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

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

13 *Plaintiffs,*

14 vs.

15 DEBRA BOWEN, in only her
16 official capacity as California
17 Secretary of State; DEAN LOGAN,
18 in only his official capacity as
19 Registrar-Recorder / County Clerk
20 of the County of Los Angeles; and
21 DOES 1-10;
22 *Defendants.*

23 *Defendants,*

24 ABEL MALDONADO, an
25 individual; CALIFORNIA
26 INDEPENDENT VOTER
27 PROJECT; and CALIFORNIANS
28 TO DEFEND THE OPEN
PRIMARY;

*Intervenors-
Defendants*

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

**REPLY BRIEF IN SUPPORT OF
PLAINTIFF MICHAEL
CHAMNESS' MOTION FOR
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES; REQUEST FOR
JUDICIAL NOTICE BY PLAINTIFF
MICHAEL CHAMNESS;
DECLARATION OF GAUTAM
DUTTA IN SUPPORT OF REQUEST
FOR JUDICIAL NOTICE**

HEARING DATE: Mar. 21, 2011
HEARING TIME: 1:30 pm
JUDGE: Hon. Otis D. Wright II
COURTROOM: 11

1 *past decade.*⁴

- 2 4. For over a century, minor-party candidates like Coffee Party
3 member Michael Chamness were allowed to use the ballot label
4 of “Independent”. But SB 6 now forces them to use the ballot
5 label of “No Party Preference” – while allowing candidates like
6 Secretary Bowen to list their major party’s name on the ballot.⁵

7 These compelling facts strongly support Plaintiff Chamness’ request for a
8 preliminary injunction.

9 Furthermore, as his Moving Papers describe, Plaintiff Chamness brings three
10 vital questions of constitutional law:

- 11 1. *As-applied constitutional violation.* Did SB 6 violate Coffee
12 Party candidate Michael Chamness’ fundamental rights, when it
13 banned him from using the “Independent” ballot label in the
14 recent special election for Senate District 28?
- 15 2. *Imminent constitutional violation.* Will SB 6 violate Plaintiff
16 Chamness’ fundamental rights in the looming election for
17 Congressional District 36, because it will ban him from using
18 the “Independent” ballot label?
- 19 3. *Imminent constitutional violation.* Will SB 6 violate Plaintiff
20 Chamness’ fundamental rights in the looming election for
21 Congressional District 36, because it will force him to use the
22 ballot label of “No Party Preference”?

23 The answer to all three questions is an unqualified Yes.

24 **III. It is Beyond Dispute That SB 6 Has Already Violated Mr. Chamness’
25 Fundamental Rights**

26 First, it is beyond dispute that SB 6 has already violated Plaintiff Chamness’
27 fundamental rights, because it forced him to falsely state that he had “No Party
28 Preference” in the special election for Senate District 28 (the “SD 28 Election”).

A. Every Candidate Has the Right to a Ballot Label of “Independent”

Despite SB 6 Defendants’ denials, the Ninth Circuit has squarely held that

⁴ Between 2001 and 2010, unaffiliated (“decline to state”) voters were allowed to vote in every Democratic or Republican primary for state and federal (non-Presidential) office. *Id.* at 3:22 n.4; CAL.CONST. art. ii §5(c).

⁵ Between 1891 and 2010, candidates were allowed to use the ballot label of “Independent”. Complaint ¶¶22-23. Just as one example, Cecilia Iglesias ran as an Independent candidate in the 47th Congressional District on Nov. 2, 2010. Mar. 11, 2011 Dutta Declaration, at 12.

1 every candidate has the right to a ballot label of “Independent”.⁶ In a key case
2 invoked by SB 6 Defendants (*Rubin v. City of Santa Monica*), the Ninth Circuit
3 made it clear that state election laws must be struck down if they “impair access to
4 the ballot, stifle *core political speech*, or dictate electoral outcomes.”⁷
5 Significantly, the Ninth Circuit held, *as a matter of law*, that “prohibiting the
6 designation ‘Independent’ was unconstitutional where the regulations allowed for
7 other political party designations.”⁸ Specifically, banning the “Independent” ballot
8 label unconstitutionally deprives candidates of “core political speech”:

9 [I]n *Rosen v. Brown*, the Sixth Circuit invalidated a regulation
10 *prohibiting the political party designation of “Independent” while*
11 *permitting “Republican” or “Democrat” designations*, holding that
party labels designate the views of party candidates and the regulations
therefore hinder “core political speech.”⁹

12 B. As Applied, SB 6’s Party Preference Ban Is Unconstitutional

13 Plaintiff Chamness brings a simple, as-applied¹⁰ claim from the February 15,

14 _____
15 ⁶ Moving Papers, at 10:5-11:6. Because SB 6’s Party Preference Ban bars him from using
both the “Independent” and “Coffee Party” ballot labels, the Court need not decide whether he
has a constitutional right to use the ballot label of “Coffee Party”.

16 ⁷ *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1015 (9th Cir. 2002) (emphases added).

17 ⁸ *Id.* at 1015 (emphases added) (*citing Rosen, supra* note 1, 970 F.2d 169). A copy of the
Senate District 28 ballot has been attached as Exhibit 1 to the Mar. 11, 2011 Dutta Declaration.
18 Because he has a right to the “Independent” ballot label *as a matter of law*, Plaintiff Chamness
need not produce any evidence (apart from the ballot used in the special election for Senate
19 District 28) to prevail. *Rubin, supra* note 7, 308 F.3d at 1015; *contra*, Secretary Bowen’s
Opposition, at 1:15-1:18. Moreover, contrary to SB 6 Defendants’ claims, neither *Libertarian*
20 *Party v. Eu* nor *Lightfoot v. Eu* applies here, because the election laws challenged in both cases
allowed candidates to use the ballot label of “Independent”. *Libertarian Party v. Eu*, 620 P.2d
21 612, 614 (Cal. 1980); *Lightfoot v. Eu*, 964 F.2d 865, 870 (9th Cir. 1992).

22 ⁹ *Rubin, supra* note 7, 308 F.3d at 1015 (emphases added) (*citing Rosen, supra* note 1, 970
F.2d 169) (state law banning the ballot label “Independent” violated the First and Fourteenth
23 Amendments). Because it expressly adopted the Sixth Circuit’s holding in *Rosen*, the Ninth
Circuit (in *Rubin*) had no need to re-apply the U.S. Supreme Court’s “severe burden” balancing
24 test with respect the right to use the ballot label of “Independent”. *Rubin, supra* note 7, 308 F.3d
at 1014-15. Likewise, Plaintiff Chamness need not re-apply the “severe burden” test with respect
25 to his fundamental right to use the ballot label of “Independent”. *Contra*, Secretary Bowen’s
Opposition, at 10:10-14:17; Intervenors’ Opposition, at 9:10-11:1.

26 ¹⁰ “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*
27 *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)).

1 2010 special election in Senate District 28. As our Moving Papers showed,
2 Secretary Bowen and Registrar Logan applied SB 6’s Party Preference Ban on
3 Plaintiff Chamness, by unlawfully banning him from using the ballot label of
4 “Independent”.¹¹ While Coffee Party candidate Chamness was foisted with the
5 ballot label of “No Party Preference”, his competitors were allowed to use the ballot
6 labels of “Democrat” and “Republican”.¹² As the Ninth Circuit made clear in
7 *Rubin*, that exact practice is flatly unconstitutional, because it “hinder[s] core
8 political speech”.¹³ Therefore, it is beyond dispute that SB 6’s Party Preference
9 Ban is unconstitutional *as applied*, for it did inflict irreparable harm on Plaintiff
10 Chamness’ fundamental rights in the February 15,2011 SD 28 Election.

11 C. Secretary Bowen Has Made a Binding Admission that SB 6’s Party
12 Preference Ban Is Unlawful

13 Remarkably, even Secretary Bowen agrees that SB 6’s Party Preference Ban
14 is unlawful. As our Moving Papers showed, email correspondence from her office
15 publicly stated that SB 6’s Party Preference Ban is *not* “permissible”, because it
16 deprives candidates of the ballot label of “Independent”.¹⁴ In so doing, Secretary

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18 ¹¹ Moving Papers, at 9:9-9:16 & nn. 37-38 (showing that Secretary Bowen and Registrar Logan applied SB 6-amended Elections Code §§325, 8002.5, & 13105(a) on Plaintiff Chamness).

19 ¹² Copies of the Senate District 28 ballot and Secretary Bowen’s certified list of candidates have been attached, respectively, as Exhibits 1 and 2 to the Mar. 11, 2011 Dutta Declaration. Secretary Bowen argues that the ballot label of “Independent” would somehow “confuse” voters and “undermine” the political advantages enjoyed by the major parties. Yet by that logic, voters have been “confused” and the major parties have been “undermined” for over a century: it is undisputed that California candidates had been able to use the “Independent” ballot label *between 1891 and 2010*. Complaint ¶¶22-23. Moreover, the Minnesota Supreme Court has expressly ruled that the “Independent” ballot label “fosters no confusion” *as a matter of law* – even though Minnesota had an “Independent-Republican” Party at the time of its decision. *Shaw v. Johnson*, 247 N.W. 2d 921, 923 (Minn. 1976). Finally, Secretary Bowen disingenuously claims that the terms “Independent” and “No Party Preference” are identical as a matter of law. However, the Massachusetts Supreme Court has expressly rejected precisely such an argument. In *Bachrach v. Commonwealth*, the Massachusetts High Court made it clear that all candidates have the constitutional right to a ballot label of “Independent”. In so doing, *Bachrach* held that it was unconstitutional to force candidates to use a ballot label of “Unenrolled” – a term identical in meaning to “No Party Preference”. *Bachrach*, 415 N.E.2d 832, 836 (Mass. 1981).

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27 ¹³ *Rubin*, *supra* note 7, 308 F.3d at 1015.

28 ¹⁴ Moving Papers, at 11:7-12:2.

1 Bowen made a binding party admission that SB 6’s Party Preference Ban is
2 unlawful.¹⁵ Tellingly, Secretary Bowen *cited no legal authority* to refute Plaintiff
3 Chamness’ claim that the email correspondence constituted a binding admission
4 under the Federal Rules of Evidence.¹⁶ Consequently, Secretary Bowen has
5 conceded that SB 6’s Party Preference Ban is unlawful.

6 **IV. It Is Beyond Dispute That SB 6 Will Ban Mr. Chamness from Using the**
7 **Ballot Label of “Independent” in the Looming Congressional Election**

8 Equally important, Secretary Bowen, Registrar Logan, and Intervenors have
9 all conceded another critical point: this is not a facial challenge. It is undisputed
10 that both Secretary Bowen and Registrar Logan have *already applied* SB 6’s Party
11 Preference Ban on Plaintiff Chamness in the Senate District 28 special election, by
12 banning him from using the ballot label of “Independent”. Unless they are
13 enjoined, Secretary Bowen and Registrar Logan will apply SB 6’s Party Preference
14 Ban on Plaintiff Chamness once again – and they will again ban him from using the
15 ballot label of “Independent” in the looming Congressional Election.¹⁷

16 **V. It Is Beyond Question that SB 6 Violates the Elections Clause**

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18 ¹⁵ Moving Papers, at 11:21 n.47 (*citing* Federal Rules of Evidence §§801(d)(2), 801
19 (d)(2)(C), and 803(8)). Intervenors argue that the correspondence from Secretary Bowen’s office
20 did not constitute an admission, allegedly because the words “not permissible” do not mean
21 “unlawful”. However, their argument fails because for two reasons. First, Secretary Bowen –
22 whose own staff sent the emails at issue – did not raise that argument. Second, Merriam
23 Webster’s online dictionary listed the following words as antonyms of “permissible”: *banned,*
24 *barred, forbidden, prohibited, verboten.* Merriam-Webster’s online dictionary, *available at*
25 <http://www.merriam-webster.com/dictionary/permissible> (*last visited* Mar. 9, 2011).

22 ¹⁶ Secretary Bowen’s Opposition, at 15:10-15:13. Contrary to Secretary Bowen’s claims,
23 the email correspondence from her office has been authenticated. Plaintiff Chamness’ Request
24 for Judicial Notice, at 2:19-2:23; Mar. 11, 2011 Declaration of Gautam Dutta ¶2.

24 ¹⁷ In our Moving Papers, Plaintiff Chamness showed that (SB 6-amended) Elections Code
25 §325 bans minor-party candidates from using the ballot label of “Independent”. Moving Papers,
26 at 9:14-9:16 & nn. 37-38). Because neither Secretary Bowen nor Intervenors’ Oppositions
27 contested that point, they have waived their right to challenge it. *E.g., People v. Boyd*, 700 P.2d
28 782, 24 Cal.3d 285, 294 n.6 (Cal. 1979) (“[A]ny point not appearing in a party’s brief will
ordinarily be deemed *waived*.”) (emphasis added). Moreover, as our Opposition to the Motion to
Intervene showed, the doctrine of judicial estoppel bars Intervenors from contradicting their
previous interpretation of SB 6’s Party Preference Ban. Plaintiff’s Mar. 1, 2011 Opposition
Motion to Intervene, at 7:13-8:4 (*citing Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990)).

1 SB 6 Defendants have also failed to refute another core point raised by
2 Plaintiff Chamness: SB 6’s Party Preference Ban violates the U.S. Constitution’s
3 Elections Clause. As our Moving Papers showed, SB 6 violates the Elections
4 Clause under the High Court’s unanimous ruling in *Cook v. Gralike*, because it
5 *intends to discriminate* against candidates who identify with the viewpoints of a
6 minor party.¹⁸ Namely, SB 6’s Party Preference Ban allows major-party candidate
7 Debra Bowen to list her party’s name on the ballot, while banning Coffee Party
8 candidate Michael Chamness from listing any party preference on the ballot.
9 Tellingly, SB 6 Defendants do not contest that SB 6’s Party Preference Ban (1)
10 aims to “favor” one class of candidates over another and (2) seeks to “dictate
11 electoral outcomes” by harming the political viability of minor-party candidates.¹⁹
12 In so doing, they have conceded that SB 6 violates the Elections Clause under
13 *Gralike*.²⁰

14 **VI. It Is Unrefuted That SB 6’s Party Preference Ban Is Not Severable**

15 Intervenor’s fail to refute – and Secretary Bowen does not even challenge –
16 that SB 6’s Party Preference Ban is not severable. As our Moving Papers showed,
17 SB 6’s Party Preference Ban is not “volitionally” separable, because the Legislature
18 would not have passed SB 6 without also passing its Party Preference Ban.²¹

19 ¹⁸ Moving Papers, at 14:1-15:21 (citing *Cook v. Gralike*, 531 U.S. 510 (2001)). When
20 scrutinizing potential violations of the Elections Clause, the High Court looks to a law’s intent:
its three-prong test does not require any evidence of how that law has been applied. *Id.* at 523.

21 ¹⁹ Moving Papers, at 15:10-15:21 (citing *Gralike*, *supra* note 18, 531 U.S. at 523). Contrary
22 to Intervenor’s claims, *Portnoy v. Shelley* does not apply here, because it did not involve any
23 Elections Clause issue. *Portnoy*, 277 F.Supp.2d 1064, 1072 (S.D. Cal. 2003). Similarly,
24 *Cartwright v. Barnes* does not apply here, because the statute at issue treated all candidates
25 equally once they received sufficient support to qualify for and appear on the ballot. *Cartwright*,
304 F.3d 1138, 1142 (11th Cir. 2002), *cert. denied*, 538 U.S. 908 (2003). Seeking to distinguish
26 *Gralike*, Secretary Bowen claims that SB 6’s Party Preference Ban does not coerce minor-party
27 candidates into changing their political views. Secretary Bowen’s Opposition, at 16:6-16:19. Yet
her argument fails for two reasons. First, SB 6 does discriminate against candidates who identify
with the viewpoints of minor parties. Even more insidious, SB 6’s Party Preference Ban *may*
coerce minor-party candidates into changing their political views: if they become members of a
major party, they will then gain the ability to state a party preference on the ballot.

28 ²⁰ *Boyd*, *supra* note 17, 700 P.2d 782, 24 Cal.3d at 294 n.6.

²¹ Moving Papers, at 15:21-17:5. The applicability of severability clauses is a matter of state

1 Nevertheless, Intervenor insist that SB 6’s Party Preference Ban must be
2 volitionally separable, merely because SB 6 contains a severability clause.
3 However, their argument fails for one simple reason: under California law, such
4 “stereotyped” severability clauses are not “persuasive”, because they are “routinely
5 attached prior to the actual contingency ... *without foreknowledge* of its real
6 character.”²² Indeed, according to a case quoted by Intervenor, if part of a statute
7 is not volitionally severable, then “the whole will be invalid” – *even if* it contains a
8 severability clause.²³ Here, it is undisputed that the Legislature intended for SB 6
9 to contain its Party Preference Ban. Therefore, SB 6’s Party Preference Ban is not
10 volitionally separable – and “the whole” of SB 6 must be struck down as a matter of
11 law.

12 **VII. It Is Undisputed That Proposition 14 Must Be Suspended If SB 6 Is** 13 **Struck Down**

14 Tellingly, SB 6 Defendants have not disputed, and thereby conceded,²⁴
15 another critical point made by Plaintiff Chamness. Namely, if the Court strikes
16 down SB 6, it must also declare Proposition 14 inoperative until a new law has been
17 passed to replace SB 6. The next regularly scheduled statewide election will be
18 held in June 2012. Thus, not only would our lawmakers have ample time to fix SB
19 6, but Intervenor would have ample time to lobby them – as they did last year in
20 Hawaii, when they sponsored a resort getaway for 22 state lawmakers.²⁵

21 law. *U.S. Dep’t of Treasury v. Fabe*, 508 U.S. 491, 509 n.8 (1993).

22 ²² *Schenley Affiliated Brands Corp. v. Kirby*, 21 Cal.App.3d 177, 199 (Cal.App.Ct. 1971)
23 (emphases added) (*quoted by* Intervenor’s Opposition, at 23:13-23:18).

24 ²³ *Schenley*, *supra* note 22, 21 Cal.App.3d at 199 (emphases added); *see also Sonoma*
25 *County v. Superior Ct.*, 173 Cal.App.4th 322, 352 (Cal.Ct.App. 2009); *Gerken v. FPPC*, 863 P.2d
26 694, 698 (Cal. 1993).

27 ²⁴ *Boyd*, *supra* note 17, 700 P.2d 782, 24 Cal.3d at 294 n.6.

28 ²⁵ Intervenor claim that the Legislature would take no action to fix SB 6’s infirmities if SB
6 is struck down. However, it is Intervenor who appear to have the Legislature’s ear. Last fall,
Intervenor California Independent Voter Project funded a Hawaii resort getaway for 22 state
lawmakers, who met with “lobbyists and corporate officials who want to influence California’s
future policies.” Mar. 1, 2011 Opposition to Motion to Intervene, at 2:2 n.1.

1 **VIII. Pullman Abstention Is Inappropriate for First Amendment Challenges**

2 *...Pullman abstention is rarely, if ever, appropriate in First Amendment*
3 *cases.*

4 -- Judge Reinhardt²⁶

5 Having exhausted all other defenses, Intervenors desperately urge the Court
6 not to rule on the merits of this case, under the Pullman abstention doctrine.²⁷

7 However, according to the Ninth Circuit, courts must adjudicate First Amendment
8 cases brought by plaintiffs like Michael Chamness, for it has made it abundantly
9 clear that abstention is “inappropriate when First Amendment rights are at stake.”²⁸

10 To abstain under Pullman, a federal court must show that three factors apply:
11 (1) the case involves a “sensitive area of social policy upon which federal courts
12 should not enter unless no alternative for adjudication exists”, (2) a “definitive
13 ruling” on the state-law issue “would end the controversy” (i.e., a state court could
14 provide a saving construction of the statute that would eliminate the potential
15 constitutional violation), and (3) resolution of the “possibly determinative issue of
16 state law is doubtful” (i.e., it is far from clear how the law at issue should be
17 construed).²⁹

18 In *J-S Distributors*, the Ninth Circuit held that it is “rarely, if ever,
19 appropriate” for a federal court not to hear the merits of First Amendment cases –
20 especially when “*fundamental civil rights* are at issue.”³⁰ Thus, the Ninth Circuit
21 held that the first Pullman factor “will *almost never* be present” in First
22 Amendment cases, “because the constitutional guarantee of free expression is, quite
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24 ²⁶ *J-R Distributors v. Eikenberry*, 725 F.2d 482 (9th Cir. 1984), *rev’d on other grounds sub*
nom. Brocket v. Spokane Arcades, 472 U.S. 491 (1985).

25 ²⁷ *Railroad Comm’n v. Pullman Co.*, 312 U.S. 496, 501 (1941).

26 ²⁸ *J-R Distributors*, *supra* note 26, 725 F.2d at 487 (emphasis added).

27 ²⁹ *Id.* at 487-88 (emphasis added) (citations omitted).

28 ³⁰ *Id.* at 488 (emphases added) (*quoting Jones v. Metzger*, 456 F.2d 854, 856 (6th Cir. 1972)
& *citing C-Y Development Co. v. City of Redlands*, 703 F.2d 375, 381 (9th Cir. 1983)).

1 properly, always an area of particular federal concern.”³¹ As the Ninth Circuit
2 noted, “abstention by federal courts in First Amendment cases *could often result in*
3 *the suppression of free speech* that is meant to be protected by the Constitution.”³²
4 Finally, *J-S Distributors* held that the second and third Pullman factors cannot be
5 present as a matter of law, if the “key provisions” of the statute “are not susceptible
6 to ... saving constructions.”³³

7 Turning to this case, the same analysis holds true. Unless this Court
8 intercedes, Plaintiff Chamness’ fundamental right to free speech will be violated –
9 for the second time. Consequently, the first Pullman factor is not present. Second,
10 there is no “saving construction” of SB 6’s Party Preference Ban: it has already
11 violated Plaintiff Chamness’ fundamental rights, by forcing him to falsely state that
12 he has “No Party Preference”. Furthermore, by denying him permission to
13 intervene in the related state lawsuit, both the California Supreme Court and the
14 California Court of Appeal *refused to allow him to defend his fundamental rights*.
15 Thus, the second and third Pullman factors are not present.³⁴ Therefore, because
16 none of the Pullman factors are present here, the constitutionality of SB 6’s Party
17 Preference Ban is ripe for adjudication by a federal court.

18 **VIII. It Is Beyond Question That The Court Owes No Deference to a Law the** 19 **Voters Did not Approve**

20 Tellingly, SB 6 Defendants have not contested one last critical point: the
21 U.S. Supreme Court has made it clear that a law like SB 6 deserves no judicial
22 deference. As our Moving Papers showed, the U.S. Supreme Court refuses to
23 blindly defer to any law that “appears to have been adopted without reasoned

24 ³¹ *J-R Distributors*, *supra* note 26, 725 F.2d at 488 (citing *Zwickler v. Koota*, 389 U.S. 241,
25 252 (1967); *Procunier v. Martinez*, 416 U.S. 396, 405 (1974)).

26 ³² *J-R Distributors*, *supra* note 26, 725 F.2d at 488 (emphases added).

27 ³³ *Id.* at 488.

28 ³⁴ Because there is not ambiguity on how to construe SB 6’s Party Preference Ban, *Burdick*
v. Takushi does not apply to this case. *Burdick*, 846 F.2d 587, 589 (9th Cir. 1988) (Pullman
abstention only appropriate when it is unclear how a state statute should be construed).

1 consideration, for discriminatory purposes, or to entrench political majorities.”³⁵

2 SB 6 fits that exact description. It was passed without any hearings or debate in the
3 middle of the night, brazenly discriminates against minor-party candidates, and was
4 designed to boost political support for major-party candidates. Consequently, SB 6
5 deserves no judicial deference whatsoever.

6 **IX. It Is Beyond Question That Plaintiff Chamness Is Entitled to a**
7 **Preliminary Injunction**

8 As the briefing has showed, there is no question that Plaintiff Chamness has a
9 right to immediate injunctive relief, because he has satisfied the four key
10 requirements laid down by the Ninth Circuit.

11 A. It Is Certain That Plaintiff Chamness Will Succeed on the Merits

12 First, Plaintiff Chamness is *more than* “likely” to succeed on the merits.³⁶ As
13 he has compellingly shown, SB 6 has (a) already violated his fundamental rights
14 under the First and Fourteenth Amendments, by foisting him with the ballot label of
15 “No Party Preference” during last month’s Senate District 28 special election, and
16 (b) is poised to violate his fundamental rights under the First and Fourteenth
17 Amendment and the Elections Clause. Thus, it is certain that Plaintiff Chamness
18 will prevail on the merits.

19 B. It Is Beyond Question That Plaintiff Chamness Is Threatened with
20 Imminent, Irreparable Harm

21 Second, it is *more than* “likely” – in fact, it is certain – that Plaintiff
22 Chamness will suffer irreparable harm if he does not swiftly receive a preliminary
23 injunction.³⁷ It is undisputed that, in a matter of weeks, SB 6 will force him to
24 falsely state that he has “No Party Preference” – and thus lie to voters about his
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26 ³⁵ Moving Papers, at 12:3-13-14 (citing *Doe v. Reed*, 561 U.S. --, No. 09-559, concurring op.
of Stevens & Breyer, JJ., at 3 n.3; *McLain v. Meier*, 637 F.2d 1159, 1167 (8th Cir. 1980)).

27 ³⁶ *Alliance for the Wild Rockies v. Cottrell*, No. 09-35756 (9th Cir. Jan. 25, 2011), at 8.

28 ³⁷ *Id.* at 8.

1 political beliefs. Furthermore, it is undisputed that (1) California grapples with an
2 average of five federal and state special elections *per year*, and (2) it is only a
3 matter of time before the next special election strikes.³⁸ By granting injunctive
4 relief now, the Court will stop SB 6 from harming more candidates, voters, and
5 taxpayers in the immediate future.

6 C. It Is Beyond Question That the Balance of Hardships Tips Sharply in
7 Plaintiff Chamness' Favor

8 It is beyond question that the balance of equities tips sharply³⁹ in Plaintiff
9 Chamness' favor. Tellingly, SB 6 Defendants do not deny a fundamental fact:
10 while Secretary Bowen will have the freedom to state on the ballot that she is a
11 Democrat, Plaintiff Chamness will be banned from stating that he belongs to the
12 Coffee Party. Instead, he will be forced to lie to voters that he has “No Party
13 Preference”.

14 Equally critical, not one voter will be disenfranchised if a preliminary
15 injunction is granted. Contrary to Intervenor's claims, neither SB 6 nor Proposition
16 14 granted unaffiliated voters any new “rights”. Instead, it is undisputed that (1)
17 unaffiliated voters had been able to vote in the Democratic or Republican primaries
18 *for the past decade*, and (2) Proposition 14 did not give unaffiliated voters the right
19 to vote in the 2012 Presidential primaries.⁴⁰ Thus, SB 6 will strip candidates like
20 Michael Chamness of their fundamental rights, while giving unaffiliated voters no
21 say on who will become the Republican and Democratic nominees for the White
22 House. Therefore, the balance of equities tips sharply in Plaintiff Chamness' favor.

23
24
25 ³⁸ Moving Papers, at 19:1-19:5.

26 ³⁹ *Id.* at 8. Under the Ninth Circuit's sliding-scale analysis, a preliminary injunction is
27 “appropriate” if (1) the balance of hardships tips “sharply” in the plaintiff's favor, and (2) the
28 plaintiff raises “serious questions” going to the merits. *Id.* at 15. Because he has unquestionably
satisfied both criteria, Plaintiff Chamness is absolutely entitled to a preliminary injunction.

⁴⁰ See *supra* note 4; Moving Papers, at 3:22 n.4; CAL.CONST. art. ii §5(c).

1 D. It Is Beyond Question that the Public Interest Will Benefit from
2 Injunctive Relief

3 Finally, it is beyond question that the public interest will strongly benefit if
4 the Court orders injunctive relief.⁴¹ Only a preliminary injunction will protect the
5 fundamental rights of Michael Chamness and the voters who support him in the
6 looming Congressional special election. Furthermore, a preliminary injunction will
7 not only stop millions of taxpayer dollars from being illegally spent, but will grant
8 California elections officials a much needed reprieve from what the California
9 Association of Clerks and Election Officials has called a “complex set of changes
10 [that] has *not occurred in recent memory*.”⁴² Therefore, granting a preliminary
11 injunction will strongly promote the public interest.

12 **X. Conclusion**

13 *This case is not one of those unusual cases in which [the Court] would be*
14 *justified in standing by and allowing constitutional violations to go unremedied.*

15 -- *Johnson v. Miller*⁴³

16 As the U.S. Supreme Court made clear in *Reynolds v. Sims*, a court must
17 “tak[e] appropriate action to insure that no further elections are conducted” under
18 an illegal election law: one that, according to Secretary Bowen, gives an
19 impermissible advantage to major-party Congressional candidates *just like her*.⁴⁴
20 Last month, SB 6 violated Coffee Party candidate Michael Chamness’ fundamental
21 rights, and it *will do so again* unless this Court swiftly takes action. It now falls on
22 this Court to issue a preliminary injunction against SB 6 – and thereby ensure that
23 the voices of Michael Chamness and other grassroots candidates are not silenced on
24 the ballot.

25 ⁴¹ *Cottrell, supra* note 36, No. 09-35756, at 8.

26 ⁴² Moving Papers, at 19:19-20:6; Complaint ¶35.

27 ⁴³ *Johnson v. Miller*, 929 F.Supp. 1529, 1562 (S.D. Ga. 1996), *aff’d sub nom. Abrams v. Johnson*, 521 U.S. 74 (1997) (emphasis added) (granting preliminary injunction against illegal redistricting plan).

28 ⁴⁴ *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

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Respectfully submitted,

By: /s/ GAUTAM DUTTA, ESQ.

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