

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re MICHAEL CHAMNESS,

Plaintiff-Petitioner,

-v.-

U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Respondent,

-and-

DEBRA BOWEN, IN ONLY HER OFFICIAL CAPACITY AS CALIFORNIA
SECRETARY OF STATE, and DEAN LOGAN, in only his official capacity as
Registrar-Recorder / County Clerk of Los Angeles County,

Defendants-Real Parties in Interest

ABEL MALDONADO, CALIFORNIA INDEPENDENT VOTER PROJECT,
CALIFORNIANS TO DEFEND THE OPEN PRIMARY,

Intervenors-Real Parties in Interest

*ON PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT
COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA*

PETITIONER'S EXCERPTS OF RECORD (Vol. 1 of 2)

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1 LOS ANGELES, CALIFORNIA; MONDAY, MARCH 21, 2011

2 1:47 P.M.

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6 THE CLERK: Calling Calendar Item Number 7, Civil
7 11-1479, Michael Chamness versus Debra Bowen, et al.

8 Counsel, please state your appearances for
9 the record.

10 MR. WATERS: Afternoon, your Honor. George Waters
11 for defendant California Secretary of State.

12 THE COURT: Mr. Waters.

13 MR. DUTTA: Good afternoon, your Honor. Gautam
14 Dutta, counsel for plaintiff Chamness.

15 MR. SKINNELL: Good afternoon, your Honor. Chris
16 Skinnell for interveners California Independent Voter
17 Project, Abel Maldonado, David Takashima and the
18 Californians to Defend the Open Primary.

19 THE COURT: Mr. Skinnell, afternoon.

20 All right. We are here in Mr. Chamness'
21 motion for a preliminary injunction.

22 Question, what is the status of the proceeding
23 in the state court?

24 MR. DUTTA: Your Honor, briefing is ongoing there.
25 The appellate -- the appellant's brief is due on the 24th

1 of March, and the date for oral argument has not been set
2 at this time.

3 MR. SKINNELL: Your Honor --

4 MR. DUTTA: And I would add that that is not,
5 unlike this, that is not an expedited motion. You know,
6 a decision would probably be expected by the end of the
7 year.

8 THE COURT: By the end of the year?

9 MR. DUTTA: Under the Court -- it is up to the
10 Court to decide, but it is not expedited, and we could
11 reliably say by the end of the year it would be -- it
12 would not be the next month or the next weeks, and this
13 election as I will explain later for all practical
14 purposes will begin in 12 days when the ballots are sent
15 out to overseas and military voters.

16 THE COURT: Right. And I would have thought that
17 there would be some urgency.

18 MR. DUTTA: There is urgency to this case before
19 you. Mr. Chamness is not part of that case. He asked to
20 intervene. Permission was denied.

21 THE COURT: Okay. All right. I am thinking now
22 that given that -- well, it would seem that since this
23 matter involves an interpretation of the state elections
24 code, that maybe the state courts would be in a better
25 position to interpret the provisions of the elections

1 code and are certainly capable of ruling on any
2 constitutional challenges to the elections code.

3 MR. DUTTA: Your Honor, if I may respond, this
4 case, this statute has already been applied in
5 one election, Senate District 28 which took place last
6 month. Election date was February 15th, 2011. My client
7 Michael Chamness ran as a qualified candidate. His name
8 appeared on the ballot. He was prevented from stating
9 that he was either an independent or that he was a member
10 of the coffee party. Instead, he was forced to state
11 that he had no party preference. So there is no saving
12 construction here.

13 The issue is presented before the Court, and
14 it is ripe, and the Secretary of State also agrees with
15 us that this law requires that candidates like
16 Mr. Chamness be branded with the ballot label of no party
17 preference, and Secretary of State, as you know, is the
18 chief elections officer of the state.

19 THE COURT: And it is your client's view that that
20 places him at a disadvantage to other candidates on the
21 ballot?

22 MR. DUTTA: Yes. It most definitely does. In
23 fact, the Supreme Court of Massachusetts has said that
24 every candidate has a right to the term independent
25 because in its words, the word independent carries --

1 see, I will quote that phrase exactly, but the difference
2 between no party preference and independent is a very
3 important one. I mean, I won't repeat the papers in that
4 the Ninth Circuit has said every candidate has a right
5 to -- the phrase independent, but the Ninth Circuit, I
6 mean, the state court -- the Supreme Court of
7 Massachusetts has said that essentially that the phrase
8 independent carries a positive connotation that would --
9 if deprived of that label, it would constitute a severe
10 harm to a candidate, and I am just looking now for --

11 THE COURT: But you can't really do that in
12 California, though, can you, without causing confusion.

13 MR. DUTTA: Actually, it was done from 1891 to
14 2010, December 21st, 2010. For over a century, people
15 have been able to run. In fact, from my -- if I might
16 share one exhibit that is already there before your
17 Honor, I want to show a before and after.

18 Essentially, I want to show a ballot that was
19 used just last November, and I want to show a ballot that
20 was used this February so your Honor can see it and I
21 also have copies for -- I have copies for opposing
22 counsel as well. So you can see the difference. So the
23 term independent is not confusing in the slightest bit.
24 Let's see here. These two.

25 So there are two elections here. The first

1 one was from November 2nd, 2010. It is an Orange County
2 ballot, and if you look at the bottom left or bottom
3 center of the ballot, it says United States
4 Representative, 47th District, vote for one. Does your
5 Honor see that? It says Orange County General Election,
6 Orange County November 2nd, 2010.

7 THE COURT: Right.

8 MR. DUTTA: Okay. So it is the middle left, and
9 this is an election for Congress, and there it says the
10 third candidate is Cecilia Iglesias. She is listed as an
11 independent.

12 THE COURT: Right.

13 MR. DUTTA: In fact, there have been successful
14 candidates who ran as independent and were elected,
15 Quentin Kopp. He was elected to the state senate in
16 1986, 1990, 1994. He ran as an independent. Lucy Kilea,
17 she was elected to the California State Senate in 1992.
18 So there was a long precedent for granting in California,
19 for granting the ballot label of independent. And it was
20 radical for Senate Bill 6, a law that was passed in the
21 middle of the night without any hearing, to run roughshod
22 over that fundamental right to use the ballot label of
23 independent.

24 THE COURT: It is interesting on the same ballot
25 we also have someone affiliated with the American

1 Independent Party.

2 MR. DUTTA: That's correct.

3 THE COURT: That is interesting.

4 MR. DUTTA: That is one of the six currently valid
5 qualified parties.

6 Now, I will direct your Honor's attention to
7 the second ballot that I gave up, the second exhibit. It
8 says voter nominated offices. It says State Senator,
9 28th District, Special Primary Election. Okay. So my
10 client -- there actually are two -- as your Honor will
11 see, all the candidates are either democrats or
12 republicans with two exceptions, and both of them state
13 no party preference. One person is Mark Lipton. The
14 other is my client, Michael Chamness. He did not want to
15 be listed as having no party preference because it
16 deprives the voters of very critical information.

17 As Chief Justice Roberts and Justices Alito
18 and Rehnquist said, the ballot is the last thing the
19 voter sees before he makes a decision, and a voter who
20 would like to support somebody of an independent
21 persuasion and would like to support someone of some
22 alternative persuasion, then the parties would be robbed
23 of this highly communicative situation that the Ninth
24 Circuit has recognized in Rubin versus City of Santa
25 Monica.