

No. 11-56303

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL CHAMNESS, DANIEL FREDERICK, and RICH WILSON

Plaintiffs,

JULIUS GALACKI

Intervenor-Applicant / Appellant,

-v.-

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 / Appellees

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

Intervenors-Defendants / Appellees

*ON APPEAL FROM A CENTRAL DISTRICT OF CALIFORNIA ORDER DENYING
JULIUS GALACKI'S MOTION TO INTERVENE*

APPELLANT JULIUS GALACKI'S OPENING BRIEF

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FRAP 26.1 CORPORATE DISCLOSURE STATEMENT

FRAP 26.1 does not apply here, for Appellant Julius Galacki is a natural person.

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The state ... has repeatedly expressed its legitimate desire to avoid to the greatest extent possible any unnecessary inequities and delay in the upcoming election cycle. We agree. Unlike the state, however, we believe that the most effective way to achieve this objective is to allow as many parties as possible who seek to run for office contrary [to the challenged statute] to be bound by our decision.

-- The Court, *Bates v. Jones*¹

I. Introduction

Julius Galacki was improperly barred from intervening in the underlying Top Two Primary litigation. Disregarding binding precedent from this Court, the trial court banned Mr. Galacki from vindicating his fundamental rights (1) as a voter who was *disenfranchised* because he cast a write-in vote, (2) as a candidate who was *unlawfully disqualified* from running for federal office because he sought to run as a write-in candidate, and (3) as a Tea Party candidate who will soon be *forced to lie to voters* that he has “No Party Preference”. By reversing the trial court’s flawed ruling, the Court will make it possible for Mr. Galacki’s grievances to be considered alongside Plaintiffs’ pending Top Two Primary appeal² – which will resolve *all but two* of Mr. Galacki’s claims.

II. Statement of Jurisdiction

This lawsuit alleges violations of fundamental rights that are protected by the First Amendment, Fourteenth Amendment, Elections Clause, Due

¹ *Bates v. Jones*, 127 F.3d 870, 872 (9th Cir. 1997) (emphases added).

² *Michael Chamness v. Debra Bowen*, No. 11-56449.

Process Clause, and 42 U.S.C. §1983. Accordingly, the trial court had federal-question jurisdiction under 28 U.S.C. §1331.

This appeal arises from an order denying Mr. Galacki leave to intervene as of right under FRCP 24(a)(2). Accordingly, that order constitutes an appealable final decision under 28 U.S.C. §1291.

This appeal was filed in a timely manner. Specifically, it was filed on August 1, 2011, eleven days after the trial court issued its order denying Mr. Galacki leave to intervene.³

III. Statement of Issues Presented for Review

A. Whether an individual who has been deprived of the fundamental right to have his vote counted is entitled to intervene as of right.

B. Whether an individual who has been deprived of the fundamental right to run for federal office is entitled to intervene as of right.

C. Whether a Tea Party candidate is entitled to intervene as of right, because a state law (Senate Bill 6) will soon force him to falsely state on the ballot that he has “No Party Preference”.

IV. Statement of the Case

On July 14, 2011, Mr. Galacki filed an Ex Parte Application and Motion to Intervene. On July 22, 2011, the trial court denied Mr. Galacki’s

³ See FRAP 4(a)(1)(A) (notice of appeal must be filed within 30 days after relevant order has been entered).

Motion. In response, Mr. Galacki filed an Emergency Motion for Summary Reversal with this Court. On August 18, 2011, the Court declined to grant emergency relief, but granted Mr. Galacki's requests for judicial notice. Subsequently, Mr. Galacki filed a Motion for Summary Reversal, which also asked that his appeal be consolidated with Plaintiffs' underlying appeal. On October 4, 2011, the Appellate Commissioner denied Mr. Galacki's Motion, but calendared his appeal with that of Plaintiffs. This appeal followed.

V. Statement of Undisputed Facts

A. Background

A resident of the City of Los Angeles, Julius Galacki lives in a district that recently elected a new Member of Congress in a July 12, 2011 special general election (the "General Election").⁴

Senate Bill 6 ("SB 6"), which implements the Top Two Primary, has trampled on Mr. Galacki's fundamental right to vote and run for office in three egregious ways. First, SB 6 *throws away all votes cast for write-in candidates* in the general election. Specifically, SB 6's Vote Counting Ban has created what one constitutional scholar would call a "trap for the

⁴ ER 1175.

unwary”.⁵ Namely, SB 6 allows voters to cast votes for write-in candidates in the general election, but then *bans their votes from being counted*.⁶ As even Secretary Bowen has admitted, SB 6’s Vote Counting Ban gives voters the “*illusion* that they can write in a candidate’s name and have it *counted*.”⁷

Second, Mr. Galacki was barred from running as a write-in candidate for Congressional office, because Los Angeles County Registrar Logan claimed that SB 6 bans write-in candidacies in the general election. In so doing, Registrar Logan ignored Elections Code §15340, which expressly gives *every* voter the right to vote for a write-in candidate in “any” election:

Each voter is entitled to *write the name of any candidate for any public office*, including that of President and Vice President, *on the ballot of any election*.⁸

Tellingly, even Secretary Bowen has admitted that SB 6’s Candidacy Ban “give[s] candidates the *illusion* that they can run as a *write-in*[.]”⁹

Finally, SB 6’s Party Preference Ban bars candidates from using the ballot label of “Independent” – a ban that even Secretary Bowen has

⁵ Joseph Fishkin, *Voting as a Positive Right: A Reply to Flanders*, 28 ALASKA L.R. 29, 31 (June 1, 2011).

⁶ SB 6-amended Elections Code §13207 (mandating that voters be given the right to cast write-in votes in every election); SB 6-amended Elections Code §8606 (banning all write-in votes that are cast in the general election from being counted).

⁷ Aug. 5, 2011 Dutta Decl. Exh. 72 (at Exh. B, p.1, emphases added). On Aug. 18, 2011, the Court took judicial notice of Secretary Bowen’s public statements regarding SB 6. Court’s Aug. 18, 2011 Order, Docket No. 14 (*granting* Mr. Galacki’s Aug. 5, 2011 Request for Judicial Notice, Docket No. 4-1, at 2).

⁸ Elections Code §15340 (emphases added).

⁹ Aug. 5, 2011 Dutta Decl. Exh. 72 (at Exh. B, p.1, emphases added). *See supra* note 7.

admitted is not “permissible”.¹⁰ Instead, SB 6’s Party Preference Ban will soon force Tea Party candidate Julius Galacki to falsely state on the ballot – and *lie to voters* – that he has “No Party Preference”.

On May 6, 2011, Plaintiffs Chamness, Frederick, and Wilson filed a Motion for Summary Judgment (“Plaintiffs’ MSJ”) in the underlying litigation.¹¹ At Secretary Bowen’s request, the trial court postponed the hearing by one week, from June 6, 2011 to June 13, 2011; the trial court later cancelled that hearing.¹² On July 14, 2011, the trial court issued a tentative ruling granting summary judgment in favor of the non-moving parties (i.e., Secretary Bowen and Intervenors-Defendants), and postponed the MSJ hearing until August 22, 2011.¹³ Subsequently, the trial court denied Plaintiffs’ MSJ, and granted summary judgment in favor of the non-moving parties.¹⁴ Plaintiffs promptly appealed.¹⁵

Meanwhile, Mr. Galacki decided to run as a write-in candidate in the July 12, 2011 special general election for Congressional District 36 (the “General Election”).¹⁶ On June 14, 2011, he asked Registrar Logan to issue him nomination papers so that he could qualify and run as a write-in

¹⁰ Aug. 5, 2011 Dutta Decl. Exh. 72 (at Exh. A, Attach. 1, p.1, emphasis added). *See supra* note 7.

¹¹ ER 1214.

¹² ER 1208-13; 1019-20.

¹³ Aug. 5, 2011 Dutta Decl. Exh. 49.

¹⁴ Sept. 12, 2011 Declaration of Gautam Dutta (“Sept. 12, 2011 Dutta Decl.”), Exh. 6.

¹⁵ Sept. 12, 2011 Dutta Decl. Exh. 3.

¹⁶ ER 1149 ¶9.

candidate.¹⁷ Mr. Galacki subsequently cast a write-in vote for himself in the General Election, and mailed his vote-by-mail ballot to Registrar Logan's office.¹⁸

On June 28, 2011, the statutory deadline to file write-in nomination papers for the General Election passed.¹⁹ Because no nomination papers had been issued to Mr. Galacki as of that date, he was barred from exercising his fundamental right to run for office.²⁰ On July 12, 2011, the write-in vote that Mr. Galacki cast for himself in the General Election was not counted.²¹ Two days later, Mr. Galacki rushed to the trial court with his Ex Parte Application and Motion to Intervene.²² In response, Secretary Bowen filed a sparse, two-paragraph opposition, while Intervenors-Defendants filed a four-paragraph opposition.²³ Mr. Galacki then filed a reply brief to respond to both oppositions.²⁴

On July 22, 2011, the trial court denied Mr. Galacki's Motion.²⁵ In response, Mr. Galacki filed an Emergency Motion for Summary Reversal with this Court. On August 18, 2011, the Court declined to grant emergency

¹⁷ ER 1111-12 ¶8.

¹⁸ ER 1149 ¶10.

¹⁹ To qualify, write-in candidates had to file their nomination papers at least 14 days before the date of the election (here, the July 12, 2011 General Election). Elections Code §8601.

²⁰ ER 1112 ¶9.

²¹ ER 1178:2-1178:6.

²² ER 1169-91.

²³ ER 1192-98.

²⁴ ER 1101.

²⁵ ER 1012.

relief, but granted Mr. Galacki's requests for judicial notice.²⁶ Subsequently, Mr. Galacki filed a Motion for Summary Reversal, which also asked that his appeal be consolidated with Plaintiffs' underlying appeal. On October 4, 2011, the Appellate Commissioner denied Mr. Galacki's Motion, but calendared his appeal with that of Plaintiffs. This appeal followed.

B. The Trial Court's Order Denying Intervention

The trial court gave two reasons for banning Mr. Galacki from intervening as of right: (1) Plaintiffs would adequately represent Mr. Galacki's interests, and (2) his Motion was not timely.²⁷ First, the trial court ruled that Plaintiffs would adequately represent Mr. Galacki's interests. According to the trial court, because both Mr. Galacki and Plaintiffs invoked the same High Court case (*Cook v. Gralike*), Mr. Galacki had not brought any unique claims.²⁸

²⁶ Court's Aug. 18, 2011 Order, Docket No. 14 (*granting* Mr. Galacki's Aug. 5, 2011 Request for Judicial Notice, Docket No. 4-1, at 2 *and granting* Mr. Galacki's Aug. 18, 2011 Request for Judicial Notice, Docket No. 12-2, at 2).

²⁷ In a footnote, the district court opined that Mr. Galacki's Motion to Intervene was procedurally defective, because it did not include a complaint in intervention. ER 1014 n.2. Interestingly, the trial court had allowed Intervenors-Defendants to intervene even though they themselves had not filed a complaint in intervention. Sept. 12, 2011 Dutta Decl. Exh. 4. In any event, prospective intervenors need not file a complaint in intervention, as long as their papers have "fully stated the legal and factual grounds for intervention." *Beckman Ind. v. Int'l Ins. Co.*, 966 F.2d 470, 474 (9th Cir. 1992) (*citing, inter alia, Smith v. Pangalinan*, 651 F.2d 320, 1325-26 (9th Cir. 1981); *Shores v. Hendy Realiz.*, 133 F.2d 738, 742 (9th Cir. 1943)). Here, even the trial court conceded that "Mr. Galacki's Motion sets forth his claims in detail[.]" ER 1014 n.2. Therefore, Mr. Galacki's Motion to Intervene did not suffer from any procedural shortcomings.

²⁸ *Cook v. Gralike*, 531 U.S. 510 (2001); ER 1016:22-1017:2.

In addition, the trial court ruled that Mr. Galacki's Motion to Intervene was not timely for three reasons. First, it ruled that it should not hear Mr. Galacki's claims, because it was about to grant summary judgment against Plaintiffs.²⁹ Second, the trial court ruled that it would be "prejudicial" to Defendants if Mr. Galacki were allowed to intervene.³⁰ Finally, the trial court ruled that Mr. Galacki should have brought his Motion to Intervene before he had suffered any irreparable harm; that is, he should not have brought any as-applied constitutional claims.³¹

VI. Standard of Review

"This Court reviews de novo the denial of a motion to intervene as of right."³² In so doing, the Court reviews the trial court's determination of timeliness (one part of the test for intervention of right) for abuse of discretion.³³ "An abuse of discretion will be found if the district court based its decision on an erroneous legal standard or clearly erroneous findings of fact."³⁴ Toward that end, this Court "review[s] conclusions of law *de novo*

²⁹ ER 1015:10-1015:11.

³⁰ ER 1015:22.

³¹ ER 1015:24-1016:2.

³² *U.S. v. State of Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996) (citation omitted).

³³ *Id.* at 1503 (citations omitted).

³⁴ *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

and findings of fact for clear error.”³⁵ Put another way, a ruling by a trial court will be reversed if it did not “g[e]t the law right”.³⁶

VII. Summary of Argument

After providing relevant background relating to write-in voting, Mr. Galacki will discuss two main issues. After underscoring the importance of write-in voting and candidacies, he will lay out in detail his unique Elections Clause claims against SB 6. Second, Mr. Galacki will show that the Court must reverse the trial court’s ruling, for he has met all of the requirements to intervene as of right.

VIII. Argument

A. The Importance of Write-In Voting

If the candidate who has represented an individual's interests and views is forced to withdraw from the campaign, alters his or her positions or is indicted for alleged felonies, that individual may feel compelled to become a candidate in order to fill the void. Rather than "doing violence" to the election process, the availability of a write-in candidacy provides the flexibility to deal with unforeseen political developments and may help ensure that the voters are given meaningful options on election day.

-- California Supreme Court, *Canaan v. Abdelnour*³⁷

Write-in voting has played an important role in local, state, and national politics. Last November, U.S. Senator Lisa Murkowski (R-Alaska)

³⁵ *Id.* at 1131.

³⁶ *Id.*

³⁷ *Canaan v. Abdelnour*, 710 P.2d 268, 277, 40 Cal.3d 703, 718-19 (Cal. 1985) (emphases added), subsequently overruled on other grounds, *Edelstein v. San Francisco*, 56 P.3d 1029, 29 Cal.4th 164 (Cal. 2002).

was re-elected as a write-in candidate.³⁸ In 1982, Ron Packard (R-CA) won his write-in bid for Congress (43rd District) and was re-elected eight times before he retired.³⁹ Two decades later, write-in candidate Beverly O’Neill won the 2002 race for Long Beach Mayor. In 2004, write-in candidate Donna Frye finished second in the San Diego mayoral election – and she would have won if her voters had not just written in her name, but also marked the “write in” oval on the ballot.⁴⁰ Two years earlier, Anthony Williams waged a successful write-in campaign for Washington, DC Mayor.⁴¹ Other notable write-in candidates include Tonia Reyes Uranga (finished second in a 2010 race for Long Beach City Council) and now-Assemblymember Tom Ammiano (finished second in the 1999 San Francisco mayoral election).⁴²

Ironically, by attacking write-in voting, SB 6 seeks to kill off a vital safety valve that would have made its election system stronger. Suppose that SB 6 had been used for last November’s gubernatorial election, and that Democrat Jerry Brown and Republican Meg Whitman had been the only two candidates whose names appeared on the November ballot.

³⁸ *Miller v. Treadwell*, -- P.3d --, No. S-14112 (Alaska Dec. 22, 2010).

³⁹ ER 1229:18-1229:19.

⁴⁰ *McKinney v. Superior Court*, 21 Cal.Rptr.3d 773, 775 (Cal.Ct.App. 2004).

⁴¹ “Anthony Williams Wins Big in D.C. Democratic Mayoral Primary”, JET, Oct. 7, 2002, at 6.

⁴² *Edelstein*, *supra*, 56 P.2d 1029, 29 Cal. 4th at 182; ER 1229:22-1230:2.

What if Whitman had suddenly suffered a stroke and became paralyzed a few weeks before the November general election? Under SB 6's new rules, Republican voters would face a double bind. First off, SB 6 would ban the Republican Party from replacing Whitman.⁴³ Worse yet, if voters had written in the name of another Republican, SB 6 would force election officials like Registrar Logan to *throw away* their votes:

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

In light of the critical role that write-in candidates have played in our elections, federal courts must scrutinize any attempt to disqualify write-in candidates or disenfranchise the voters who support them.⁴⁵

B. The Fundamental Right to Run as a Write-In Candidate

The United States Supreme Court has repeatedly held that the individual's right to seek public office is inextricably intertwined with the public's fundamental right to vote, and may be limited only where necessary to achieve a compelling state purpose.

-- Ninth Circuit, *Davies v. Grossmont Union High School District*⁴⁶

⁴³ SB 6-amended Elections Code §8807.

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

⁴⁵ “[H]aving granted citizens the right to cast write-in votes, the [State] *must confer the right* in a manner *consistent with the Constitution*.” *Libertarian Party v. District of Columbia Bd. of Elections*, 768 F.Supp.2d 174, 182 (D.D.C. 2011) (emphases added); *see also Grant v. Meyer*, 828 F.2d 1446, 1456 (10th Cir. 1987); *Turner v. District of Columbia Bd. of Elections*, 77 F.Supp.2d 25, 30 (D.D.C. 1999).

⁴⁶ *Davies v. Grossmont Union High School Dist.*, 930 F.2d 1390, 1397 (9th Cir. 1991) (emphases added), *cert. denied*, 501 U.S. 1252 (1991) (citing *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Lubin v. Parish*, 415 U.S. 709 (1974); *Bullock v. Carter*, 405 U.S. 134 (1972); *Mancuso v. Taft*, 476 F.2d 187 (1st Cir. 1973)); *see also Leonard v. Clark*, 12 F.3d 885, 890 (9th Cir. 1994).

Since ... SB 6 precludes [write-in] votes from being counted, it *makes no sense* to give candidates the illusion that they can run as a write-in or give voters the illusion that they can write in a candidate's name 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*."

-- Secretary of State Debra Bowen's office⁴⁷

Mr. Galacki had a fundamental – and undeniable – right to run as a write-in candidate in the July 12, 2011 General Election. Elections Code section 15340 gives every voter the right to cast a write-in vote in "any" election.⁴⁸ Furthermore, Sections 8600 and 8601 of the Elections Code expressly give individuals like Mr. Galacki the right to run as write-in candidates for every federal and state office, as long as they file their nomination papers within 14 days of the date of the election.⁴⁹ Thus, the statutory deadline to file write-in nomination papers for the General Election fell on **June 28, 2011** (i.e., 14 days before July 12, 2011).

C. Mr. Galacki's Unique Elections Clause Claims

⁴⁷ ER 1227:3-1227:6 (emphases added); *see also supra* note 7.

⁴⁸ Elections Code §15340.

⁴⁹ *Id.* §8600 (specifying paperwork requirements to qualify as a write-in candidate; *id.* §8601 (write-in candidates must file their nomination papers within 14 days of the election). Because the Elections Code did not ban write-in votes from being cast, neither *Burdick v. Takushi* nor *Edelstein v. San Francisco* applies here. *Cf. Burdick v. Takushi*, 504 U.S. 428 (1992) (State may ban write-in votes from being cast under the U.S. Constitution); *Edelstein, supra*, 56 P.3d 1029, 29 Cal.4th at 169 (to ban write-in candidacies and voting in the general election, a State must first pass a statute that expressly bans write-in votes from being cast).

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

-- U.S. District Court, District of Columbia⁵⁰

In addition to the claims that have already been raised by Plaintiffs, Mr. Galacki brings two unique,⁵¹ as-applied Elections Clause claims against SB 6: (1) it unlawfully banned him from running as a write-in candidate in the special general election for Congressional District 36, and (2) it unlawfully forced Defendant Logan not to count the write-in vote that he had cast for himself.⁵² As the High Court unanimously ruled in *Cook v. Gralike*, an election regulation such as SB 6 violates the Elections Clause if it aims to (1) “favor or disfavor” one class of candidates over another, (2) “dictate electoral outcomes”, or (3) “evade important constitutional restraints”.⁵³

⁵⁰ *Libertarian Party, supra*, 768 F.Supp.2d at 182 (emphases added); *see also Grant, supra*, 828 F.2d at 1456 (“Although the right to place a question on the ballot is not fundamental in Illinois, the legislature has seen fit to confer such right. Once [the State] decided to extend this forum, it *became obligated to do so in a manner consistent with the Constitution*.”) (emphases added) (quoting *Georges v. Carney*, 546 F.Supp. 469, 476-77) (N.D. Ill.), *aff’d*, 691 F.2d 297 (7th Cir. 1982)); *Turner, supra*, 77 F.Supp.2d at 30.

⁵¹ Plaintiff Rich Wilson, who cast a write-in vote in a state election (for Assembly District 4), brings a *different* Elections Clause claim: namely, federal law enacted pursuant to the Elections Clause protects “the right of an eligible voter to cast a ballot and have that ballot counted.” ER 1233:18-1233:20. Otherwise, Mr. Galacki’s as-applied and facial claims mirror Plaintiffs’ other claims against SB 6. ER 1182:7-1182:8. Namely, SB 6 has violated – and is poised to again violate – his fundamental rights under the First Amendment, Fourteenth Amendment, and the Due Process Clause.

⁵² SB 6 implements Proposition 14’s Top Two Primary system, which is modeled after Washington State’s Top Two Primary system. In contrast to SB 6, Washington law allows write-in candidacies in the general election and does not ban lawfully cast write-in votes from being counted. RCW 29a.24.311.

⁵³ *Gralike, supra*, 531 U.S. at 523 (quoting *U.S. Term Limits v. Thornton*, 514 U.S. 779,

In *Gralike*, the High Court struck down a state statute that targeted federal candidates who did not support term limits. For example, if an incumbent did not support term limits, that law required the following label to be printed beside his or her name on the ballot: “DISREGARDED VOTERS’ INSTRUCTIONS ON TERM LIMITS.”⁵⁴ In response, the High Court held that the state statute violated the Elections Clause for at least two reasons. First, the statute was “plainly designed to favor candidates who [were] willing to support” term limits and “to disfavor those who either oppose term limits entirely or would prefer a different proposal”:⁵⁵

[I]t seems clear that the adverse labels *handicap candidates* “at the most crucial state in the election process – the instant before the vote is cast.” At the same time, “by directing the citizen’s attention to the single consideration of the candidates’ fidelity to term limits, the labels imply that the issue “is an important – perhaps paramount consideration in the citizen’s choice, which *may decisively influence the citizen* to cast his ballot” against candidates branded as unfaithful.⁵⁶

The High Court then concluded that the statute unlawfully aimed to “dictate electoral outcomes,” because “the labels surely place their targets at a *political disadvantage*[.]”⁵⁷

833-34 (1995)).

⁵⁴ *Gralike, supra*, 531 U.S. at 524

⁵⁵ *Id.* at 524 (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788 n.9 (1983)).

⁵⁶ *Gralike, supra*, 531 U.S. at 524 (quoting *Anderson, supra*, 375 U.S. at 402) (emphases added).

⁵⁷ *Gralike, supra*, 531 U.S. at 525 (emphases added).

By barring Mr. Galacki from running as a write-in candidate in the General Election, SB 6 “disfavored” write-in candidates like him and “dictated political outcomes”.⁵⁸ Specifically, SB 6 unlawfully deprived him of his fundamental right to run as a write-in candidate – which Sections 8600 and 8601 of the Election Code guarantee. Thus, SB 6 was plainly designed to “disfavor” and “handicap” write-in candidates like Mr. Galacki, and designed to “favor” those candidates whose names appeared on the ballot.⁵⁹ Moreover, SB 6 “dictated political outcomes”, for it put Mr. Galacki at a debilitating political disadvantage: it disqualified it from running for office.

Similarly, by forcing Defendant Logan not to count Mr. Galacki’s write-in vote, SB 6 “disfavored” write-in voters like him and “dictated political outcomes”. Specifically, SB 6 unlawfully deprived of his fundamental right to cast a write-in vote and have it counted in “any” election – a right which Section 15340 of the Election Code guarantees. Thus, SB 6 was plainly designed to “disfavor” and “handicap” voters like Mr. Galacki who cast ballots for write-in candidates, and designed to “favor” voters who cast ballots for candidates whose names appeared on the ballot.⁶⁰ Moreover, SB 6 “dictated political outcomes”, for it put Mr. Galacki at a

⁵⁸ *Id.* at 523.

⁵⁹ *Id.* at 523-25.

⁶⁰ *Id.* at 523-25.

debilitating political disadvantage: it forced Registrar Logan to disenfranchise him.

D. Defendants Had No Lawful Authority to Disqualify and Disenfranchise Mr. Galacki

To be sure, Secretary Bowen and Registrar Logan may argue that they lawfully disqualified and disenfranchised Mr. Galacki, because the State has the authority to ban write-in votes from being cast.⁶¹ However, the plain language of the Elections Code flatly contradicts such a claim. In fact, instead of banning him from casting write-in votes, the Elections Code *explicitly allowed* Mr. Galacki not only to cast write-in votes, but also to *run as a write-in candidate* in every general election. Specifically, Section 15340 of the Elections Code gave (and still gives) voters like Mr. Galacki the right to cast a write-in vote in “every” election. Furthermore, Sections 8600 and 8601 allowed (and still allow) individuals like Mr. Galacki to run as a write-in candidate in every election, as long as they have filed nomination papers at least 14 days before the date of the election. Because SB 6 did not repeal Sections 15340, 8600, or 8601, Secretary Bowen and

⁶¹ Cf. *Burdick, supra*, 504 U.S. 428 (State may ban write-in votes from being cast under the U.S. Constitution); *Edelstein, supra*, 56 P.3d 1029, 29 Cal.4th at 169 (to ban write-in candidacies and voting in the general election, a State must first pass a statute that expressly bans write-in votes from being cast).

Registrar Logan⁶² had *no lawful authority* either to disqualify Mr. Galacki's write-in candidacy or to throw away lawfully cast his write-in vote.⁶³

For her part, Secretary Bowen may resort to two meritless arguments. First, she may claim that Part 8605 or 8606 of SB 6 banned Mr. Galacki from running as a write-in candidate in the General Election.⁶⁴ However, neither of those SB 6 provisions repealed Elections Code Sections 8600, 8601, or 15340. Thus, because SB 6 did not ban write-in candidacies, Registrar Logan had no legal authority to bar Mr. Galacki from running as a write-in candidate in the General Election.⁶⁵

⁶² Registrar Logan also claimed that he could not issue write-in nomination papers to Mr. Galacki, because Secretary Bowen forbade him from doing so: namely, Secretary Bowen's General Election Calendar "contain[ed] no line item or line items regarding the write-in process." ER 1126. However, California law gives elections officials like Registrar Logan independent authority to interpret and enforce elections laws. *See, e.g., Billig v. Voges*, 273 Cal.Rptr. 91, 96-97, 223 Cal.App.3d 962 (Cal.Ct.App. 1990) (elections official interprets and enforces Elections Code without consulting the Secretary of State); *Farley v. Healey*, 67 Cal.2d 325, 327 (Cal. 1997); *Alliance for a Better Downtown Millbrae v. Wade*, 108 Cal.App.4th 123, 132, 136 (Cal.Ct.App. 2003).

⁶³ "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)). Although it made nearly 60 amendments to the Elections Code, SB 6 did not repeal (1) the right to run as a write-in candidate, or (2) the right to cast a write-in vote for a write-in candidate. 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).

⁶⁴ SB 6-amended Elections Code §§8605 & 8606.

⁶⁵ "An as-applied First Amendment challenge contends that a given statute or regulation is 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 added) (*citing Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 802-03 (1984)). Thus, instead of deciding whether SB 6 was correctly interpreted, the Court must decide whether Secretary Bowen and Registrar Logan's actual interpretation and enforcement of SB 6 violated Mr. Galacki's fundamental rights.

As a fallback, Secretary Bowen may insist that the State had the authority to disqualify and disenfranchise Mr. Galacki, because the State has the power to “prescribe the procedural mechanisms for holding congressional elections.”⁶⁶ Yet contrary to her claims, the U.S. Supreme Court has banned the State’s regulatory interest *from even being considered* in Elections Clause cases. In *Gralike*, the High Court made an emphatic, unanimous ruling: if a state’s election rule violates the Elections Clause, no state interest can save it. Thus, the High Court made it clear that it will strike down any state “regulation” that singles out and targets a class of federal candidates:

While the precise damage the labels may exact on candidates is disputed between the parties, the labels surely place their targets at a political disadvantage to unmarked candidates for congressional office. Thus, far from regulating the procedural mechanisms of elections, [the statute] attempts to “dictate electoral outcomes.” Such “regulation” of congressional elections *simply is not authorized* by the Elections Clause.⁶⁷

In short, the State “simply is not authorized” to politically harm write-in candidates and the voters who support them. Therefore, no state interest could justify disqualifying and disenfranchising Mr. Galacki.

C. The Trial Court’s Order Denying Intervention Must Be Reversed

⁶⁶ See *Gralike, supra*, 531 U.S. at 523 (emphasis added) (citation omitted).

⁶⁷ *Id.* at 525-26 (emphases added) (*quoting U.S. Term Limits v. Thornton*, 514 U.S. 779, 833-34 (1995)).

The trial court's order denying intervention must be reversed, for Mr. Galacki easily satisfies the requirements to intervene as of right. The Court requires four criteria to qualify for intervention of right:

1. The applicant must have a "significantly protectable" interest relating to the property or transaction that is the subject of the transaction;
2. The disposition of the action may, as a practical matter, "impair or impede" the applicant's ability to protect that interest;
3. The application for intervention must be timely;
4. The applicant's interest "may not be" adequately represented by the existing parties in the lawsuit.⁶⁸

As the Court has made clear, "Rule 24 traditionally receives liberal construction *in favor of* applicants for *intervention*."⁶⁹ As the trial court correctly ruled, Mr. Galacki easily satisfied the first two requirements. Indeed, it is undisputed that (1) Mr. Galacki has a "significantly protectable" interest in the underlying Top Two Primary litigation, and (2) his ability to protect that interest has already been impeded and impaired. Namely, by denying Plaintiffs' claims, the trial court deprived Mr. Galacki of his fundamental right to vote and run for public office *without giving him a hearing* – violating his right to Due Process.⁷⁰

⁶⁸ *U.S. v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004) (*quoting U.S. v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)); *see also* FRCP 24(a)(2).

⁶⁹ *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003), *cert. denied sub. nom. Hoohuli v. Lingle*, 540 U.S. 1017 (2003) (emphases added).

⁷⁰ *Walls v. Central Contra Costa Transit Auth.*, -- F.3d --, 2011 WL 3319442 at *3 (9th Cir. 2011); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *see also Kassbaum v. Steppenwolf Prods.*, 236 F.3d 487, 494 (9th Cir. 2000); *Bates, supra*, 127 F.3d at

1. No Other Party Can Adequately Represent Mr. Galacki's Interests

Contrary to the trial court's erroneous ruling, Mr. Galacki must be allowed to intervene, for no other party can adequately represent his interests as a matter of law.⁷¹ The Court weighs three factors in deciding whether existing parties can adequately represent a prospective intervenor's interests: (1) whether the interest of an existing party "is such that it will undoubtedly make all the intervenor's arguments"; (2) whether the existing party is "capable and willing to make such arguments"; and (3) whether the prospective intervenor would "offer any necessary elements" to the litigation that other parties would "neglect".⁷² Toward that end, a prospective intervenor has the "minimal" burden of making such a showing: he or she "need only show that representation of its interests by existing parties 'may be' inadequate".⁷³

Here, Mr. Galacki's interests will not be adequately represented for one simple reason. Namely, Plaintiffs have not and cannot raise two of his Elections Clause claims under *Cook v. Gralike*: that SB 6 (1) violated his

873-74; *Keith v. Volpe*, 858 F.3d 467, 473-76 (9th Cir. 1988).

⁷¹ *Fortney v. U.S.*, 59 F.3d 117, 119 (9th Cir. 1995).

⁷² *Southwest Center for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001).

⁷³ *Id.* at 823 (emphases added) (quoting *Trbovich v. UMW*, 404 U.S. 528, 538 n.10 (1972)).

fundamental right to run for office, and (2) violated his fundamental right to cast a vote and have it counted.⁷⁴

As the trial court noted, Plaintiffs Daniel Frederick and Rich Wilson, respectively, have also brought write-in claims stemming from the recent state election in Assembly District 4. But contrary to the trial court's opinion, *Gralike* only applies to elections involving federal candidates with respect to the Elections Clause.⁷⁵ Specifically, Plaintiff Daniel Frederick – who, like Mr. Galacki, was illegally banned from running as a write-in candidate – invoked the First Amendment, but not the Elections Clause.⁷⁶

For his part, Plaintiff Rich Wilson – who, like Mr. Galacki, cast a write-in vote that was not counted – did not invoke *Gralike*, but instead brought a different Elections Clause claim: namely, a federal statute (which was enacted by Congress pursuant to its authority under the Elections Clause) protects his right to cast a ballot and have that ballot counted.⁷⁷

Because Plaintiffs Frederick and Wilson did not *and cannot* raise Mr. Galacki's unique Elections Clause claims, they cannot adequately represent

⁷⁴ *Gralike, supra*, 531 U.S. 510.

⁷⁵ *Id.* at 523 (examining when a state exceeds its power to “prescribe the procedural mechanisms for holding congressional elections”) (emphasis added).

⁷⁶ Plaintiff Frederick was barred from running as a write-in candidate in the May 3, 2011 special general election for Assembly District 4. ER 1232:5-1233:11.

⁷⁷ Plaintiff Rich Wilson cast a write-in vote in the May 3, 2011 special general election for Assembly District 4. ER 1233:18-1233:20; *see also U.S. v. Mosley*, 238 U.S. 383, 386 (1915) (Civil Rights Act of 1870, 16 Stat. 140-146, passed by Congress pursuant to its authority under the Elections Clause, safeguards the fundamental right of every voter to cast a ballot and have that ballot counted); *Gamza v. Aguirre*, 619 F.2d 449, 452 (5th Cir. 1980) (re-affirming *Mosley*); *cf. Gralike, supra*, 531 U.S. 510.

Mr. Galacki's interests.

Secretary Bowen may argue that Mr. Galacki should still be banned from intervening, because both he and Plaintiffs shares the same "ultimate objective": to strike down SB 6. To be sure, a "presumption of adequacy" arises if a prospective intervenor and an existing party share the same "the same ultimate objective."⁷⁸ However, prospective intervenors may rebut that presumption if they do not share "sufficiently congruent" interests.⁷⁹

Here, the interests of Mr. Galacki and Plaintiffs diverge in one critical respect: unlike Mr. Galacki, Plaintiffs do not seek to run for Congress in the 2011-12 election cycle.⁸⁰ Plaintiffs' MSJ does not seek injunctive relief against Senate Bill 6. Unless Mr. Galacki is allowed to intervene, it may prove difficult for Plaintiffs to fully resolve their appeal before March 29, 2012: the deadline for Secretary Bowen to finalize the certified list of federal and state candidates for the 2012 statewide election.⁸¹

In short, Plaintiffs cannot adequately defend the fundamental rights of Mr. Galacki: a Tea Party candidate who may soon be forced to lie to voters regarding his political beliefs in the 2012 statewide election. Because

⁷⁸ *Berg, supra*, 268 F.3d at 823.

⁷⁹ *Id.* at 823; *see also Bates, supra*, 127 F.3d at 873 n.4.

⁸⁰ *Bates, supra*, 127 F.3d at 873 n.4 (voters and candidates allowed to intervene with respect to looming election because their interests would not have been adequately represented by the existing parties).

⁸¹ *Chamness v. Bowen*, No. 11-56449, Dkt. 24-1, at 4-5.

Plaintiffs do not share “sufficiently congruent” interests with Mr. Galacki, he must be allowed not only to intervene as of right, but to consolidate his claims into Plaintiffs’ pending appeal.⁸²

2. Mr. Galacki’s Motion to Intervene Was Timely

Equally important, the trial court did not “get the law right” when it ruled that Mr. Galacki had not brought a timely Motion to Intervene.⁸³ Courts consider three factors in determining whether an applicant has brought a timely motion to intervene: (1) the “stage of the proceeding” when an applicant seeks to intervene, (2) the prejudice to other parties, and (3) “the reason for and length of the delay.”⁸⁴ Here, it is undisputed Mr. Galacki filed his Motion to Intervene *two days* after the event that inflicted irreparably harm on his fundamental rights: when his write-in vote was not counted. Furthermore, in *Bates v. Jones*, this Court admonished courts to enable voters and candidates to vindicate their rights in election cases – *even after a case has been appealed*.⁸⁵ Having rushed to Court only hours after his write-in vote was not counted, Mr. Galacki has unquestionably brought a timely motion to intervene.

⁸² *Berg, supra*, 268 F.3d at 823; *Volpe, supra*, 858 F.3d at 473-76; *see also Bates, supra*, 127 F.3d at 873 n.4.

⁸³ *Cottrell, supra*, 632 F.3d at 1131.

⁸⁴ *Alisal, supra*, 370 F.3d at 921.

⁸⁵ *Bates, supra*, 127 F.3d at 873-74 (emphasis added, quotation marks omitted).

3. The Trial Court Disregarded the Legal Standard Laid Down by This Court in *Bates v. Jones* and *Keith v. Volpe*

First, the trial court did not “get the law right” when it barred Mr. Galacki from intervening when it was about to rule against Plaintiffs’ MSJ and in favor of the non-moving parties.⁸⁶ Because the Court intended to rule against the legal claims brought by Plaintiffs and Mr. Galacki, binding precedent from this Court (let alone basic principles of fairness) demanded that Mr. Galacki be allowed to intervene – especially since the trial court had previously postponed the hearing on Plaintiffs’ MSJ in order to accommodate Secretary Bowen.⁸⁷

More troubling, the trial court disregarded – and *did not even cite* – the clear legal standard laid down by this Court in *Keith v. Volpe* and *Bates v. Jones*. Under *Volpe*, a party may supplement and add related claims to a pleading, if relevant events, transactions, or occurrences have happened after that pleading has been filed:⁸⁸

Rule 15(d) is intended to give district courts broad discretion in allowing *supplemental pleadings*. The rule is a tool of *judicial economy and convenience*. Its use is therefore *avored*.

⁸⁶ ER 1009:10-1009:11.

⁸⁷ *E.g.*, *Kassbaum*, 236 F.3d at 494; *Bates*, *supra*, 127 F.3d at 873-74; *Volpe*, *supra*, 858 F.3d at 473-76.

⁸⁸ *Volpe*, *supra*, 858 F.3d at 473-76 (*citing* FRCP 15(d)); *see also Bates*, *supra*, 127 F.3d at 872 (aggrieved voters and candidates permitted to intervene in election case *on appeal*).

The United States Supreme Court has stated that *new claims, new parties*, and events occurring *after* the original action are all *properly permitted* under FRCP 15(d).⁸⁹

Just as important, this Court has firmly rejected attempts to bar voters and candidates from intervening in election cases on the basis of “untimeliness”. In fact, the *Bates* Court held that voters and candidates must even be allowed to intervene *on appeal*:⁹⁰

The state ... has repeatedly expressed its legitimate desire to avoid to the greatest extent possible any unnecessary inequities and delay in the upcoming election cycle. We agree. Unlike the state, however, we believe that the *most effective* way to achieve this objective is to *allow as many parties as possible* who seek to run for office contrary [to the challenged statute] to be bound by our decision.⁹¹

Here, Mr. Galacki rushed to the trial court with his related claims against SB 6 in a timely manner: less than 48 hours after his write-in vote was not counted and *more than five weeks before* the August 22, 2011 hearing on Plaintiffs’ MSJ.⁹² Consequently, he easily met this Court’s requirements of timeliness under *Bates* and *Volpe*.

⁸⁹ *Volpe, supra*, 858 F.3d at 473, 475 (emphases added) (citing advisory committee’s note and quoting *Griffin v. County School Bd.*, 377 U.S. 218, 226-27 (1964) (supplemental pleadings “are well within the basic aim of the rules to make pleadings a *means to achieve an orderly and fair administration of justice.*”) (italics added)).

⁹⁰ *Bates, supra*, 127 F.3d at 873.

⁹¹ *Id.* at 872 (emphases added). Contrary to the trial court’s ruling, *U.S. v. Alisal Water Corp.* did not bar Mr. Galacki from intervening. Indeed, as *Alisal* itself noted, intervention “has been granted after settlement agreements were reached”. *U.S. v. Alisal*, 370 F.3d 915 (9th Cir. 2004) (emphasis added); see also *Bates, supra*, 127 F.3d at 873; *Forest Conservation Council v. U.S. Forest Svc.*, 66 F.3d 1489, 1499 (9th Cir. 1995); *contra*, ER 1015:15-1015:18 (trial court order).

⁹² Contrary to Intervenor-Defendants’ insinuations, Mr. Galacki filed his Motion to

4. The Trial Court Erroneously Ruled that Mr. Galacki's Intervention Would Prejudice the Opposing Parties

Second, the trial court did not “get the law right” when it ruled that allowing Mr. Galacki to intervene would prejudice the opposing parties. As shown earlier, *Bates* – which the trial court did not even cite – held that it was “both *imperative and in the public interest*” that aggrieved voters and candidates be allowed to intervene and vindicate their rights in cases involving the fundamental right to vote – *even after oral argument has been held on appeal*.⁹³ Significantly, Secretary Bowen and Intervenors-Defendants have not asserted that they would be prejudiced if Mr. Galacki were allowed to intervene.⁹⁴ Indeed, this Court has held that the State *cannot be prejudiced as a matter of law* if aggrieved candidates and voters like Mr. Galacki were allowed to intervene, for allowing them to intervene would *benefit the public interest*:

[T]he state does not assert that it will be prejudiced by intervention, and *we find no reason to think otherwise*. In fact, the state, like the public, will benefit from the uniform applicability of its laws. We therefore deem the first motion timely and grant ... intervention.⁹⁵

Simply put, the trial court should have allowed Mr. Galacki to intervene and consolidate his legal claims with those of Plaintiffs.

Intervene before the trial court had scheduled the MSJ hearing. ER 1104:16 n.13.

⁹³ *Bates, supra*, 127 F.3d at 873-74 (emphasis added, quotation marks omitted).

⁹⁴ ER 1192-97.

⁹⁵ *Bates, supra*, 127 F.3d at 874 (emphases added, citations omitted).

Moreover, briefing Mr. Galacki's claims will not impose any prejudice on the parties. The facts relating to his claims are undisputed, and Defendants have now had *nearly four months* to study his legal claims – which involve the same case law that the parties have already briefed at great length. Specifically, Mr. Galacki bases his two unique Elections Clause claims entirely on *Cook v. Gralike* (531 U.S. 510), an unanimous 2001 Supreme Court opinion that was first cited in Plaintiffs' Feb. 18, 2011 Motion for Preliminary Injunction.⁹⁶ In this light, the parties will be able to quickly assess and respond to Mr. Galacki's claims.

5. No Legal Authority Barred Mr. Galacki from Bringing As-Applied Claims Against SB 6

Finally, the trial court did not “get the law right” when it concocted a new requirement for intervention: namely, a prospective intervenor must be kept out if he or she seeks to bring any as-applied constitutional claims. No appellate court has imposed such a requirement. In fact, the Supreme Court has urged voters and candidates to bring as-applied claims when challenging election laws.⁹⁷ Furthermore, this Court has made it clear that any voter or

⁹⁶ Aug. 5, 2011 Dutta Decl. Exh. 64, at p.14

⁹⁷ *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449-50 (2008); *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 189 (2008); Joseph Fishkin, *Equal Citizenship and the Individual Right to Vote*, IND.L.J. Vol. 86, 1288, 1326 (noting High Court's strong preference for as-applied constitutional challenges).

candidate may intervene in a case challenging an election law, if he or she brings a facial challenge to that law with respect to a looming election.⁹⁸

In addition to his two as-applied claims under the Elections Clause, Mr. Galacki brings a facial claim as a Tea Party candidate for Congress. Namely, SB 6 will unlawfully (1) force him to falsely state on the 2012 ballot that he has “No Party Preference”, and (2) deprive him of his constitutional right to use the ballot label of “Independent”. Because Mr. Galacki has challenged SB 6’s constitutionality with respect to the June 5, 2012 election, the trial court was required to allow him to intervene.

VII. Conclusion

Under these circumstances, and given the fundamental nature of the right at stake, we find it both “imperative” and in the public interest that we allow these applicants to intervene.

-- The Court, *Bates v. Jones*⁹⁹

It is not too late to allow Mr. Galacki to defend and vindicate his fundamental rights. As this Motion has compellingly shown, Mr. Galacki is clearly entitled to intervene as a matter of law. It is not too late to re-affirm

⁹⁸ *Bates, supra*, 127 F.3d at 872. Contrary to the trial court’s ruling, *Edelstein v. San Francisco* does not apply here. In a nutshell, the section cited by the trial court does not bar voters or candidates from bringing as-applied claims, but instead holds that the State has the authority to ban voters from casting write-in ballots in the general election. *Edelstein v. San Francisco*, 56 P.2d 1029, 29 Cal.4th 164, 173-74, 178 (Cal. 2002). In contrast, the plain language of SB 6 enables voters to cast write-in ballots in the general election, but then bans those votes from being counted. SB-6 amended Elections Code §13207 (requiring ballots to allow voters to cast write-in votes in every election); SB-6 amended Elections Code §8606 (banning all write-in votes that are cast in the general election from being counted).

⁹⁹ *Bates, supra*, 127 F.3d at 873-74 (emphases added) (quoting *Landreth Timber Co. v. Landreth*, 731 F.2d 1348, 1353 (9th Cir.), *rev’d on the merits*, 469 U.S. 1016 (1984)).

this Court's holdings in *Bates* and *Volpe*, which the trial court wholly disregarded. It is not too late to promote judicial economy by consolidating Mr. Galacki's claims into Plaintiffs' pending Top Two Primary appeal.¹⁰⁰ Finally, it is not too late to prevent a rash of separate state and federal lawsuits from "disrupti[ng]" the looming 2012 statewide election.¹⁰¹ Therefore, this Court must reverse the trial court's denial of intervention of right to Tea Party candidate Julius Galacki, and consolidate his weighty constitutional claims with those of Plaintiffs.

Jan. 9, 2012

Respectfully submitted,

/s/ _____

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¹⁰⁰ *Volpe, supra*, 858 F.3d at 473-76; *Bates, supra*, 27 F.3d at 873.

¹⁰¹ *Bates, supra*, 27 F.3d at 872-73.

CERTIFICATE OF SERVICE

On Jan. 9, 2012, I electronically filed, via CM/ECF, a copy of the foregoing document 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

STATEMENT OF RELATED CASES

One related case is currently pending before this Court: *Michael Chamness v. Debra Bowen* (Case No. 11-56449). One related case is currently pending before the California Superior Court, San Francisco County: *Mona Field v. Debra Bowen* (Case No. CGC 10-502018).

/s/ _____

GAUTAM DUTTA

FRAP 32(a)(7)(B)(iii) CERTIFICATE OF COMPLIANCE

I certify that the foregoing document contains 6,164 words.

/s/ _____

GAUTAM DUTTA