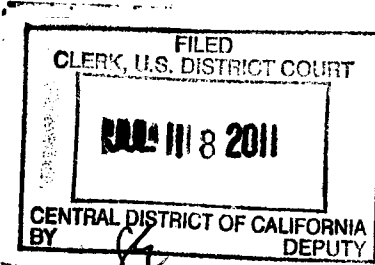


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Attorney for Intervenor-Applicant

JULIUS GALACKI

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CLERK, U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL CHAMNESS, DANIEL  
FREDERICK, and RICH WILSON,

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

*Plaintiffs,*

vs.

**INTEVENOR-APPLICANT JULIUS  
GALACKI'S EX PARTE  
APPLICATION TO SHORTEN  
TIME AND INCORPORATE HIS  
AS-APPLIED CONSTITUTIONAL  
CLAIMS INTO PLAINTIFFS'  
PENDING MOTION FOR  
SUMMARY JUDGMENT**

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

HEARING DATE: ~~N/A~~ August 15, 2011  
HEARING TIME: ~~N/A~~ 1:30 P.M.  
JUDGE: Hon. Otis D. Wright II

*Defendants.*

COURTROOM: 11\_

NOTICE OF EX PARTE APPLICATION

Intervenor-Applicant Julius Galacki respectfully asks the Court for an order that (1) grants his underlying Motion to Intervene on shortened time, and (2) incorporates by reference his as-applied constitutional claims (stemming from the July 12, 2011 special general election in Congressional District 36) into Plaintiffs' pending Motion for Summary Judgment. The accompanying Points and Authorities, Notice of [Proposed] Motion and [Proposed] Motion to Intervene,

1 Declaration of Julius Galacki, Declaration of Gautam Dutta, and Request for  
2 Judicial Notice support this Application.

3 Pursuant to Local Rule 7-19, Plaintiffs hereby provide the contact  
4 information of all counsel:

- 5 1. George Waters (counsel for Defendant Debra Bowen), Office of the  
6 Attorney General, P.O. Box 944255, Sacramento, CA 94244-2550;  
916.323.8050 phone; 916.324.8835 fax; George.Waters@doj.ca.gov.
- 7 2. Brandi Moore (counsel for Defendant Dean Logan), Office of the Los  
8 Angeles County Counsel, Room 648, 500 W. Temple St, Los  
9 Angeles, CA 90012; 213.974.1832 phone; 213.617.7182 fax;  
BMoore@counsel.lacounty.gov.
- 10 3. Marguerite Mary Leoni & Chris Skinnell (counsel for Intervenors),  
11 Nielsen Merksamer Law Firm, 2350 Kerner Blvd. # 250, San Rafael,  
CA 94901; 415.389.6800 phone; 415.388.6874 fax;  
mleoni@nmgovlaw.com & cskinnell@nmgovlaw.com.
- 12 4. Gautam Dutta (counsel for Plaintiffs Michael Chamness, Daniel  
13 Frederick, and Rich Wilson), 39270 Paseo Padre Pkwy. # 206,  
14 Fremont, CA 94538; 415.236.2048 phone; 213.405.2416 fax;  
Dutta@BusinessandElectionLaw.com.

## 15 MEMORANDUM OF POINTS AND AUTHORITIES

### 16 **I. Introduction**

17 To avert irreparable prejudice, Intervenor-Applicant Julius Galacki makes  
18 two urgent requests. First, he asks the Court to grant his Motion to Intervene on  
19 shortened time. Second, he asks the Court to incorporate by reference his as-  
20 applied claims (stemming from the July 12, 2011 special general election in  
21 Congressional District 36) into Plaintiffs' pending Motion for Summary Judgment.

### 22 **II. Basis for Application**

#### 23 **A. Plaintiffs' Pending Motion for Summary Judgment**

24 On May 6, 2011, Plaintiffs filed the Memorandum of Points and Authorities  
25 to their Notice of Motion and Motion for Summary Judgment.<sup>1</sup> Plaintiffs noticed  
26 the hearing for the Motion for June 6, 2011, 1:30 pm; the hearing was later  
27

28 <sup>1</sup> July 14, 2011 Declaration of Gautam Dutta ("Dutta Decl.") ¶3.

1 rescheduled for June 13, 2011, 1:30 pm.<sup>2</sup> On June 7, 2011, the Court issued an  
2 order cancelling the June 13, 2011 hearing on Plaintiffs' Motion for Summary  
3 Judgment, and took the matter under submission.<sup>3</sup> The discovery cutoff date for  
4 this case has been set for October 3, 2011; pretrial conference, December 12, 2011;  
5 bench trial, January 3, 2012.<sup>4</sup>

6 B. The Urgent Need to Grant Mr. Galacki's Motion to Intervene on  
7 Shortened Time

8 Unless he is allowed to intervene in this lawsuit and supplement Plaintiffs'  
9 pending Motion for Summary Judgment, former write-in candidate, write-in voter,  
10 and declared Tea Party candidate **Julius Galacki** will be deprived of a critical  
11 opportunity to vindicate his fundamental rights. Specifically, Plaintiffs' Motion for  
12 Summary Judgment asks the Court to rule on *all but two* of Mr. Galacki's  
13 constitutional claims. By allowing him to join this litigation, the Court will not  
14 only follow Ninth Circuit precedent, but prevent harmful "inequities and delay"<sup>5</sup>  
15 from disrupting the 2011-12 election cycle.

16 Two days ago, the write-in vote that he cast in a Congressional special  
17 election was not counted.<sup>6</sup> Two weeks earlier, the Los Angeles County Registrar  
18 refused to issue Mr. Galacki any nomination papers to run as a write-in candidate.<sup>7</sup>  
19 As a direct result, Mr. Galacki was barred from exercising his fundamental right to  
20 run for federal office and vote for the candidate of his choice.

21 The interests of justice and judicial economy require that the Court grant this  
22 Application.<sup>8</sup> In this manner, the Court will gain critical insight into the core legal  
23 question raised by Plaintiffs' Motion for Summary Judgment: namely, do the Top

24 <sup>2</sup> *Id.* ¶2.

25 <sup>3</sup> Dutta Decl. ¶5.

26 <sup>4</sup> *Id.* ¶3.

27 <sup>5</sup> *Bates v. Jones*, 127 F.3d 870, 872 (9<sup>th</sup> Cir. 1997) (emphasis added).

28 <sup>6</sup> July 14, 2011 Declaration of Julius Galacki ("Galacki Decl.") ¶¶10, 12, 13; Dutta Decl.

¶12.

<sup>7</sup> Galacki Decl. ¶ 12; Dutta Decl. ¶10.

<sup>8</sup> *Bates, supra*, 127 F.3d at 873 (citing *Storer v. Brown*, 415 U.S. 724, 736 (1974);

*Legislature v. Deukmejian*, 669 P.2d 17 (Cal. 1983)).

1 Two Primary's new rules for write-in candidates violate the U.S. Constitution's  
2 Elections Clause? Equally important, Mr. Galacki will be spared from having to  
3 file a separate, duplicative lawsuit – an outcome disfavored by the Ninth Circuit:

4           The state's electoral process would be subject to disruption if [the  
5 fundamental right at stake] has to be decided in a separate lawsuit.  
6 Surely all parties would want uniformity in the ... election. Whatever  
7 the ultimate outcome of this case, intervention can only be a step in  
8 that direction.

### 7 **III. Mr. Galacki Qualifies for Ex Parte Relief**

8           Mr. Galacki qualifies for ex parte relief for two reasons: (1) he is threatened  
9 with irreparable prejudice, and (2) he is not “at fault for “creating” his urgent  
10 crisis.<sup>10</sup>

#### 11 **A. Mr. Galacki Is Threatened with Irreparable Prejudice**

12           Mr. Galacki is threatened with irreparable prejudice, because unless his  
13 Application is granted, he will be deprived of a critical opportunity to vindicate his  
14 fundamental right to vote and run for public office. Specifically, Plaintiffs' pending  
15 Motion for Summary Judgment raises *all but two* of his constitutional claims. If the  
16 Court decides Plaintiffs' Motion without also hearing Mr. Galacki's claims, he will  
17 suffer irreparable prejudice. As his accompanying Motion to Intervene shows, Mr.  
18 Galacki amply qualifies for intervention of right on the merits.<sup>11</sup> Furthermore,  
19 because he is threatened with “drastic harm” – i.e., losing a critical opportunity to  
20 litigate and vindicate his fundamental rights – Mr. Galacki is entitled *a fortiori* to  
21 ex parte relief, for he has unquestionably “show[n] that there are close issues that  
22 justify the court's review before [he] suffers the harm.”<sup>12</sup>

23           Significantly, the Ninth Circuit has found it “both imperative and in the  
24 public interest” that aggrieved voters and candidates be allowed to intervene and  
25

26 <sup>9</sup> *Bates, supra*, 127 F.3d at 873 (emphases added).

27 <sup>10</sup> *Mission Power Engineering Co. v. Continental Casualty Co.*, 883 F.Supp. 488, 492-93  
(C.D. Cal. 1989).

28 <sup>11</sup> *Id.* at 492.

<sup>12</sup> *Id.* at 492 (emphasis added) (citing *U.S. v. Nutri-Cology, Inc.*, 982 F.2d 394, 397 (9<sup>th</sup> Cir. 1992); *Oakland Tribune v. Chron. Pub. Co.*, 762 F.2d 1374, 1376 (9<sup>th</sup> Cir. 1985)).

1 vindicate their rights in cases involving the fundamental right to vote.<sup>13</sup> Toward  
2 that end, the Ninth Circuit has admonished district courts “to allow *as many parties*  
3 *as possible* who seek to run for office” to intervene in election cases.<sup>14</sup> Because  
4 Mr. Galacki is threatened with irreparable prejudice, he amply qualifies for ex parte  
5 relief.

6 B. Mr. Galacki Did Not “Create” This Urgent Crisis

7 Moreover, Mr. Galacki is not “at fault” for “creating” this urgent crisis. Less  
8 than 48 hours ago, Mr. Galacki’s write-in vote was not counted in the July 12, 2011  
9 special general election for Congressional District 36. Having freshly been  
10 deprived of his fundamental right to vote, he has ruled to this Court with his ripe,  
11 as-applied constitutional claims. In this light, Mr. Galacki amply qualifies for ex  
12 parte relief, because he is not “at fault” for “creating” this urgent crisis.

13 IV. **Opposing Counsel’s Positions**

14 Defendant Logan. Yesterday, Brandi Moore, counsel for Defendant Logan,  
15 stated that her client takes no position with respect to this Application.<sup>15</sup>

16 Defendant Bowen. This morning, George Waters, counsel for Defendant  
17 Bowen, stated that his client opposes this Application.<sup>16</sup>

18 Intervenors. This morning, Chris Skinnell, counsel for Intervenors-  
19 Defendants, stated that his clients oppose this Application. Mr. Skinnell stated: “I  
20 think under the circumstances, with a summary judgment motion under submission  
21 for the past five weeks and probably due for decision any time, it’s our view that it  
22 would be inappropriate to inject a new issue into this case at this point. We also  
23 oppose the ex parte application to intervene.”<sup>17</sup>

24 Plaintiffs. Plaintiffs, who are also represented by Intervenor-Applicant  
25

26 <sup>13</sup> *Bates, supra*, 127 F.3d at 873-74 (emphasis added, quotation marks omitted).

27 <sup>14</sup> *Id.* at 872 (emphases added).

28 <sup>15</sup> Dutta Decl. ¶15.

<sup>16</sup> Dutta Decl. ¶17.

<sup>17</sup> *Id.* ¶19.


1 Galacki's counsel, do not oppose this Application.<sup>18</sup>

2 **V. Conclusion**

3 No other party in this litigation can safeguard Julius Galacki's fundamental  
4 right to vote and run for public office. By immediately hearing his Motion to  
5 Intervene and consolidating his as-applied constitutional claims with Plaintiffs'  
6 Motion for summary Judgment, the Court will uphold the "elementary principles  
7 of fairness that govern California's elections."<sup>19</sup>

8  
9  
10 DATED: July 14, 2011

11  
12 Respectfully submitted,

13  
14 By:   
15 GAUTAM DUTTA, ESQ.

16  
17 Attorney for Intervenor-Applicant

18  
19 JULIUS GALACKI

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27 <sup>18</sup> *Id.* ¶20.

28 <sup>19</sup> *Bates, supra*, 127 F.3d at 873 (citing *Storer v. Brown*, 415 U.S. 724, 736 (1974); *Legislature v. Deukmejian*, 669 P.2d 17 (Cal. 1983)).