

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 Intervenor-Applicant

5 JULIUS GALACKI

6
7
8 IN THE UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 MICHAEL CHAMNESS, DANIEL
FREDERICK, and RICH WILSON,

12 *Plaintiffs,*

13 vs.

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

18 *Defendants.*

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

**REPLY BRIEF IN SUPPORT OF
JULIUS GALACKI'S EX PARTE
APPLICATION TO SHORTEN
TIME AND [PROPOSED] MOTION
TO INTERVENE**

HEARING DATE: N/A
HEARING TIME: N/A
JUDGE: Hon. Otis D. Wright

19 II
COURTROOM: 11_

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 *The state’s electoral process would be subject to disruption if [every*
3 *plaintiff’s claim] must be decided in a separate lawsuit. Surely all parties should*
4 *want uniformity in the ... election. Whatever the ultimate outcome of this case,*
intervention can only be a step in that direction.

5 -- Ninth Circuit, *Bates v. Jones*¹

6 **I. Introduction**

7 Desperately seeking to stop Tea Party candidate Julius Galacki from joining
8 this case, both Secretary Bowen and Intervenors- Defendants have shamelessly
9 misrepresented the law to the Court. Blatantly ignoring Ninth Circuit precedent,
10 they make three baseless claims: (1) Mr. Galacki should be barred from
11 intervening because he did not file a Complaint in Intervention, (2) he allegedly
12 filed his ex parte papers “too late”, and (3) his interests will be adequately protected
13 by Plaintiffs. Yet in so doing, Defendants have conceded that (a) Mr. Galacki has a
14 “significantly protectable” interest in this lawsuit, and (b) the disposition of this
15 case will impair and impede his ability to vindicate his fundamental rights.² As his
16 moving papers have compellingly shown, Mr. Galacki deserves immediate
17 intervention of right. Consequently, the Court must grant his ex parte Application
18 and Motion to Intervene.

19 **II. Background**

20 On July 14, 2011, Mr. Galacki filed his Ex Parte Application to Shorten Time
21 and his [Proposed] Motion to Intervene with the Court.³ That day, his counsel
22 emailed Mr. Galacki’s ex parte papers to the process server at approximately 1:30
23 pm.⁴ At the time he emailed Mr. Galacki’s ex parte papers to the process server, his
24 counsel did not know that, later that day, the Court would issue an order regarding
25 Plaintiffs’ pending Motion for Summary Judgment.⁵ After printing and formatting

26 ¹ *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997) (emphases added).

27 ² *See U.S. v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004) (citation omitted).

28 ³ July 17, 2011 Declaration of Gautam Dutta (“Dutta Decl.”) ¶2.

⁴ *Id.* ¶6.

⁵ *Id.* ¶8.

1 hard copies of Mr. Galacki's papers, the process server filed them with the Court
2 that afternoon.⁶ Shortly thereafter, at 4:17 pm, the Court issued an order setting an
3 August 22, 2011 date for Plaintiffs' pending Motion for Summary Judgment.⁷

4 **III. Mr. Galacki Need Not File a Complaint in Intervention**

5 Intervenor-Defendants live in a glass house. Although they themselves did
6 not file a Complaint in Intervention,⁸ they have the temerity to attack Mr. Galacki
7 for not having filed one. Intervenor's hypocrisy notwithstanding, the Ninth Circuit
8 has made it crystal clear that prospective intervenors need not file a Complaint in
9 Intervention, as long as their papers have "fully stated the legal and factual grounds
10 for intervention":

11 Courts, including this one, *have approved intervention motions*
12 *without a pleading* where the court was otherwise apprised of the
13 grounds for the motion... We therefore rejected the type of technical
14 objection [Defendant] makes here.

15 Here, Mr. Galacki has fully stated the legal and factual grounds that require his
16 participation in this case. As his moving papers explained, Mr. Galacki brings three
17 sets of claims: Senate Bill 6 (1) violated his rights under the Elections Clause, First
18 Amendment, and Due Process Clause, when it barred him from running as a write-
19 in candidate in the General Election; (2) violated his rights under the Elections
20 Clause, First Amendment, Fourteenth Amendment, and the Due Process Clause,
21 when it banned Registrar Logan from counting his write-in vote; and (3) is poised
22 to violate his rights under the Elections Clause, First Amendment, and Fourteenth
23 Amendment, for it will force him – a Tea Party candidate – to falsely state on the
24 ballot that he has "No Party Preference".¹⁰ Because he fully stated the legal and
25 factual grounds that require him to intervene, Mr. Galacki was not required to file a

25 ⁶ Dutta Decl. ¶6.

26 ⁷ *Id.* ¶7.

27 ⁸ *Id.* ¶3.

28 ⁹ *Beckman Indus. v. Int'l Ins. Co.*, 966 F.2d 470, 474 (9th Cir. 1992) (emphases added)
(citing, *inter alia*, *Smith v. Pangilinan*, 651 F.2d 1320, 1325-26 (9th Cir. 1981); *Shores v. Hendy*
Realization, 133 F.2d 738, 742 (9th Cir. 1943)).

¹⁰ Julius Galacki's July 14, 2011 [Proposed] Motion to Intervene, at 9:7-9:18.

1 Complaint in Intervention.

2 **IV. Mr. Galacki Qualifies for Ex Parte Relief**

3 Contrary to Defendants' claims, Mr. Galacki unquestionably qualifies for ex
4 parte relief. As his moving papers showed, Mr. Galacki (1) will suffer irreparable
5 prejudice if he is barred from joining this lawsuit, and (2) is not "at fault" for
6 "creating" this urgent crisis.¹¹ Nevertheless, Defendants claim that Mr. Galacki is
7 at fault for "creating" this urgent crisis, for he filed his ex parte papers "too late".

8 Intervenor's argue that Mr. Galacki filed his ex parte papers two weeks too
9 late, because he was unlawfully barred from running as a write-in candidate on June
10 28, 2011. (Ironically, Intervenor's themselves had waited two weeks before filing
11 their Motion to Intervene).¹² In so doing, Intervenor's neglect one inconvenient fact.
12 Namely, if Mr. Galacki had filed his ex parte papers before July 12, 2011, he would
13 have been forced to abandon one of his core claims: that his write-in vote was
14 unlawfully not counted in the July 12, 2011 election. Indeed, it is undisputed that
15 Mr. Galacki rushed to this Court less than 48 hours after his write-in vote was not
16 counted.¹³ Consequently, he did not file his ex parte papers "too late".

17 For her part, Secretary Bowen argues that it is "too late" to add Mr. Galacki's
18 claims to this litigation, because the Court will hear Plaintiffs' Motion for Summary
19 Judgment five weeks from today.¹⁴ Once again, binding legal authority refutes
20 their claim. As Mr. Galacki's moving papers showed, the Ninth Circuit has found
21 it "both imperative and in the public interest" that an aggrieved voter and candidate
22 like Mr. Galacki be allowed to intervene and vindicate his rights – even after a

23 _____
24 ¹¹ Julius Galacki's July 14, 2011 Ex Parte Application ("Ex Parte Application"), at 4:7-5:12;
Mission Power Engineering Co. v. Continental Casualty Co., 883 F.Supp. 488, 492-93 (C.D. Cal.
1989).

25 ¹² Court's Mar. 7, 2011 Order Granting Intervenor's-Defendants' Application to Intervene, at
26 3 n.2 (two-week delay before filing Application to Intervene held to be timely).

27 ¹³ At the time Mr. Galacki filed his papers on July 14, 2011, neither he nor his counsel knew
28 that the Court would issue an order in this case later that day. Dutta Decl. ¶8.

¹⁴ Interestingly, Secretary Bowen did not object when Intervenor's-Defendants filed their
Application to Intervene *three weeks before* the Court was scheduled to hear Plaintiffs' earlier
Motion for Preliminary Injunction.

1 district court has already resolved a case.¹⁵ In so doing, the Ninth Circuit expressly
2 aimed to prevent a rash of separate lawsuits from “disrupting” the state’s electoral
3 process.¹⁶ Furthermore, the Ninth Circuit has made it clear that any party may
4 supplement – and add related claims to – a pleading, if relevant events, transactions,
5 or occurrences have happened after a pleading has been filed.¹⁷ By allowing Mr.
6 Galacki to add his claims to Plaintiffs’ Motion for Summary Judgment, the Court
7 will secure what the Ninth Circuit has called “an *orderly and fair* administration of
8 justice.”¹⁸

9 **V. Plaintiffs Cannot Protect Mr. Galacki’s Interests**

10 Finally, Defendants argue that Mr. Galacki need not intervene, because
11 Plaintiffs can fully protect his legal interests. But as his moving papers showed,
12 Plaintiffs do not share “sufficiently congruent” interests with Mr. Galacki.¹⁹ Here,
13 the interests of Mr. Galacki and Plaintiffs diverge in one critical way: unlike Tea
14 Party candidate Julius Galacki, Plaintiffs do not seek to run for federal office in the
15 2011-12 election cycle. Because no Plaintiff has standing as a future candidate, it
16 may prove difficult for them to expedite this case unless Mr. Galacki intervenes.²⁰
17 Because Plaintiffs cannot adequately defend his rights as a Tea Party candidate, Mr.
18 Galacki must be immediately granted intervention of right.

19
20
21
22
23
24 ¹⁵ *Bates, supra*, 127 F.3d at 874 (emphasis added, quotation marks omitted).

¹⁶ *Bates, supra*, 127 F.3d at 873.

25 ¹⁷ *Keith v. Volpe*, 858 F.3d 467, 473-76 (citing FRCP 15(d));

26 ¹⁸ *Id.* at 475 (emphases added) (quoting *Griffin v. County School Bd.*, 377 U.S. 218, 226-27 (1964)).

27 ¹⁹ *Southwest Center for Biological Diversity v. Berg*, 268 F.3d 810, 823 (9th Cir. 2001); see also *Bates, supra*, 127 F.3d at 873 n.4.

28 ²⁰ *Bates, supra*, 127 F.3d at 873 n.4 (voters and candidates allowed to intervene because their interests would not have been adequately represented by the existing parties).

1 **VI. Conclusion**

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

5 -- Ninth Circuit, *Keith v. Volpe*²¹

6 No other party can safeguard Tea Party candidate Julius Galacki's
7 fundamental rights. Therefore, it is "imperative and in the public interest" that he
8 be immediately allowed to intervene in this litigation.²²

9
10
11 DATED: July 18, 2011

12
13 Respectfully submitted,

14
15 By: /s/
16 GAUTAM DUTTA, ESQ.
17 ATTORNEY FOR
18 INTERVENOR-APPLICANT
19 JULIUS GALACKI

20
21
22
23
24
25
26
27
28 ²¹ *Keith, supra*, 858 F.3d at 473 (citing Advisory Committee's note).

²² *See Bates, supra*, 127 F.3d at 874 (emphasis added).