 2002).

15 *Id.*

16 *Gralike, supra*, 531 U.S. 510.

1 Chamness to use the ballot label of “No Party Preference” while
2 allowing his Democratic and Republican rivals to list their party’s
name on the ballot in the CD 36 Primary?

3 **V. Uncontroverted Facts and Legal Conclusions**

4 As this section will show, three core conclusions are undisputed about the
5 California’s former “qualified party” election system, which SB 6 and Proposition
6 14 eliminated on January 1, 2011. First, a registered voter like Plaintiff Frederick
7 could have run as a write-in candidate in any state or federal general election.
8 Second, a registered voter like Plaintiff Wilson could have voted for a qualified
9 write-in candidate in the general election, and have his or her vote counted. Finally,
10 a minor-party candidate like Plaintiff Chamness could have used the ballot label of
11 “Independent”, and would not have been forced to falsely state that he had “No
12 Party Preference”.

13 Furthermore, briefing by the parties has also underscored six core facts:

- 14 1. SB 6 was stealthily passed by the Legislature in the middle of
15 the night, without any public debate or discussion.¹⁷
- 16 2. Last summer, Secretary Bowen’s own staff publicly stated that
17 SB 6’s Vote Counting Ban (a) gave candidates the “illusion”
18 that they could “run as a write-in”, and (b) gave voters the
“illusion” that their¹⁸ votes would be counted if they voted for a
write-in candidate.
- 19 3. Last summer, Secretary Bowen’s staff also publicly stated that it
20 is not “permissible” to force candidates to state on the ballot that
they have “No Party Preference”.¹⁹
- 21 4. Proposition 14 did not confer any new rights on politically
independent voters. Before SB 6 took effect, unaffiliated voters
22 had been allowed to vote in Democratic and Republican
primaries *for the past decade*. What is more, neither SB 6 nor
23 Proposition 14 gave unaffiliated voters the right to vote in the
Democratic or Republican Presidential Primaries.²⁰
- 24 5. For over a century, minor-party candidates like Plaintiff
25 Chamness were allowed to use the ballot label of “Independent”.
But SB 6 now forces them to use the ballot label of “No Party
26 Preference”, while allowing Democratic and Republican

17 Pl. Statement ¶ 9.
18 Pl. Statement ¶ 10.
19 Pl. Statement ¶ 11.
20 Pl. Statement ¶ 12.

1 candidates to list their party's name on the ballot.²¹

2 6. It would have cost between \$22,800 and \$108,800 for Plaintiff
3 Chamness to publish candidate statements in the voter guides for
4 both the CD 36 Primary and the SD 28 Primary.²²

4 A. California's Former "Qualified Party" Election System

5 California law classifies political parties were into two categories: qualified
6 ("major" or state-recognized) parties and non-qualified ("minor" or non-state-
7 recognized) parties.²³ Under California's former qualified-primary election
8 system, only qualified parties were entitled to hold party primaries.²⁴ Every even-
9 numbered year, voters had at least two chances to vote for state and federal
10 candidates:²⁵ (1) the primary election, where candidates from each qualified party
11 would vie for their party's nomination; and (2) the general election, where the
12 nominees (top votegetters) from each qualified party would all face off against (a)
13 minor-party candidates like Plaintiff Chamness, and (b) qualified write-in
14 candidates like Plaintiff Frederick.²⁶

15 Under the "qualified party" election system, major-party candidates could
16 state their party's name on the ballot (e.g., Democratic or Republican). However,
17 California candidates had been able to use the "Independent" ballot label *between*
18 *1891 and 2010*.²⁷ During that time, all minor-party candidates – who are deemed

19 ²¹ Between 1891 and Dec. 31, 2010 (the day before SB 6 took effect), candidates were
20 allowed to use the ballot label of "Independent". Former Political Code §1188, *codified at* Ch.
21 130 Stats 1891, *amended by* Ch. 136 Stats. 1915, p.274. On Nov. 2, 2010, Cecilia Iglesias ran as
22 an Independent candidate in the 47th Congressional District. Pl. Statement ¶ 14.

21 ²² Pl. Statement ¶ 13.

22 ²³ Elections Code §5100.

22 ²⁴ *Libertarian Party v. Eu*, 620 P.2d 612, 28 Cal.3d 535, 540 (Cal. 1980) ("[T]he
23 Legislature ... defined 'party' as a political organization that has '*qualified for participation in*
24 *any primary election*.'" (emphases added).

24 ²⁵ CAL.CONST art. ii §5(b) (before it was amended on Jan. 1, 2011 by Proposition 14).

24 ²⁶ "Each voter is *entitled to write the name of any candidate* for any public office ... on the
25 ballot *for any election*." Elections Code §15340 (emphases added). To qualify as a write-in
26 candidate, candidates for state office must (1) be registered to vote in the district in which the
27 election at issue is being held, and (2) submit the required filing papers at least 14 days before
28 that election is held. Elections Code §8601 (which was not amended by SB 6). Plaintiff
Frederick is registered to vote in Assembly District 4, and attempted to qualify as a write-in
candidate over *two months* before the AD 4 runoff was held. Pl. Statement ¶ 5. Therefore,
Plaintiff Frederick qualified as a write-in candidate in the AD 4 Runoff.

28 ²⁷ See *supra* note 21. Between 1891 and 1915, California law permitted minor-party

1 by the California Supreme Court to have “independent” (i.e., minor-party) status²⁸
2 – could state on the ballot that they were “Independent”.²⁹ Within the last two
3 decades, Quentin Kopp and Lucy Killea were both elected the State Senate as
4 Independent candidates.³⁰ Currently, over one-fifth of California’s voters are not
5 registered with a major political party.³¹

6 B. Budgetary Cause, Electoral Effect

7 Two years ago, then-State Senator Abel Maldonado cast the deciding vote to
8 pass the state budget.³² In exchange for his vote, Maldonado demanded legislation
9 that would eliminate the qualified-party election system.³³ The Legislature
10 obliged by (1) putting Maldonado-authored Proposition 14 on the June 8, 2010
11 ballot, and (2) passing Maldonado-authored SB 6, which implemented the
12 provisions of Proposition 14.³⁴

13 Between 3:40 am and 6:55 am on February 19, 2009, the Legislature passed
14 SB 6 and voted to put Proposition 14 on the June 8, 2010 ballot, without holding a
15 single hearing or giving the public any notice.³⁵ Subsequently, Secretary Bowen’s
16 Voter Information Guide for Proposition 14 *did not provide either a summary or*
17 *the text of SB 6*, which fleshes out *critical details* of Proposition 14.³⁶ On June 8,
18 2010, a narrow majority of voters approved Proposition 14.³⁷

19 C. SB 6 and Proposition 14’s “Top Two” Primary

20
21 candidates to state their party’s name on the ballot. Former Political Code §1188, *codified at* Ch.
22 130 Stats 1891, *amended by* Ch. 136 Stats. 1915, p.274. In 1912, a minor-party candidate
(William Kent of the Progressive Party) was elected by California’s 1st Congressional District.
23 Pl. Statement ¶ 15.

24 ²⁸ *Eu. supra*, 620 P.2d 612, 28 Cal.3d at 540 (defining “independent” candidates as those
25 who “are independent of qualified political parties”) (emphasis added).

26 ²⁹ Elections Code §13105(c) [before it was amended on January 1, 2011 by SB 6].

27 ³⁰ Pl. Statement ¶ 16.

28 ³¹ Pl. Statement ¶ 17. Specifically, 20.4 percent of registered voters did not belong to a
qualified party as of Feb. 20, 2011. *Id.*

³² Pl. Statement ¶ 18.

³³ Pl. Statement ¶ 19.

³⁴ Pl. Statement ¶ 20.

³⁵ Pl. Statement ¶ 21.

³⁶ Pl. Statement ¶ 22.

³⁷ Pl. Statement ¶ 23.

1 On January 1, 2011, SB 6 and Proposition 14 abolished the “qualified party”
2 election system, and spawned an untested process for electing our federal and state
3 officials. Under SB 6’s new rules, all candidates, irrespective of their party
4 identification, square off against one another in a primary election. The top two
5 votegetters from the primary election automatically advance to the general (runoff)
6 election – even if one candidate has received a majority of the vote.³⁸

7 According to the California Association of Clerks and Election Officials, SB
8 6 mandates a “complex set of changes [that] *has not occurred in recent*
9 *memory[.]*”³⁹ Specifically, SB 6 will not only force counties to spend “*millions of*
10 *dollars* statewide in ballot production and postage costs”, but could force them to
11 spend millions more in new voting equipment.⁴⁰ Last year, Los Angeles County
12 Registrar Dean Logan stated that the changes required by SB 6 would have

13 *overwhelmed the capacity of our ballot. If the proposed open primary*
14 *process were in place back in 2006 our voting system would not have*
15 *been able to accommodate all of the contests and measures on the*
16 *ballot.*⁴¹

17 D. Write-In Voting under SB 6’s New Rules

18 Although it provides for write-in candidacies and write-in voting,⁴² SB 6
19 bans all write-in votes from being counted. Specifically, SB 6 requires⁴³ that
20 voters be allowed to cast a write-in ballot in the general election, but then *bans*
21 *their votes from being counted:*

22 A person whose name has been written on the ballot as a *write-in*
23 *candidate* at the general election ... *shall not be counted.*⁴⁴

24 ³⁸ SB 6-amended Elections Code §8141.5. However, a different set of rules apply for
25 special elections. Namely, if a candidate receives a majority in the “all-party” special primary
26 election, he or she will win the election outright, and no general election will be held. SB 6-
27 amended Elections Code §10705(a).

28 ³⁹ Pl. Statement ¶ 24.

⁴⁰ Pl. Statement ¶ 25 (emphases added).

⁴¹ Pl. Statement ¶ 26 (emphases added).

⁴² See SB 6-amended Elections Code §8600 (write-in candidacies), §13207(a)(2) (write-in
voting), §13212 (write-in voting), §15340 (write-in voting).

⁴³ SB 6-amended Elections Code §13207(a)(2) mandates that all ballots include the “names
of candidates with sufficient blank spaces to allow the voters to write in names not printed on the
ballot[.]”

⁴⁴ SB 6-amended Elections Code §8606 (emphases added).

1 Last summer, Secretary Bowen’s office publicly admitted that SB 6’s Vote
2 Counting Ban *deceives both candidates and voters*:

3 Since ... SB 6 precludes [write-in] votes from being counted, it *makes*
4 *no sense* to give candidates the illusion that they can run as a write-in
5 or give voters the illusion that they can write in a candidate’s name
6 and have it counted. Making these conforming changes is only
controversial because *there is a lawsuit on this issue* that essentially
states “SB 6 says don’t count the votes, so it’s *misleading to let people*
think they can write in a candidate’s name and have it counted.”⁴⁵

7 On February 27, 2010, Plaintiffs Frederick and Wilson asked Secretary
8 Bowen (1) whether Plaintiff Frederick would be allowed to run as a write-in
9 candidate in the AD 4 Runoff, and (2) whether Plaintiff Wilson’s vote would be
10 counted, if he voted for Plaintiff Frederick in the AD 4 Runoff.⁴⁶ On March 2,
11 2011, Secretary Bowen’s Chief Counsel responded that (a) SB 6 banned Plaintiff
12 Frederick from running as a write-in candidate in the AD 4 Runoff, and (b)
13 Secretary Bowen would enforce SB 6’s Vote Counting Ban.⁴⁷ Relying on that
14 response, Plaintiff Frederick did not file any papers to run as a write-in candidate
15 for the AD 4 Runoff.⁴⁸ Subsequently, Plaintiff Wilson cast a write-in vote for
16 Plaintiff Frederick.⁴⁹ On May 3, 2011, Plaintiff Wilson’s write-in vote was not
17 counted in the AD 4 Runoff.⁵⁰

18 E. Ballot Labels under SB 6’s New Rules

19 Proposition 14 purports to give all candidates the right to state their “political
20 party preference, or lack of political party preference” on the ballot, “in the manner
21 provided by statute.”⁵¹ However, that “statute” – SB 6 – fails to give minor-party
22 candidates the right to state their “political party preference”. Instead, if a

23 ⁴⁵ Pl. Statement ¶ 10 (emphases added).

24 ⁴⁶ Pl. Statement ¶ 27.

24 ⁴⁷ Pl. Statement ¶ 28. The Chief of Secretary Bowen’s Elections Division has also stated
25 that Section 8605 of SB 6 bans write-in candidacies in runoff elections. Pl. Statement ¶ 41.

25 ⁴⁸ Pl. Statement ¶ 29.

26 ⁴⁹ Pl. Statement ¶ 30.

26 ⁵⁰ Pl. Statement ¶ 31.

27 ⁵¹ CAL.CONST. art. ii §5 (b) (emphasis added). In Section 2(a) of its Statement of
28 Purpose, Proposition 14 explicitly states that it needs implementing legislation: “This act, along
with legislation already enacted by the Legislature *to implement this act*, are intended to
implement an open primary system in California[.]” (emphases added).

1 candidate identifies with a minor party, SB 6 Section 325 bans that candidate from
2 using the ballot label of “Independent”, and instead forces him or her to use the
3 ballot label of “No Party Preference”.⁵²

4 Because it bans candidates from using the ballot label of “Independent”,
5 Secretary Bowen’s own staff has concluded that SB 6’s Party Preference Ban is not
6 “permissible”:

7 [SB 6’s Party Preference Ban] implies that a candidate ... actually has
8 selected a party preference but is not disclosing it. That is *permissible*
9 for candidates in certain circumstances [citing an example where a
10 candidate chooses not to disclose his or her party preference], but *not*
11 *in all instances*. What *the term should imply* is that the voter has not
12 chosen, made, or stated a party preference and is therefore
13 “*independent*.”⁵³

14 F. Plaintiff Chamness’ Unsuccessful Effort to Intervene in State Court

15 Plaintiff Chamness brought his claims to this Court because the California
16 Supreme Court and California Court of Appeal had denied his requests to intervene
17 in litigation challenging SB 6’s constitutionality (the “State Court Case”).⁵⁴ Last
18 winter, Plaintiff Chamness asked the California Supreme Court for permission to
19 intervene in the State Court Case during a mandamus proceeding, in which the
20 Secretary of State, Registrar Logan, and Intervenors were Real Parties in Interest.⁵⁵
21 While Registrar Logan took no position regarding Plaintiff Chamness’ request to
22 intervene, the Secretary of State and Intervenors vigorously opposed it.⁵⁶ On
23 December 15, 2010, the California Supreme Court denied both Plaintiff Chamness’

24 ⁵² SB 6 presumes that only registered voters may qualify as candidates. In *Libertarian Party*
25 *v. Eu*, the California Supreme Court defined an “independent” candidate as a non-qualified
26 (minor-party) candidate. *Eu. supra*, 620 P.2d 612, 28 Cal.3d at 540. SB 6-amended Elections
27 Code §325 mandates that all voters “of independent status” be listed as having “No Party
28 Preference”. Further, 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.” SB 6-amended Elections Code §8002.5(a). 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. SB 6-amended Elections Code §13105(a).

⁵³ Pl. Statement ¶11 (emphases added).

⁵⁴ Pl. Statement ¶37.

⁵⁵ Pl. Statement ¶32.

⁵⁶ Pl. Statement ¶33.

1 request to intervene and the underlying mandamus petition.⁵⁷

2 Seeking to vindicate his fundamental rights, Plaintiff Chamness first sought
3 to bring his as-applied challenge to the California Court of Appeal (First
4 District).⁵⁸ Toward this end, he asked the Court of Appeal for permission to
5 intervene in the State Court case.⁵⁹ Again, Registrar Logan took no position with
6 respect to Plaintiff Chamness' request to intervene, while the Secretary of State
7 and Intervenors vigorously opposed his request.⁶⁰ On January 31, 2011, the Court
8 of Appeal denied Plaintiff Chamness' request to intervene.⁶¹

9 Plaintiff Chamness has qualified for and appeared on the ballots for the CD
10 36 and SD 28 Primaries.⁶² Secretary Bowen, who also appeared on the ballot of
11 the CD 36 Primary (with the ballot label of "Democratic"), published CD 36 and
12 SD 28 Lists of Certified Candidates; both lists falsely stated that Plaintiff
13 Chamness had "No Party Preference".⁶³ Subsequently, Registrar Logan published
14 ballots that falsely stated that Plaintiff Chamness had "No Party Preference".⁶⁴

15 G. The Importance of Write-In Voting

16 Write-in voting has played an important role in local, state, and national
17 politics. Last November, U.S. Senator Lisa Murkowski (R-Alaska) was re-elected
18 as a write-in candidate.⁶⁵ In 1982, Californian Ron Packard won his write-in bid
19 for Congress (43rd District) and was re-elected eight times before he retired. In
20 2004, write-in candidate Donna Frye finished second in the San Diego mayoral
21 election – and would have won if her supporters had marked the "write in" oval on
22 the ballot.⁶⁶ Other notable write-in candidates include Tonia Reyes Uranga

23 _____
24 ⁵⁷ Pl. Statement ¶34.

⁵⁸ *Id.* ¶35.

⁵⁹ *Id.* ¶35.

25 ⁶⁰ *Id.* ¶36.

⁶¹ *Id.* ¶37.

26 ⁶² Pl. Statement ¶2.

⁶³ Pl. Statement ¶39.

27 ⁶⁴ Pl. Statement ¶42.

⁶⁵ *Miller v. Treadwell*, -- P.3d --, No. S-14112 (Alaska Dec. 22, 2010).

28 ⁶⁶ *McKinney v. Superior Court*, 21 Cal.Rptr.3d 773, 775 (Cal.Ct.App. 2004).

1 (finished second in a 2010 race for Long Beach City Council) and Tom Ammiano
2 (finished second in the 1999 San Francisco mayoral election).⁶⁷

3 **VI. Legal Analysis**

4 A. SB 6's Vote Counting Ban Violated the Fundamental Rights of
5 Plaintiffs Frederick and Wilson

6 [H]aving granted citizens the right to cast write-in votes, the [State]
7 *must confer the right* in a manner *consistent with the Constitution*.

8 -- U.S. District Court, District of Columbia⁶⁸

9 In a nutshell, SB 6's Vote Counting Ban violated the fundamental rights of
10 Plaintiffs Wilson and Frederick, because it banned the write-in vote that Plaintiff
11 Wilson cast for Plaintiff Frederick from being counted. Specifically, SB 6 Section
12 8606 bans all write-in votes from being counted in all state and federal elections:

13 A person whose name has been written on the ballot as a *write-in*
14 *candidate* at the general election ... *shall not be counted*.⁶⁹

15 1. The State Gives Write-In Candidates and Their Voters the Right
16 to Participate in Every State and Federal Election

17 Significantly, the State has given candidates the right to run write-in
18 candidacies and has given voters the right to cast write-in votes for them:

19 Each voter is entitled to write the name of any candidate for any public
20 office, including that of President and Vice President of the United
21 States, on the ballot of any election.⁷⁰

22 Having conferred that right, the State must comply with stringent constitutional
23 requirements.⁷¹

24 ⁶⁷ *Edelstein v. San Francisco*, 56 P.2d 1029, 29 Cal. 4th 164, 182 (Cal. 2002); Pl.
25 Statement ¶ 40.

26 ⁶⁸ *Libertarian Party v. District of Columbia Bd.*, 2011 WL 782031, at *6 (D.D.C. Mar. 8,
27 2011) (emphases added, citations omitted).

28 ⁶⁹ SB 6-amended Elections Code §8606 (emphases added).

⁷⁰ Elections Code §15340 (emphases added). "If there is no ambiguity in the language, we
presume the Legislature meant what it said and the *plain meaning of the statute governs*."
Arterberry v. San Diego County, 182 Cal.App.4th 1528, 1533 (Cal.App. 2010) (emphases added)
(quoting *Diamond Multimedia Systems v. Superior Court*, 968 P.2d 539 (Cal. 1999)). A citizen
qualifies as a write-in candidate by filing candidacy papers within 14 days of the date of any state
or federal election. Elections Code §8601. Although it made nearly 60 amendments to the
Elections Code, SB 6 did not amend the right to run as a write-in candidate (Elections Code
§§8600 *et seq.*). Consequently, California courts will assume that the Legislature did not intend
to amend those other statutes. *See, e.g., Estate of McDill*, 537 P.2d 874, 878 (Cal. 1971).

⁷¹ *See, e.g., Libertarian Party, supra*, 2011 WL 782031, at *6; *Grant v. Meyer*, 828 F.2d

1
2 2. SB 6’s Vote Counting Ban Violated Plaintiffs Wilson and Frederick’s Fundamental Rights

3 Plaintiffs Wilson and Frederick bring two intertwined, as-applied⁷² claims:
4 SB 6, as applied (1) disqualified Plaintiff Frederick from qualifying as a write-in
5 candidate for the AD 4 Runoff, in violation of the Due Process Clause and the First
6 Amendment, and (2) banned Plaintiff Wilson’s write-in vote (which he cast for
7 Plaintiff Frederick) from being counted in the AD 4 Runoff, in violation of the Due
8 Process Clause, First and Fourteenth Amendments, and the Elections Clause.

9 3. Secretary Bowen Has Made a Binding Admission of Liability

10 Remarkably, Secretary Bowen’s office has conceded that SB 6’s Vote
11 Counting Ban *deceives both candidates and voters* – and therefore violated their
12 Due Process rights. Under the Due Process Clause, a State may not change vote-
13 counting rules unless it has given fair and adequate notice to candidates and
14 voters.⁷³ Here, SB 6 gives voters no warning whatsoever that, if they vote for a
15 write-in candidate, their vote will be *thrown away*. As the Secretary Bowen’s staff
16 admitted, SB 6 gives candidates the “illusion” that they can mount write-in
17 candidacies in the general election, and gives voters the “illusion” that they can
18 cast a write-in vote that will be counted:

19 Since ... SB 6 precludes [write-in] votes from being counted, it *makes*
20 *no sense* to give candidates the illusion that they can run as a write-in
21 or give voters the illusion that they can write in a candidate’s name
22 and have it counted. Making these conforming changes is only
controversial because *there is a lawsuit on this issue* that essentially
states “SB 6 says don’t count the votes, so it’s *misleading to let people*
think they can write in a candidate’s name and have it counted.”⁷⁴

23 1446, 1456 (10th Cir. 1987) (“Although the right to place a question on the ballot is not
24 fundamental in Illinois, the legislature has seen fit to confer such right. Once Illinois decided to
25 extend this forum, it *became obligated to do so in a manner consistent with the Constitution.*”) (emphases added, citation omitted); *Turner v. District of Columbia Bd.*, 77 F.Supp.2d 25, 30 (D.D.C. 1999).

26 ⁷² “An as-applied First Amendment challenge contends that a given statute or regulation is
27 unconstitutional as it has been applied to a litigant’s particular speech activity.” *Legal Aid*
Services of Oregon v. Legal Services Corp., 587 F.3d 1006, 1018 (9th Cir. 2009) (emphasis
28 added) (citing *Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 802-03 (1984)).

⁷³ See, e.g., *Griffin v. Burns*, 570 F.2d 1065, 1074 (1st Cir. 1978).

⁷⁴ Pl. Statement ¶ 10 (emphases added).

1 By publicly admitting that SB 6 would trick candidates like Plaintiff Frederick and
2 disenfranchise voters like Plaintiff Wilson, Secretary Bowen has made a binding
3 party admission⁷⁵ that SB 6's Vote Counting Ban violated the Due Process rights of
4 Plaintiffs Frederick and Wilson.

5 4. SB 6 Imposed a Severe Burden on Plaintiff Frederick and
6 Plaintiff Wilson's Fundamental Rights

7 "The United States Supreme Court has repeatedly held that the individual's
8 right to seek public office is *inextricably intertwined with the public's fundamental*
9 *right to vote*, and may be limited only where necessary to achieve a compelling
10 state purpose."⁷⁶ Here, Plaintiff Frederick (a) was eligible to run as a write-in
11 candidate under Elections Code §8601, and (b) attempted to qualify as a write-in
12 candidate for the AD 4 Runoff in a timely manner.⁷⁷ However, Secretary Bowen's
13 top lawyer told Plaintiff Frederick that SB 6 barred him from running as a write-in
14 candidate in the AD 4 Runoff.⁷⁸ In so doing, Secretary Bowen imposed a severe
15 burden on Plaintiff Frederick's right to run for public office.

16 As a starting point, any state election law that imposes a "severe burden" on
17 free-speech rights must be struck down, unless it is narrowly tailored and serves a
18 compelling state interest.⁷⁹ Specifically, a law imposes a severe burden if it

19 ⁷⁵ Party admissions are admissible under the exception to the hearsay rule. Federal Rules of
20 Evidence §801(d)(2). The statement made by Secretary of State Bowen's staff is admissible and
21 not subject to the hearsay rule, because (a) the staff member was authorized by Secretary of State
22 Bowen to make the statement on her behalf, and (b) the staff member made the statement within
23 the scope of her official duties. *Id.* §801(d)(2)(C) (authorized-party exception to hearsay rule); *id.*
24 §803(8) (public-records exception to hearsay rule).

25 ⁷⁶ *Davies v. Grossmont Union High School Dist.*, 930 F.2d 1390, 1397 (9th Cir.) (emphases
26 added), *cert. denied*, 501 U.S. 1252 (1991) (citing *Anderson v. Celebrezze*, 460 U.S. 780 (1983);
27 *Lubin v. Parish*, 415 U.S. 709 (1974); *Bullock v. Carter*, 405 U.S. 134 (1972); *Mancuso v. Taft*,
28 476 F.2d 187 (1st Cir. 1973)); *see also Leonard v. Clark*, 12 F.3d 885,890 (9th Cir. 1994).

29 ⁷⁷ To be qualified, write-in candidates for state office must (1) be registered to vote in the
30 district in which the election at issue is being held, and (2) submit the required filing papers at
31 least 14 days before that election is held. Elections Code §8601 (which was not amended by SB
32 6). Plaintiff Frederick is registered to vote in Assembly District 4, and attempted to qualify as a
33 write-in candidate over *two months* before the AD 4 runoff was held. Pl. Statement ¶¶ 4-5.
34 Therefore, Plaintiff Frederick was eligible to be a write-in candidate in the AD 4 Runoff.

35 ⁷⁸ Pl. Statement ¶¶ 41 (Secretary Bowen's top aides claim that Section 8605 SB 6 banned
36 write-in candidacies in the general (runoff) election.

37 ⁷⁹ *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008).

1 “impair[s] access to the ballot, stifle[s] core political speech, or dictate[s] electoral
2 outcomes.”⁸⁰ As the U.S. Supreme Court has admonished, a state election law
3 “dictates electoral outcomes” if it places a class of candidates at a political
4 disadvantage.⁸¹

5 Here, SB 6 barred Plaintiff Frederick from exercising his constitutional right
6 (conferred by Elections Code §8601) to run as a write-in candidate in the AD 4
7 Runoff.⁸² In so doing, SB 6 placed Plaintiff Frederick and all other write-in
8 candidates at a debilitating political disadvantage: they were disqualified from
9 running for office. Because it thus “dictated electoral outcomes”, SB 6 imposed a
10 severe burden on Plaintiff Frederick’s fundamental right to run as a write-in
11 candidate in the AD 4 Runoff.

12 5. SB 6’s Vote Counting Ban Imposed a Severe Burden on
13 Plaintiff Wilson’s Fundamental Rights

14 By banning Plaintiff Wilson’s vote from being counted, SB 6 imposed a
15 severe burden on Plaintiff Wilson’s fundamental rights. The U.S. Supreme Court
16 has made it clear that “[t]he right to vote includes the right to have the ballot
17 counted.”⁸³ Last year, the High Court noted that “the expression of a political view
18 *implicates a First Amendment right*.”⁸⁴ Furthermore, as the Ninth Circuit noted in
19 *Gonzalez v. Arizona*, federal law enacted pursuant to the Elections Clause protects
20 “the right of an eligible voter to cast [a] ballot and have [that] ballot counted.”⁸⁵ If
21 a state statute violates such a federal law, the state statute must be struck down:

22 [C]ourts deciding issues raised under the Elections Clause need not
23 strike any balance between competing sovereigns. Instead, the
24 Elections Clause, as a standalone pre-emption provision, establishes its
own balance, *resolving all conflicts in favor of the federal*

25 ⁸⁰ *Rubin, supra*, 308 F.3d at 1015. (citing *Gralike, supra*, 531 U.S. 510).

26 ⁸¹ *Gralike, supra*, 531 U.S. at 525-26.

27 ⁸² *Libertarian Party, supra*, 2011 WL 782031, at *6; *Grant, supra*, 828 F.2d at 1456;
Turner, supra, 77 F.Supp.2d at 30.

28 ⁸³ *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (emphasis added).

⁸⁴ *Doe v. Reed*, 561 U.S. --, No. 09-559, at 6 (June 24, 2010) (Roberts, J.) (emphases added).

⁸⁵ *Gonzalez v. Arizona*, 624 F.3d 1162, 1173 n.9 (9th Cir. 2010) (emphasis added) (citing
U.S. v. Mosley, 238 U.S. 383, 386 (1915)).

1 *government.*⁸⁶

2 Moreover, any law that bans the counting of a lawfully cast vote triggers
3 *strict scrutiny*, because it would impose a content-based restriction on the right to
4 core political speech.⁸⁷ In *Turner v. District of Columbia Board*, a federal court
5 quashed an attempt to prevent write-in votes from being counted. There, an
6 election board claimed that federal law barred it from counting the write-in votes
7 cast in an election. The *Turner* Court emphatically disagreed:

8 Obviously included within the right to choose, secured by the
9 Constitution, is the right of qualified voters within a state to cast their
10 ballots and *have them counted.*⁸⁸

11 Here, SB 6 banned Plaintiff Wilson’s write-in vote for Plaintiff Frederick
12 from being counted. In this manner, SB 6 violated the Elections Clause under
13 *Gonzalez*, for it violated federal law that protects the right to cast a vote and have it
14 counted.⁸⁹ Furthermore, even if SB 6 did not violate the Elections Clause, strict
15 scrutiny would apply. Tellingly, Secretary Bowen did not provide Plaintiff Wilson
16 any government interest to justify the throwing away of all write-in votes. Because
17 it violated Plaintiff Frederick’s and Plaintiff Wilson’s fundamental rights, SB 6’s
Vote Counting Ban must be struck down.

18 B. SB 6’s Party Preference Ban Violated Plaintiff Chamness’
19 Fundamental Rights

20 SB 6’s Party Preference Ban violated Plaintiff Chamness’ fundamental
21 rights in two troubling ways: (1) it banned him from using the ballot label of
22 “Independent” in the CD 36 and SD 28 Primaries; and (2) it unlawfully forced him
23 to use the ballot label of “No Party Preference” in the CD 36 and SD 28 Primaries.
24 As a starting point, any state election law that imposes a “severe burden” on free-
25 speech rights must be struck down, unless it is narrowly tailored and serves a

26 ⁸⁶ *Gonzalez, supra*, 624 F.3d at 1174 (emphases added).

27 ⁸⁷ *Turner, supra*, 77 F.Supp.2d at 32-33; *see also Rubin, supra*, 308 F.3d at 1015.

28 ⁸⁸ *Turner, supra*, 77 F.Supp.2d at 32-33 (emphases added) (*quoting U.S. v. Classic*, 313 U.S. 299, 315 (1941)). *See also Libertarian Party, supra*, 2011 WL 782031, at *9; *Gould v. Grubb*, 536 P.2d 1337, 1343 n.10 (Cal. 1975).

⁸⁹ *Gonzalez, supra*, 624 F.3d at 1174 (emphases added).

1 compelling state interest.⁹⁰ A law imposes a severe burden if it “impair[s] access
2 to the ballot, stifle[s] core political speech, or dictate[s] electoral outcomes.”⁹¹

3 C. Banning the ballot label of “Independent” Imposed a Severe Burden
4 on Candidates’ Free-Speech Rights

5 *Without a designation next to an Independent’s name on the ballot, the voter*
6 *has no clue as to what the candidate stands for. Thus, the state affords a crucial*
7 *advantage to party candidates by allowing them to use a designation, while*
8 *denying the Independent the crucial opportunity to communicate a designation of*
9 *their candidacy.*

10 -- Sixth Circuit, *Rosen v. Brown*⁹²

11 The Ninth Circuit has signaled that banning the ballot label of “Independent”
12 would constitute a severe burden on a candidate’s rights. As shown earlier,
13 California candidates had been allowed to use the ballot label of “Independent” for
14 over a century, between 1891 and 2010. Moreover, two Independent candidates
15 were elected to the California State Senate within the past two decades: Lucy
16 Killea and Quentin Kopp.

17 In *Rubin v. City of Santa Monica*, the Ninth Circuit has made two principles
18 clear. First, ballot labels “affect[] core political speech”, for they “provide a
19 *shorthand designation of the views of party candidates* on matters of public
20 concern.”⁹³ Furthermore, this Court *signaled its agreement* with the Sixth Circuit
21 that banning the ballot label of “Independent” would “stifle” core political speech”:

22 [I]n *Rosen v. Brown*, the Sixth Circuit invalidated a regulation
23 *prohibiting the political party designation of “Independent” while*
24 *permitting “Republican” or “Democrat” designations*, holding that
25 *party labels designate the views of party candidates and the regulations*
26 *therefore hinder “core political speech.”*⁹⁴

27 ⁹⁰ *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008).

28 ⁹¹ *Rubin, supra*, 308 F.3d at 1015.

⁹² *Rosen v. Brown*, 970 F.2d 169, 172 (6th Cir. 1992) (emphases added).

⁹³ *Rubin, supra*, 308 F.3d at 1015 (emphases added) (*quoting Schrader v. Blackwell*, 241 F.3d 783, 789 (6th Cir. 2001)).

⁹⁴ *Rubin, supra*, 308 F.3d at 1015 (emphases added) (*citing Rosen, supra*, 970 F.2d 169). Secretary Bowen may claim that SB 6’s Party Preference Ban did not burden Plaintiff Chamness’ rights, because he could have published a candidate statement in the official voter guide. However, it is undisputed that it would have cost Plaintiff Chamness *between \$15,600 to \$62,400* to publish such a statement in the SD 28 Primary; and \$11,600 to \$46,400 to do so in the CD 36 Primary. Pl. Statement ¶13. Simply put, it is unlawful to effectively foist minor-party candidates with a candidacy fee that their major-party competitors *need not pay*. See, e.g., *Bullock, supra*

1 In *Rosen*, a state law had banned minor-party candidates from using the
2 ballot label of “Independent”, and instead forced them to have a blank space next
3 to their name on the ballot.⁹⁵ The Sixth Circuit struck down that law, for
4 “prohibiting the designation ‘Independent’ was unconstitutional *where the*
5 *regulations allowed for other political party designations.*”⁹⁶ Indeed, *Rosen* noted
6 that banning the ballot label of “Independent” would result in “the effective
7 *exclusion of Independent and new party candidacies.*”⁹⁷

8 Significantly, because the Ninth Circuit has signaled its agreement with
9 *Rosen*, the *Rubin* Court had no need to re-apply the U.S. Supreme Court’s “severe
10 burden” balancing test with respect to the fundamental right to use the ballot label
11 of “Independent”.⁹⁸ Therefore, Plaintiff Chamness need not produce any evidence
12 to prevail, apart from election documents which show that he was forced to use the
13 ballot label of “No Party Preference” in the CD 36 and SD 38 Primaries.⁹⁹

14 What is more, both the Massachusetts and Minnesota High Courts have also
15 held that it is unconstitutional to ban the ballot label of “Independent”. In
16 *Bachrach*, a state law had banned minor-party candidates from using the ballot
17 label of “Independent”.¹⁰⁰ Instead, those candidates were forced to state that they
18 were “Unenrolled” – a term identical in meaning to “No Party Preference”.
19 Striking down that law, the Massachusetts High Court ruled that it was
20 unconstitutional to ban candidates from using the party label of “Independent”:

21 405 U.S. at 146 (“We can hardly accept as reasonable an alternative that requires candidates and
22 voters to *abandon their party affiliations in order to avoid the burden of the filing fees.*”) (emphases added).

23 ⁹⁵ *Rosen, supra*, 970 F.2d at 171.

24 ⁹⁶ *Rubin, supra*, 308 F.3d at 1015 (emphases added) (*citing Rosen, supra*, 970 F.2d at 176-
77).

25 ⁹⁷ *Rosen, supra*, 970 F.2d at 177 (emphasis added).

26 ⁹⁸ *Cf. Rubin, supra*, 308 F.3d at 1014-15 (*citing to the High Court’s “severe burden” test articulated in Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 385 (1997)).

27 ⁹⁹ Having been forced to use the ballot label of “No Party Preference”, Plaintiff Chamness
has *already been incorrectly described* as one of three candidates in the CD 36 Primary “who
decline to state their political parties[.]” Pl. Statement ¶ 43 (emphases added).

28 ¹⁰⁰ *Bachrach, supra*, 415 N.E.2d at 833; *see also Shaw v. Johnson*, 247 N.W. 2d 921, 923 (Minn. 1976).

1 Voters who during the campaign might have been favorably
2 impressed with the candidate as an Independent, would be confronted
3 on the ballot with a candidate who was called Unenrolled. *Unenrolled*
4 *is hardly a rallying cry*.¹⁰¹

5 Thus, there is a fundamental right to use the ballot label of “Independent”.

6 Accordingly, banning Plaintiff Chamness from using that label imposed a severe
7 burden on his fundamental rights as a candidate.

8 D. Secretary Bowen Has Admitted That Banning the Ballot Label of
9 “Independent” Is Not “Permissible”

10 Remarkably, Secretary Bowen has made a binding admission that SB 6’s
11 Party Preference Ban is unlawful. Last summer, in an email to the Office of the
12 Lieutenant Governor, her office stated that SB 6’s Party Preference Ban is not
13 “permissible”, because it *bans minor-party candidates from using the ballot label of*
14 *“Independent”*. According to a public statement made by Secretary Bowen’s own
15 staff, SB 6’s Party Preference Ban

16 implies that a candidate ... actually has selected a party preference but
17 is not disclosing it. That is *permissible* for candidates in certain
18 circumstances [citing an example where a candidate chooses not to
19 disclose his or her party preference], but *not in all instances*. What
20 *the term should imply* is that the voter has not chosen, made, or stated
21 a party preference and is therefore *“independent.”*¹⁰²

22 Thus, the Secretary of State has publicly conceded that SB 6’s Party Preference Ban
23 is not “permissible”, because it deprives minor-party candidates of the ballot label
24 of “Independent”. In so doing, the Secretary of State has made a binding party
25 admission¹⁰³ that SB 6’s Party Preference Ban stifles core political speech.

26 Therefore, SB 6’s Party Preference Ban imposed a severe burden on Plaintiff
27 Chamness’ free-speech rights *as a matter of law*.

28 E. SB 6’s Party Preference Ban Imposes a Severe Burden by Dictating
Electoral Outcomes

Furthermore, SB 6’s Party Preference Ban imposed a severe burden on

¹⁰¹ *Bachrach*, 415 N.E.2d at 836 (emphases added); *see also Shaw*, *supra*, 247 N.W. 2d at 923.

¹⁰² Pl. Statement ¶ 11 (emphases added) (*citing* SB 6-amended Elections Code §325).

¹⁰³ *See* discussion at *supra* note 75.

1 Plaintiff Chamness, because it “dictated” the electoral outcome in the CD 36 and
2 SD 28 Primaries.¹⁰⁴ As discussed earlier, a state election law “dictates electoral
3 outcomes” if it places a class of candidates at a political disadvantage.¹⁰⁵ Here, SB
4 6 banned Plaintiff Chamness from using the ballot label of “Independent” – “a
5 customary title” that carries a “positive connotation”.¹⁰⁶ In this manner, SB 6
6 placed Plaintiff Chamness and other minor-party candidates at a political
7 disadvantage. Because it thus “dictated” electoral outcomes, SB 6’s Party
8 Preference Ban imposed a severe burden on Plaintiff Chamness’ rights as a
9 candidate.

10 F. No Compelling State Interest Can Save SB 6

11 To save SB 6’s Vote Counting Ban and Party Preference Ban, Secretary
12 Bowen may proffer a purported state interest. Namely, she may claim that the
13 “Independent” ballot label can be banned, because it would otherwise confuse
14 voters or harm major parties. However, it is undisputed that California candidates
15 had been able to use the “Independent” ballot label between 1891 and 2010.¹⁰⁷
16 Moreover, the Minnesota Supreme Court has expressly ruled that the “Independent”
17 ballot label “fosters no confusion” *as a matter of law* – even though Minnesota had
18 an “Independent-Republican” Party at the time.¹⁰⁸ It strains credulity to claim that a
19 ballot label that has been used in California *since 1891* has confused voters or
20 harmed the major political parties. Consequently, Secretary Bowen has failed to
21 provide *any* legitimate state interest, compelling or otherwise, that would save SB
22 6’s Vote Counting Ban or Party Preference Ban.

23 G. SB 6’s Party Preference Ban Violated Plaintiff Chamness’ Rights
24 under the Elections Clause

25 ¹⁰⁴ *Rubin, supra*, 308 F.3d at 1015.

¹⁰⁵ *Gralike, supra*, 531 U.S. at 525-26.

¹⁰⁶ *Bachrach, supra*, 415 N.E.2d at 836.

¹⁰⁷ Pl. Statement ¶44. Between 1891 and 1915, California law also permitted minor-party candidates to state their party’s name on the ballot. *Id.* ¶ 15. In 1912, a minor-party candidate (William Kent of the Progressive Party) was elected by California’s 1st Congressional District. *Id.* ¶ 15.

¹⁰⁸ *Shaw, supra*, 247 N.W. 2d at 923.

1
2 *[O]nce a candidate is legally entitled to appear on the ballot*
3 *there is substantial support in the lower courts to invalidate laws that*
4 *favor incumbents, or nominees of preferred parties].*

5 -- Supreme Court scholar Vicki Jackson¹⁰⁹

6 In a nutshell, SB 6 violated Plaintiff Chamness’ rights under the Elections
7 Clause, because its Party Preference Ban singled out and discriminated against
8 Plaintiff Chamness in the CD 36 Primary. How a candidate appears on a ballot
9 matters makes a profound difference. As the U.S. Supreme Court has noted, an
10 adverse ballot label will “handicap candidates at the most crucial stage in the
11 election process – the instant before the vote is cast.”¹¹⁰ In the landmark *Anderson*
12 *v. Martin*, the High Court struck down a state statute that forced candidates to state
13 their race on the ballot, because it held that such a statute aimed to politically harm
14 African American candidates.¹¹¹

15 As the High Court unanimously held in *Cook v. Gralike*, a state law violates
16 the Elections Clause if it aims to (1) “favor or disfavor” one class of candidates
17 over another, (2) “dictate electoral outcomes”, or (3) “evade important
18 constitutional restraints”.¹¹² In *Gralike*, the High Court struck down a state statute
19 that targeted federal candidates who did not support term limits. For example, if an
20 incumbent did not support term limits, that law required the following label to be
21 printed beside his or her name on the ballot: “DISREGARDED VOTERS’
22 INSTRUCTIONS ON TERM LIMITS.”¹¹³

23 In response, the High Court held that the state statute violated the Elections

24 ¹⁰⁹ Vicki C. Jackson, *Cook v. Gralike: Easy Cases and Structural Reasoning*, 2001
25 Sup.Ct.Rev. 299, 336 n.112 (emphases added), citing, *inter alia*, *McLain v. Meier*, *supra*, 637
26 F.2d at 1166-67; *Graves v. McElderry*, 946 F.Supp. 1569, 1573, 1579-82 (W.D. Okla. 1996)
27 (striking down state law that gave top ballot position to Democratic candidates); *Sangmeister v.*
28 *Woodard*, 562 F.2d 460, 465-67 (7th Cir. 1977) (striking down elections officials’ practice of
29 giving their own political party the top position on the ballot).

30 ¹¹⁰ *Gralike*, 531 U.S. at 525 (emphasis added, quotations omitted) (*quoting Anderson*, 375
31 U.S. at 402).

32 ¹¹¹ *Anderson*, *supra*, 375 U.S. at 402.

33 ¹¹² *Gralike*, *supra*, 531 U.S. at 523 (*quoting U.S. Term Limits v. Thornton*, 514 U.S. 779,
34 833-34 (1995)).

35 ¹¹³ *Gralike*, *supra*, 531 U.S. at 510.

1 Clause for at least two reasons. First, the statute was “plainly designed to favor
2 candidates who [were] willing to support” term limits and “to disfavor those who
3 either oppose term limits entirely or would prefer a different proposal”:¹¹⁴

4 [I]t seems clear that the adverse labels *handicap candidates* “at the
5 most crucial state in the election process – the instant before the vote is
6 cast.” At the same time, “by directing the citizen’s attention to the
7 single consideration of the candidates’ fidelity to term limits, the labels
8 imply that the issue “is an important – perhaps paramount
9 consideration in the citizen’s choice, which *may decisively influence*
10 *the citizen to cast his ballot*” against candidates branded as
11 unfaithful.¹¹⁵

12 The High Court then concluded that the statute unlawfully aimed to “dictate
13 electoral outcomes,” because “the labels surely place their targets at a *political*
14 *disadvantage[.]*”¹¹⁶

15 SB 6’s Party Preference Ban must be struck down for the same reasons stated
16 in *Gralike*. Indeed, SB 6 grants a party label to candidates (like herself) who
17 identify with the viewpoints of a major party, while forcing candidates who identify
18 with the viewpoints of a minor party to lie to voters: to falsely state on the ballot
19 that they have “No Party Preference”.¹¹⁷ Thus, SB 6 was “plainly designed to
20 favor” candidates who identify with the viewpoints of major party, and was
21 designed to “disfavor” and “handicap” candidates who identify with the viewpoints
22 of a minor party.¹¹⁸ Furthermore, because it places minor-party candidates at a
23 political disadvantage, SB 6 also aims to “dictate electoral outcomes”.

24 In response, Secretary Bowen may claim that the State has a regulatory
25 interest in favoring major-party candidates and discriminating against minor-party
26 candidates. However, such a dubious claim ignores two key facts. First, minor-

24 ¹¹⁴ *Id.* at 510 (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788 n.9 (1983)).

25 ¹¹⁵ *Gralike, supra*, 531 U.S. at 524 (quoting *Anderson, supra*, 375 U.S. at 402) (emphases
26 added).

26 ¹¹⁶ *Gralike, supra*, 531 U.S. at 525 (emphases added).

27 ¹¹⁷ Secretary Bowen may argue that Plaintiff Chamness can avoid being foisted with the “No
28 Party Preference” label, by accepting a “blank” ballot label. However, it is unconstitutional to
force any minor-party candidate to accept a “blank” ballot label, while allowing major-party
candidates to state their party’s name on the ballot. *Rosen, supra*, 970 F.2d at 172, 174.

¹¹⁸ *Id.* at 523-25.

1 party candidates had been allowed to use the ballot label of “Independent” during
2 California’s former “qualified party” election system. Equally important, SB 6 has
3 now deprived voters of “party quality control”. Before SB 6 took effect, only
4 candidates who had belonged to a major party for an extended period of time could
5 use that party’s name on the ballot.¹¹⁹ But under SB 6, voters can no longer tell
6 from the ballot how long a candidate has been affiliated with a party – because
7 candidates can change their party affiliation *the minute before they register to run*
8 *for office*.¹²⁰ For example, a person affiliated with the Tea Party could change his
9 affiliation to “Democratic” on the last day of registration – *and be listed as a*
10 *Democrat*. Ironically, apart from silencing the voices of candidates, SB 6 may
11 cause misleading information to be provided to voters. Accordingly, the Court
12 must rule that SB 6’s Party Preference Ban violated Plaintiff Chamness’ rights
13 under the Elections Clause.¹²¹

14 H. SB 6 Deserves No Judicial Deference Whatsoever

15 *Thus, when a law appears to have been adopted without reasoned*
16 *consideration, for discriminatory purposes, or to entrench political majorities, we*
are less than willing to defer to the institutional strengths of the legislature.

17 -- Justices Breyer and Stevens¹²²

18 Simply put, SB 6 deserves no deference from the Court, because it was not
19 passed by the voters. The Legislature could have put both SB 6 and Proposition 14
20 on the ballot, but it *deliberately chose not to do so*. Why did Intervenor
21 Maldonado, the author of both SB 6 and Proposition 14, dodge the voters when it
22 came to SB 6, a Legislature-passed statute that *fleshes out* critical details of
23 Proposition 14’s new election rules? In any event, Plaintiffs have not challenged
24 the constitutionality of Proposition 14. Rather, they are challenging the

25 ¹¹⁹ Specifically, major-party candidates in regularly scheduled elections had been required to
26 belong to their party for at least one year; in special elections, three months. Elections Code
§8001(a).

27 ¹²⁰ Elections Code §8002.5(c).

28 ¹²¹ *Id.* at 525.

¹²² *Doe v. Reed*, 561 U.S. ___, No. 09-559, concurring op., Stevens & Breyer, JJ., at 3
n.3 (June 24, 2010) (emphases added).

1 constitutional of SB 6, an unjust law rammed through the Legislature without
2 any public hearing or debate.

3 Significantly, Justices Breyer and Stevens recently warned that they would
4 be “*less than willing to defer to the institutional strengths of the legislature*” –
5 particularly “when a law appears to have been adopted *without reasoned*
6 *consideration, for discriminatory purposes, or to entrench political majorities[.]*”¹²³

7 Needless to say, SB 6 would receive absolutely no deference under the
8 Justices’ standard. Indeed, SB 6 was passed by the Legislature:

9 (1) Without “reasoned consideration”. SB 6 was introduced and
10 passed between 3:40 am and 6:55 am on February 19, 2009, without
any public notice or committee hearings;

11 (2) For “discriminatory purposes”. As our analysis of the Elections
12 Clause shows, SB 6 was designed to inflict political harm on minor-
party candidates; and

13 (3) To “entrench political majorities”. As our analysis of the Elections
14 Clause also shows, SB 6 brazenly favors candidates from major parties
over those from minor parties.

15 The Court owes no deference whatsoever to SB 6 – and must strike it down if it
16 fails to pass constitutional muster.

17 I. SB 6’s Party Preference Ban Is Not Severable

18 SB 6’s Party Preference Ban is not severable; that is, it is not possible to save
19 SB 6 by “cutting out” its unlawful Party Preference Ban. To be severable, the
20 unlawful part of a statute must be functionally, grammatically, and volitionally
21 separable.¹²⁴ Although SB 6 has a severability clause, the California Supreme
22 Court has repeatedly held that such clauses are not conclusive – particularly when
23 the unlawful part of a statute is not “volitionally” separable.

24 Under California law, boilerplate severability clauses are not “persuasive”,
25 because they are “routinely attached prior to the actual contingency ... *without*
26

27 ¹²³ *Doe v. Reed, supra*, 561 U.S. --, No. 09-559, concurring op., Stevens & Breyer, JJ., at 3
n.3 (citations omitted, emphases added).

28 ¹²⁴ *Gerken v. FPPC*, 863 P.2d 694, 698 (Cal. 1993).

1 *foreknowledge* of its real character.”¹²⁵ Suppose the Legislature had been able to
2 foresee that part of a statute that it was about to pass would later be declared
3 unconstitutional. If it is “clear” that the Legislature would have still passed that
4 statute without its unlawful part, then that part would be “volitionally” separable,
5 and the statute’s remaining parts could be saved.¹²⁶

6 Here, it is undisputed that when the Legislature passed SB 6’s Party
7 Preference Ban, it did so because *it intended to implement Proposition 14*.¹²⁷
8 Specifically, Subsection V(b) of Proposition 14 called for a “statute” to implement
9 the “manner” in which candidates could state their party preference on the ballot.¹²⁸
10 In response, the Legislature enacted SB 6’s Party Preference Ban, which controls
11 the “manner” in which candidates may (or may not) state their party preference on
12 the ballot.

13 Thus, it is crystal “clear” the Legislature would not have passed SB 6 without
14 the Party Preference Ban – because without the Party Preference Ban, the
15 lawmakers *could not have implemented Subsection V(b) of Proposition 14*.¹²⁹ Thus,
16 SB 6’s Party Preference Ban is not “volitionally” separable, and SB 6 as a whole
17 *cannot be saved as a matter of law*.¹³⁰ Therefore, because the entirety of SB 6 is
18 unenforceable, the Court must strike it down in its entirety.

19 J. Proposition 14 Must Be Declared Inoperative If SB 6 Is Struck Down

20 Finally, Proposition 14 *must be declared inoperative* if SB 6 is struck down.

21 _____
22 ¹²⁵ *Schenley Affiliated Brands v. Kirby*, 21 Cal.App. 3d 177, 199 (Cal.App.Ct. 1971)
(emphases added).

23 ¹²⁶ *Sonoma County v. Superior Ct.*, 173 Cal.App.4th 322, 352 (Cal.Ct.App. 2009); *accord*,
24 *Gerken, supra*, 863 P.2d at 698 (“The final determination [on whether a severability clause is
25 conclusive] *depends on whether the remainder* [of the statute] ... *would have been adopted* by the
26 legislative body had the latter *foreseen* the partial *invalidity* of the statute.”) (*quoting Calfarm*,
27 771 P.2d 1247, 48 Cal.3d 805, 821 (Cal. 1989)).

28 ¹²⁷ In its Statement of Purpose, Proposition 14 explicitly states that it needs implementing
legislation. *See supra* note 51. When the Legislature enacts implementing legislation, it must be
assumed that it actually *intended* to implement the constitutional provision in question. *See, e.g.*,
People v. Broussard, 856 P.2d 1134, 1137 (Cal. 1993).

¹²⁸ CAL.CONST. art. ii §5 (b).

¹²⁹ *Sonoma County, supra*, 173 Cal.App.4th at 352.

¹³⁰ *Id.* at 352; *Gerken, supra*, 863 P.2d 694, 6 Cal.4th at 714.

1 It is undisputed that (1) SB 6 was passed in order to implement Proposition 14, and
2 (2) Proposition 14 needs a lawful statute to implement it, because it is not a self-
3 executing provision.¹³¹ Thus, because SB 6 is unenforceable in its entirety,
4 Proposition 14 lacks a lawful statute to implement it. Consequently, Proposition 14
5 must be declared inoperative until the Legislature has passed a new law to
6 implement it.¹³²

7 **VII. Conclusion**

8 *In short, I see grave risks in legislation, enacted by incumbents of the major*
9 *political parties, which distinctly disadvantages minor parties or independent*
10 *candidates.*

11 -- Former Chief Justice Warren Burger, *Buckley v. Valeo*¹³³

12 In our democracy, we entrust our elected leaders with the power to pass fair
13 and just laws. To be sure, the lawmaking process is far from tidy (Otto von
14 Bismarck famously compared it to sausage-making). Yet at the same time, we
15 must constantly guard against overreaching by entrenched political elites. As
16 constitutional scholar John Hart Ely put it: “We cannot trust the ins to decide *who*
17 *stays out*[.]”¹³⁴

18 In 2009, California voters were never given the chance to vote on SB 6:
19 whose core parts, according to Secretary Bowen, are not “permissible” and will
20 instead give Californians the “*illusion*” that they can run as and vote for write-in
21 candidates. It now falls on this Court to protect not only the fundamental rights of
22 political outsiders, but the very integrity of our State’s election system.

25 ¹³¹ *E.g., People v. Vega-Hernandez*, 179 Cal.App.3d 1084, 1092 (Cal.Ct.App. 1986);
26 *Borchers Bros. v. Buckeye Incubator Co.*, 379 P.2d 1, 59 Cal.2d 234, 238 (Cal. 1963).

27 ¹³² See, e.g., *In re Redevelopment Plan for Bunker Hill*, 389 P.2d 538, 61 Cal.2d 21, 75 (Cal.
1964); *Denninger v. Recorder’s Court*, 79 P. 360, 145 Cal. 629, 635 (Cal. 1904).

28 ¹³³ *Buckley v. Valeo*, 424 U.S. 1, 251 (1976) (Burger, C.J., concurring in part and dissenting
in part) (emphases added).

¹³⁴ John Hart Ely, *Democracy and Distrust* 120 (Harvard 1980) (emphases added).

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Respectfully submitted,

By: /s/

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