

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*

**EMERGENCY PETITION FOR WRIT OF MANDAMUS
PURSUANT TO 28 U.S.C. §1651**

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CIRCUIT RULE 27-3 CERTIFICATE

1. Telephone numbers and addresses of counsel for the parties

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2. Facts Showing the Existence and Nature of the Emergency

Unless this Court takes action by tomorrow (March 29, 2011),

Petitioner Michael Chamness' fundamental right to run for office will be

irreparably harmed. On Wednesday (March 30, 2011), vote-by-mail ballots for the May 17, 2011 election in Congressional District 36 will start being printed. Unless this Petition is granted, Petitioner Chamness will be unlawfully banned from using the ballot label of “Independent”, and will instead be forced to use the ballot label of “No Party Preference”. In stark contrast, major-party candidates in this election – including Secretary of State Debra Bowen, a Real Party in Interest in this case – *will be allowed to list their party’s name* on the ballot.

On Saturday (Apr. 2, 2011), the first batch of Ballots must be mailed to military and overseas voters, who constitute *0.75 percent* of the registered voters in Congressional District 36. The remaining – and larger – batch of vote-by-mail Ballots must be made available to all vote-by-mail voters (i.e., not just military and overseas voters) *three weeks later*, on April 23, 2011.

Although it has been apprised of Petitioner’s plight, the District Court has not yet ruled on his Motion for Preliminary Injunction – which was filed on February 18, 2011 and heard on March 21, 2011. Because he will suffer irreparable harm as soon as the Ballots have been mailed, Petitioner urges the Court to immediately enjoin Real Party in Interest Dean Logan from printing and mailing the Congressional ballots. In this manner, the Court will maintain the status quo while it considers this Petition.

3. When and How Counsel Notified

I notified counsel for Real Party in Interest Dean Logan by two telephone calls to Patrice Salseda's and Brandi Moore's offices on March 25, 2011, at approximately 4:39 pm and 4:47 pm. During the first call, I spoke with Ms. Salseda's assistant, and told her that my client would likely seek emergency relief from the Ninth Circuit today. A few minutes later, at 4:47 pm, Ms. Moore's assistant Hazel Bataclan called me. I told her that my client would likely seek emergency relief from the Ninth Circuit on March 28, 2011. Ms. Bataclan stated that she would promptly notify Ms. Moore. The next day (March 26, 2011), I received an email (attached as Exhibit 1 to the Mar. 26, 2011 Declaration of Gautam Dutta) from Ms. Moore. In her email, Ms. Moore confirmed that she had received my messages, and asked me to keep her updated.

I notified counsel for Real Party in Interest Debra Bowen by two telephone calls to George Waters on March 25, 2011, at approximately 4:41 pm and 4:57 pm. During the first call, Mr. Waters did not answer. Consequently, I left a voicemail asking him to call me back on my cell phone (415.236.2048) regarding an urgent matter. Shortly thereafter, I called Mr. Waters again. When he did not answer, I left a voicemail in which I stated that my client would likely seek emergency relief from the

Ninth Circuit today. This morning, Mr. Waters called me at approximately 8:32 am and confirmed that he had received my messages.

I notified counsel for Intervenors - Real Parties in Interest by a telephone call to Marguerite Leoni and Chris Skinnell on March 25, 2011, at approximately 4:49 pm. During our conversation, I told them that my client would likely seek emergency relief from the Ninth Circuit today.

I have served an electronic copy of this Petition via email, and to the District Court via FedEx overnight.

4. Submission to the District Court

Petitioner Chamness has already asked the District Court for the full relief sought by this Petition, but the District Court has not yet ruled on his request. On February 18, 2011, Petitioner filed his Motion for Preliminary Injunction (the "PI Motion"). Like this Petition, the PI Motion asked the District Court to block Real Parties in Interest Dean Logan and Debra Bowen from implementing California's new election rules for the looming election in Congressional District 36. The District Court heard oral argument on the PI Motion on March 21, 2011.

On March 23, 2011, Petitioner Chamness notified the trial court that the ballots at issue were scheduled to be printed *seven days later*, on March

30, 2011.¹ However, as of this afternoon, the District Court had not ruled on the PI Motion – forcing Petitioner to rush to this Court.

Dated: Mar. 28, 2011

A handwritten signature in blue ink that reads "Gautam Dutta". The signature is written in a cursive style and is positioned above a horizontal line.

GAUTAM DUTTA

¹ ER 105 ¶7.

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