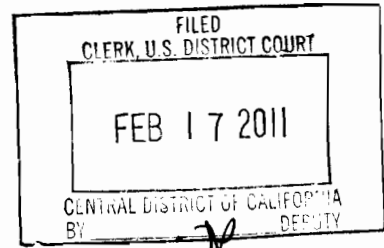


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8 MICHAEL CHAMNESS



9 IN THE UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

F/S  
21

11 MICHAEL CHAMNESS,

12 *Plaintiff,*

13 vs.

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

21 *Defendants.*

CASE NO.

**CV11-01479** ODW (FFMx)

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

FEDERAL JURISDICTION INVOKED  
PURSUANT TO 28 U.S.C. §1983

HEARING DATE:

HEARING TIME:

JUDGE: Hon. \_\_\_\_\_

COURTROOM: \_\_\_\_\_

22 **INTRODUCTION**

23 1. Plaintiff Michael Chamness brings this facial and as-applied  
24 constitutional challenge to defend and vindicate every candidate's fundamental  
25 right to share his or her political beliefs with the voters.

26 2. Plaintiff Chamness seeks to block Senate Bill 6 ("SB 6") from being  
27 implemented in the looming special primary election for California Congressional  
28 District 36 – because SB 6 will force him to falsely state on the ballot that he has  
"No Party Preference".

3. SB 6 targets and discriminates against minor-party candidates for

1 federal and state legislative office, while bestowing unlawful privileges on major-  
2 party candidates.

3 4. Plaintiff Chamness is affiliated with the Coffee Party, a minor (non-  
4 state-recognized) political party. He intends to run in the CD 36 Primary, as a  
5 candidate who identifies with the Coffee Party.

6 5. The special primary election for Congressional District 36 (the "CD 36  
7 Primary") could be held as soon as April 26, 2011. Under that timetable, voters  
8 will be able to cast vote-by-mail ballots beginning April 1, 2011; and the general  
9 election (if necessary) will be held on June 21, 2011.

10 6. On February 15, 2011, Secretary of State Debra Bowen, who has been  
11 named as a Defendant in this case, announced that she would run as a candidate in  
12 the CD 36 Primary.

13 7. Unlike Plaintiff Chamness, Secretary of State Bowen will be allowed  
14 to use a party label (i.e., "Democratic Party") on the ballot for the CD 36 Primary.  
15 In a statement released on February 15, 2011, Secretary of State Bowen stated:  
16 "Over the years, I've proven that I'm principled and that solving problems is much  
17 more important to me than party labels." A copy of her February 15, 2011 press  
18 release has been attached as Exhibit 8.

19 8. Previously, the Elections Code allowed minor-party candidates to state  
20 on the ballot that they were "Independent". In a radical departure, Senate Bill 6  
21 ("SB 6") banned minor-party candidates from stating on the ballot that they are  
22 "Independent".

23 9. SB 6 imposes a "Party Preference Ban" on minor-party candidates.  
24 That is, minor-party candidates are forced to falsely state on the ballot that they  
25 have "No Party Preference". Significantly, Secretary of State Bowen *has publicly*  
26 *admitted that SB 6's Party Preference Ban is not "permissible"*, because it bans  
27 minor-party candidates from identifying themselves as "Independent".

28 10. SB 6 threatens Plaintiff Chamness with imminent, irreparable harm.

1 Unless SB 6 is swiftly enjoined, it will force Plaintiff Chamness to falsely state  
2 that he has “No Party Preference” on the ballot for the CD 36 Primary. In other  
3 words, SB 6 will force Plaintiff Chamness to lie to voters about his political views.

4 11. SB 6 has already inflicted irreparable harm on Plaintiff Chamness’  
5 fundamental rights. Recently, Plaintiff Chamness’ name appeared on the February  
6 15, 2011 ballot, as a certified candidate for the special primary election in Senate  
7 District 28 (the “SD 28 Primary”). During the SD 28 Primary, SB 6 forced Plaintiff  
8 Chamness to falsely state that he had “No Party Preference”.

9 12. Specifically, the ballot for the SD 28 Primary foisted Plaintiff  
10 Chamness with the party label of “No Party Preference”, even though he identifies  
11 with the Coffee Party.<sup>1</sup>

#### 12 STATEMENT OF FACTS

13 13. The CD 36 Primary was triggered by the announcement that  
14 Congressman Jane Harman will resign in mid- to late February. The date of the  
15 CD 36 Primary will be set within 14 days after her resignation takes effect.

16 14. On February 19, 2009, the Legislature introduced and passed SB 6 in  
17 the middle of the night, without holding a single hearing and without giving the  
18 public any notice.<sup>2</sup> SB 6 contained a raft of amendments to the Elections Code.<sup>3</sup>

19 <sup>1</sup> A copy of the sample ballot used in the SD 28 Primary has been attached as  
20 Exhibit 1. That ballot states that Plaintiff Chamness has “No Party Preference”.  
21 Like the sample ballot, the vote-by-mail and election-day ballots also stated that  
22 Plaintiff Chamness had “No Party Preference”.

23 <sup>2</sup> SB 6 was passed between 3:40 am and 6:55 am on Feb. 19, 2009. “State  
24 Legislature Passes Emergency Budget Plan,” SF CHRONICLE, Feb. 19, 2009,  
25 available at [http://articles.sfgate.com/2009-02-19/news/17190540\\_1\\_budget-plan-](http://articles.sfgate.com/2009-02-19/news/17190540_1_budget-plan-state-income-tax-gop-vote)  
26 [state-income-tax-gop-vote](http://articles.sfgate.com/2009-02-19/news/17190540_1_budget-plan-state-income-tax-gop-vote) (last visited Feb. 14, 2011).

27 <sup>3</sup> SB 6, Exh. 3, at 56, codified at Ch. 1, Stats. 2009, chaptered version  
28 available at [http://leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0001-](http://leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sb_6_bill_20090220_chaptered.pdf)  
0050/sb\_6\_bill\_20090220\_chaptered.pdf (last visited Feb. 14, 2011). According to  
its chaptered version, SB 6 amends “Sections 13, 334, 337, 2150, 2151, 2152, 2154,  
8025, 8062, 8068, 8081, 8121, 8124, 8142, 8148, 8150, 8300, 8550, 8600,  
8605, 8805, 8807, 10705, 10706, 12108, 13102, 13105, 13110, 13206,  
13207, 13208, 13230, 13300, 13302, 13305, 15451, 15452, 15670, 15671,  
19300, and 19301 of, to amend Part 1 of Division 7 of, to add Sections 300.5,  
325, 332.5, 338.5, 359.5, 8002.5, 8005, 8141.5, 8606, 9083.5, 9084.5, 13109.5, and  
14105.1 to, to add Chapter 0.5 (commencing with Section 6000) to Part 1 of

1           15. The Legislature passed SB 6 in order to implement Proposition 14's  
2 "Top Two" Primary, which was narrowly approved over a year later on June 8,  
3 2010.

4           16. Proposition 14 and SB 6, which both became operative on January 1,  
5 2011, eliminated California's previous "qualified party" election system (except for  
6 Presidential elections).

7                           California's Previous Qualified-Party Election System

8           17. The Elections Code classifies political parties into two categories:  
9 "qualified" parties (i.e., "major" or state-recognized parties) and "non-qualified"  
10 parties (i.e., "minor" or non-state-recognized parties).

11           18. Under the previous qualified-party election system, candidates from  
12 qualified parties had the right to state their party's name on the ballot. In addition,  
13 candidates from non-qualified (minor) parties had the right to the party label of  
14 "Independent".

15           19. A political party gains "qualified" (state-recognized) status if it meets  
16 satisfies one of three stringent requirements: (a) one of that party's candidates has  
17 received at least 2 percent of the vote in a statewide contest during the last  
18 preceding gubernatorial election; (b) at least 1 percent of "the entire vote of the  
19 state at the last preceding gubernatorial election have declared their intention to  
20 affiliate with that political party"; or (c) at least 10 percent of registered voters have  
21 signed a petition.<sup>4</sup>

22           20. Under the previous "qualified party" election system, voters filled  
23 federal and state offices through a two-round election system: a primary (first-  
24 round) election in which each qualified party chose its nominee for a given office,  
25

---

26 Division 6 of, to amend and renumber Section 6000 of, to repeal and add Section  
27 8125 of, to repeal Sections 8802 and 8806 of, the Elections Code, and to amend  
28 Section 88001 of the Government Code, relating to elections." *Id.* at 56.

<sup>4</sup> Elections Code §5100.

1 followed by a general election in which every qualified-party nominee squared off  
2 against minor-party and write-in candidates. In this manner, voters have had at  
3 least two opportunities to vote for federal and state candidates during each even-  
4 numbered year: (a) the June qualified-party primary election, and (b) the  
5 November general election.<sup>5</sup>

6 21. During the qualified-party primary election, voters affiliated with each  
7 qualified party (and voters who declined to state any party affiliation)<sup>6</sup> would select  
8 that party's nominee for the general election. The top votegetter from the party  
9 primary would then advance as that party's nominee to the general election.<sup>7</sup>

10 22. During the general election, all voters could choose, irrespective of  
11 their party affiliation, between three classes of candidates: (a) the nominees from  
12 each qualified political party, (b) candidates who were listed on the ballot as  
13 "Independent" because they were affiliated with either no party or with a non-  
14 qualified (minor) political party, and (c) write-in candidates. The top votegetter in  
15 the general election would win.

16 23. Currently, 24 states allow minor-party labels to appear on their ballots.  
17 Between 1891 and 1915, California law permitted minor-party candidates to list  
18

19 <sup>5</sup> Since 2006, the qualified-party primary election has been held in June. In  
20 2007, the Legislature passed legislation to move Presidential primaries to February.  
21 SB 113, *codified at* Ch. 2 Stats. 2007, *available at* [http://info.sen.ca.gov/pub/07-08/bill/sen/sb\\_0101-0150/sb\\_113\\_bill\\_20070315\\_chaptered.html](http://info.sen.ca.gov/pub/07-08/bill/sen/sb_0101-0150/sb_113_bill_20070315_chaptered.html) (*last visited* Feb.  
14, 2011).

22 <sup>6</sup> Under existing law, each qualified party has the option to allow "decline to  
23 state" (unaffiliated) voters to vote in its party primary. Elections Code §13102(b),  
24 *codified at* Ch. 98, Stats. 2000. Under that provision, "decline to state" voters have  
25 been allowed to vote in every Democratic and Republican primary for state and  
26 federal (excluding Presidential) office since 2001.

27 <sup>7</sup> Unlike regularly scheduled elections, special elections ran according to  
28 different rules. There, all candidates squared off against one another, irrespective  
of party. If one candidate received a majority (50 percent plus 1), that candidate  
would win outright, and the general election would be cancelled. But if no  
candidate received a majority, the top votegetter from every qualified party would  
advance to the general election, where they would face off against minor-party and  
write-in candidates.

1 their party's name on the ballot.<sup>8</sup> In 1912, a minor-party candidate (William Kent  
2 of the Progressive Party) was elected to the U.S. House of Representatives.

3 Budgetary Cause, Electoral Effect

4 24. In Winter 2009, the State of California faced a record \$41 billion  
5 budget deficit. During that time, the Legislature could not muster the two-thirds  
6 majority that was then necessary to pass a budget.<sup>9</sup>

7 25. On February 19, 2009, then-State Senator Abel Maldonado broke the  
8 political impasse, when he cast the deciding vote to pass the budget.

9 26. In exchange for his vote, Maldonado demanded a ballot measure that  
10 would eliminate the qualified-party election system. The Legislature obliged.

11 27. Between 3:40 am and 6:55 am on February 19, 2009, without giving  
12 any notice to the public, the Legislature passed SB 6, authored by Maldonado.

13 28. According to its Senate bill analysis, SB 6 was passed in order to  
14 implement Proposition 14, which was originally known as SCA 4: "This bill  
15 implements SCA 4 (Maldonado), the Top-Two Candidates Open Primary Act."<sup>10</sup>

16 29. SCA 4, also authored by Maldonado, consisted of a proposed state  
17 constitutional amendment to eliminate the qualified-party election system.<sup>11</sup>

18 30. In its Statement of Purpose, SCA 4 stated: "This act, *along with*  
19 *legislation* already enacted by the Legislature *to implement this act*, are intended to  
20 implement an open primary system in California[.]"<sup>12</sup>

21  
22 <sup>8</sup> Former Political Code §1188, *codified at* Ch. 130 Stats. 1891.

23 <sup>9</sup> Proposition 25, passed by the voters on Nov. 2, 2010, abolished the two-  
24 thirds requirement for the Legislature to pass the state's budget. Under Proposition  
25 25, a simple majority of the Legislature can now pass the budget.

26 <sup>10</sup> Senate Bill Analysis for SB 6, Feb. 19, 2009 (emphasis added), *available at*  
27 [http://info.sen.ca.gov/pub/09-10/bill/sen/sb\\_0001-  
0050/sb\\_6\\_cfa\\_20090219\\_031945\\_sen\\_floor.html](http://info.sen.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sb_6_cfa_20090219_031945_sen_floor.html) (*last visited* Feb. 14, 2011).

28 <sup>11</sup> SCA 4, Exh. 4, at 78, *codified at* Res. Ch. 2, Stats. 2009, *available at*  
[http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0001-  
0050/sca\\_4\\_bill\\_20090219\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sca_4_bill_20090219_chaptered.pdf) (*last visited* Feb. 14, 2011).

<sup>12</sup> *Id.* Exh. 4 at 79 (emphases added).

1 31. Between 3:40 am and 6:55 am on February 19, 2009, without giving  
2 any notice to the public, the Legislature voted to put SCA 4 on the statewide ballot.

3 32. On June 8, 2010, SCA 4 appeared on the statewide ballot as  
4 Proposition 14.

5 33. The Official Voter Information Guide for Proposition 14 did not  
6 provide either a summary or the text of SB 6.<sup>13</sup>

7 34. On June 8, 2010, a narrow majority of California voters approved  
8 Proposition 14.

9 Proposition 14: An Overview

10 35. According to the California Association of Clerks and Election  
11 Officials, SB 6 mandates a “complex set of changes [that] has not occurred in  
12 *recent memory*[.]”<sup>14</sup> Specifically, SB 6 will not only force counties to spend  
13 “*millions of dollars* statewide in ballot production and postage costs”, but could  
14 force them to spend millions more in new voting equipment.<sup>15</sup>

15 36. Under Proposition 14 and SB 6, all candidates for federal and state  
16 legislative office square off against one another during a primary (first-round)  
17 election. The top two votegetters then advance to the general election, irrespective  
18 of their party preference.<sup>16</sup>

19 37. Under subsection 5(b) of Proposition 14, all candidates may state their  
20

21 <sup>13</sup> A true copy of certain pages from the Secretary of State’s June 8, 2010 Voter  
22 Guide have been attached: the text of Proposition 14 (Exhibit 5); the Official Title  
23 and Summary of Proposition 14 (Exhibit 6); the Analysis by the Legislative Analyst  
24 (Exhibit 6); and the Arguments In Favor of and Against Proposition 14 (Exhibit  
25 14).

26 <sup>14</sup> Mar. 3, 2010 letter from California Association of Clerks and Election  
27 Officials to the Legislature, attached to Defendant Dean Logan’s Mar. 20, 2010  
28 Memorandum to the Los Angeles Board of Supervisors, Exh. 9, at 91 (emphases  
added).

<sup>15</sup> *Id.* at 91 (emphases added).

<sup>16</sup> CAL.CONST. art. ii §5(a). In the case of special elections, the general  
election will be cancelled under one circumstance. Namely, if a candidate receives  
a majority (50 percent plus 1) of the vote in the special primary election, that  
candidate will win outright. Elections Code §10705(a).

1 “political party preference, or lack of political party preference” on the ballot, but  
2 only if they do so “in the manner *provided by statute.*”<sup>17</sup> That “statute” is SB 6.

3 SB 6: No Party Label for Minor-Party Candidates

4 38. During the SD 28 Primary, SB 6 forced Plaintiff Chamness to falsely  
5 state that he had “No Party Preference”. A copy of the SD 28 Primary’s sample  
6 ballot has been attached as Exhibit 1.

7 39. SB 6-amended Elections Code Section 325 requires that all candidates  
8 and voters “of independent [i.e., minor-party]<sup>18</sup> status” be listed on the ballot as  
9 having “No Party Preference”.<sup>19</sup> That is, SB 6 explicitly bans minor-party  
10 candidates from stating on the ballot that they are “Independent” – which the  
11 qualified-party election system had previously allowed them to do.

12 40. On August 3 and 11, 2010, the Secretary of State’s office sent detailed  
13 analyses of SB 6 to the office of Abel Maldonado, the author of SB 6. The  
14 Secretary of State’s August 3, 2010 analysis stated that SB 6’s Party Preference  
15 Ban is *not “permissible”*, because it bans minor-party candidates from identifying  
16 themselves as “Independent”. A copy of both of the Secretary of State’s analyses  
17 has been attached as Exhibit 2.

18 41. In contrast to its treatment of minor-party candidates like Plaintiff  
19 Chamness, SB 6 allows candidates from major parties (e.g., Democratic and  
20

21 <sup>17</sup> CAL.CONST. art. ii §5(b) (emphases added).

22 <sup>18</sup> The California Supreme Court defined an “independent” candidate as a non-  
23 qualified-party (minor-party) candidate. *Libertarian Party v. Eu*, 620 P.2d 612, 28  
24 Cal.3d 535, 540 (Cal. 1980) (defining an independent candidate is one who is  
25 “independent of qualified political parties”) (emphases added).

26 <sup>19</sup> Only registered voters may run for state and federal office. SB 6-amended  
27 Elections Code §325 mandates that all voters “of independent status” be listed as  
28 having “No Party Preference”. Further, if a candidate’s voter registration card states  
that he or she has “No Party Preference”, his or her declaration of candidacy must  
also state that he or she has “No Party Preference.” SB 6-amended Elections Code  
§8002.5(a). Finally, if a candidate’s declaration of candidacy states that he or she  
has “No Party Preference”, then “No Party Preference” must be printed beside his or  
her name on the ballot. SB 6-amended Elections Code §13105(a).



1 Republican Parties) to state their party's name on the ballot.<sup>20</sup> If Secretary of State  
2 Bowen ran in the CD 36 Primary, she *would be allowed to state her party's name*  
3 *on the ballot.*

4 42. In summary, SB 6 forces minor-party candidates to falsely state that  
5 they have "No Party Preference" – *unless they state a preference for a major*  
6 *political party.*

7 Special Elections: Frequency, CD 36 Calendar

8 43. As of February 16, 2011, no date had yet been set for the CD 36  
9 Primary, because Congressman Harman had not yet resigned.

10 44. According to the Secretary of State's office, California has had 4.8  
11 special federal and state elections per year since 1990. A copy of her office's report  
12 on special elections has been attached as Exhibit 10, and is available online at  
13 <http://www.sos.ca.gov/admin/press-releases/2010/db10-048.pdf> (*last visited Feb.*  
14 *15, 2011*).

15 45. After a federal or state legislative seat falls vacant, the Governor must  
16 call a special election within 14 days of the vacancy.<sup>21</sup>

17 46. If Congressman Harman resigns on February 23, 2011, the earliest  
18 date for which the CD 36 Primary could be scheduled is April 26, 2011.<sup>22</sup> Under  
19 that timetable, voters may cast vote-by-mail ballots beginning April 1, 2011 (i.e.,  
20

21 <sup>20</sup> SB 6-amended Elections Code 13105(a).

22 <sup>21</sup> Elections Code §10700. In contrast, if the Governor's seat falls vacant, the  
23 Lieutenant Governor automatically becomes Governor. Moreover, if the seat of  
24 any other state constitutional officer falls vacant (e.g., Attorney General or  
25 Secretary of State), the Governor appoints the successor with the advice and  
26 consent of the Legislature. CAL.CONST. art. v §§5, 10.

27 <sup>22</sup> This analysis assumes that the Governor will call the election between Feb.  
28 23 and 29, 2011. Unless it can be consolidated with an already scheduled election,  
a special primary election must be held within 56 to 70 days after the date on which  
the Governor calls the election. Elections Code §§10703(a) & 10704(a) (special  
general election must be held within 112 to 126 after the date on which the  
Governor has called the election, and the special primary election must be held on  
the eighth Tuesday before the date of the special general election).

1 25 days before April 26, 2011).<sup>23</sup> Moreover, if no candidate receives a majority in  
2 the CD 36 Primary, the general election must be held 56 days later (here, on June  
3 21, 2011).<sup>24</sup>

4 Plaintiff Chamness' Proactive Attempt to Avert Irreparable Harm

5 47. Plaintiff Chamness brings both a facial and an as-applied constitutional  
6 challenge to SB 6.

7 48. Recently, the California Supreme Court and the California Court of  
8 Appeal (First District) denied him permission to intervene in related litigation.

9 49. On July 29, 2010, six plaintiffs (the "State Court Plaintiffs")<sup>25</sup> asked a  
10 San Francisco Superior Court judge to grant a preliminary injunction against SB 6.  
11 The judge denied their request on October 5, 2010.<sup>26</sup>

12 50. Subsequently, State Court Plaintiffs sought mandamus relief from the  
13 California Supreme Court, because SB 6 was poised to be implemented in three  
14 special elections: in Senate District 28, Senate District 17, and Assembly District 4.

15 51. Plaintiff Chamness sought to run for the vacancy in Senate District 28,  
16 as a candidate affiliated with the Coffee Party. Once implemented for that election,  
17 SB 6 would force him to state on the ballot that he had "No Party Preference". In  
18 this light, SB 6 threatened Plaintiff Chamness with imminent, irreparable harm.

19 52. To avert irreparable harm, Plaintiff Chamness asked the California  
20 Supreme Court for permission to intervene in State Court Plaintiffs' mandamus  
21 proceeding, in which the Secretary of State and Defendant Logan were Real Parties  
22 in Interest.<sup>27</sup> Significantly, Defendant Logan (who administered the SD 28 Primary

23 <sup>23</sup> Elections Code §10704(c).

24 <sup>24</sup> See *supra* note 22.

25 <sup>25</sup> *Mona Field et al. v. Debra Bowen et al.* (San Francisco Superior Court No.  
26 CGC-10-502018) (case information accessible at  
[http://webaccess.sftc.org/scripts/magic94/Mgrqispi94.dll?APPNAME=IJS&PRGN  
AME=casenumberprompt22](http://webaccess.sftc.org/scripts/magic94/Mgrqispi94.dll?APPNAME=IJS&PRGN<br/>AME=casenumberprompt22)) (last visited Feb. 14, 2011).

27 <sup>26</sup> A copy of the Superior Court's Oct. 5, 2010 order denying State Court  
Plaintiffs' Motion for Preliminary Injunction has been attached as Exhibit 11.

28 <sup>27</sup> *Mona Field et al. v. Superior Court* (California Supreme Court No. S188436)

1 and will administer the CD 36 Primary) *took no position* with respect to Plaintiff  
2 Chamness' request to intervene. In contrast, the Secretary of State opposed his  
3 request.

4 53. On December 15, 2010, the California Supreme Court denied Plaintiff  
5 Chamness' request to intervene, along with State Court Plaintiffs' underlying  
6 petition for mandamus relief.<sup>28</sup>

7 54. Subsequently, Plaintiff Chamness qualified for and appeared on the  
8 SD 28 Primary ballot. On January 5, 2011, the Secretary of State published an  
9 online List of Certified Candidates for the SD 28 Primary. That list, attached as  
10 Exhibit 14, falsely stated that Plaintiff Chamness had "No Party Preference".  
11 Subsequently, Defendant Logan (who administered the SD 28 Primary) published  
12 vote-by-mail and election-day ballots that falsely stated that Plaintiff Chamness  
13 had "No Party Preference". A copy of the SD 28 Primary's sample ballot has been  
14 attached as Exhibit 1.

15 55. By forcing Plaintiff Chamness to falsely state that he had "No Party  
16 Preference", SB 6 *inflicted irreparable harm on his fundamental rights* between  
17 January 21, 2011 (the first day voters could cast vote-by-mail ballots) and February  
18 15, 2011 (the day of the SD 28 Primary).

19 56. State Court Plaintiffs appealed the Superior Court's denial of  
20 preliminary injunction to the California Court of Appeal (First District).<sup>29</sup> In  
21 response, Plaintiff Chamness asked the Court of Appeal for permission to intervene  
22

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23 (docket accessible at  
24 [http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc\\_id=1962839&doc\\_no=S188436](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1962839&doc_no=S188436)) (*last visited* Feb. 14, 2011).

25 <sup>28</sup> A copy of the California Supreme Court's Dec. 15, 2010 order denying  
26 Plaintiff Chamness' Motion to Intervene and State Court Plaintiffs' Petition for  
27 Writ of Mandate has been attached as Exhibit 12.

28 <sup>29</sup> *Mona Field et al. v. Debra Bowen et al.* (California Court of Appeal No.  
A129946) (docket accessible at  
[http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc\\_id=1958245&doc\\_no=A129946](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc_id=1958245&doc_no=A129946)) (*last visited* Feb. 14, 2011).

1 in that proceeding, in which the Secretary of State and Defendant Logan are  
2 Respondents. Again, Defendant Logan (who administered the SD 28 Primary and  
3 will administer the CD 36 Primary) *took no position* with respect to Plaintiff  
4 Chamness' request to intervene, while the Secretary of State opposed his request.

5 57. On January 31, 2011, the Court of Appeal denied Plaintiff Chamness'  
6 request to intervene.<sup>30</sup>

7 58. It is highly unlikely that the Court of Appeal will rule on the merits of  
8 State Court Plaintiffs' appeal before vote-by-mail ballots will be cast in the CD 36  
9 Primary. As of February 15, 2011, State Plaintiffs' appeal had not yet been fully  
10 briefed. The Secretary of State's opposition brief had been due on February 9,  
11 2011. As of February 14, 2011, she had not yet filed her brief.<sup>31</sup> After she has filed  
12 her brief, State Court Plaintiffs will have 20 days to file a reply brief.<sup>32</sup> Needless to  
13 say, the Court of Appeal will not schedule oral argument until the appeal (which is  
14 not a mandamus proceeding) has been fully briefed.

### 15 JURISDICTION AND VENUE

16 59. The Court has original jurisdiction to hear Plaintiff Chamness' claims  
17 pursuant to 28 U.S.C. §1983. This Court is a proper venue for this action, because  
18 Defendant Dean Logan (who administered the SD 28 Primary and will administer  
19 the CD 36 Primary) performs the duties of his office within the Central District of  
20 California.

### 21 PARTIES

22 <sup>30</sup> A copy of the California Court of Appeal's Jan. 31, 2011 order denying  
23 Plaintiff Chamness' Motion to Intervene has been attached as Exhibit 13.

24 <sup>31</sup> Rule 8.220 of the California Rules of Court gives a litigant a 15-day grace  
25 period to file a late brief. This 15-day clock begins to run on the date the Court  
26 gives notice to the parties that a timely brief had not been filed. As of February 14,  
27 2011, the 15-day clock had not yet begun to run, as the Court of Appeal had not yet  
28 sent such a notice in *Mona Field et al. v. Debra Bowen et al.* (California Court of  
Appeal No. A129946) (docket accessible at  
[http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc\\_id=1958245&doc\\_no=A129946](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc_id=1958245&doc_no=A129946)) (*last visited* Feb. 14, 2011).

<sup>32</sup> California Rules of Court §8.212(a)(3).

1           60. Plaintiff Michael Chamness, an individual, lives and is registered to  
2 vote in the County of Los Angeles. He paid taxes to the State of California during  
3 the past year. Recently, Plaintiff Chamness' name appeared on the February 15,  
4 2011 ballot, as a certified candidate for the SD 28 Primary. Plaintiff Chamness  
5 seeks to run for the office of Member of the United States House of Representatives  
6 (36<sup>th</sup> Congressional District), as a candidate stating a preference for the Coffee  
7 Party, a minor party.

8           61. Defendant Debra Bowen, in her official capacity as California  
9 Secretary of State, serves as the State's chief elections officer; and administers and  
10 enforces the Elections Code with respect to federal and state elections.<sup>33</sup>

11           62. Defendant Dean Logan, in his official capacity as Los Angeles  
12 County's Registrar-Recorder / County Clerk, serves as Los Angeles County's voter  
13 registrar. He administered the SD 28 Primary and will administer the CD 36  
14 Primary.

15           63. Plaintiff does not know the true names and capacities of Defendants  
16 DOES 1 through 20, and therefore sue those Defendants by fictitious names. Based  
17 on his information and belief, Plaintiff alleges that each of the fictitiously named  
18 Defendants is in some manner responsible for the actions described in this  
19 Complaint. When the true identities and capacities of those fictitiously named  
20 Defendants are determined, Plaintiff will seek leave to amend this Complaint to  
21 insert those identities and capacities.

22                           **FIRST CLAIM FOR RELIEF (Party Preference)**

23                           *Facial Violation of the United States Constitution and 42 U.S.C. §1983*

24   (Amendments I & XIV)

25                           By Plaintiff Chamness Against Defendants Bowen and Logan

26           64. The allegations of paragraphs 1 through 63 are hereby incorporated by  
27

28           <sup>33</sup> Elections Code §12172.5.

1 reference.

2 65. In the looming CD 36 Primary, the conduct of Defendants Bowen and  
3 Logan threatens to violate Plaintiff Chamness' right to state on the ballot that he is  
4 "Independent". That fundamental right is protected under the United States  
5 Constitution (Amendments I & XIV) and 42 U.S.C. §1983.

6 66. Plaintiff Chamness will be irreparably harmed if Defendants Bowen  
7 and Logan violate his constitutional rights, and he has no speedy or adequate  
8 remedy at law. Unless Defendants Bowen and Logan are enjoined, Plaintiff  
9 Chamness will suffer imminent and irreparable harm, because he will be banned  
10 from stating on the ballot that he is "Independent". At the same time, Defendants  
11 Bowen and Logan will illegally spend public funds to implement SB 6.  
12 Consequently, Plaintiff Chamness is entitled to preliminary and permanent  
13 injunctive relief to restrain Defendants Bowen and Logan from implementing SB 6  
14 for the CD 36 Primary and all future elections for federal and state legislative  
15 office.

16 67. An actual controversy now exists between Plaintiff Chamness and  
17 Defendants Bowen and Logan as to whether Defendants' conduct threatens to  
18 violate Plaintiff Chamness' rights under the United States Constitution  
19 (Amendments I & XIV) and 42 U.S.C. §1983. The parties therefore need a  
20 declaration from the Court regarding whether Defendants' ongoing and imminent  
21 actions, as alleged in this Complaint, violate the United States Constitution  
22 (Amendments I & XIV) and 42 U.S.C. §1983.

23 **SECOND CLAIM FOR RELIEF (Party Preference)**

24 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

25 (Amendments I & XIV)

26 By Plaintiff Chamness Against Defendants Bowen and Logan

27 68. The allegations of paragraphs 1 through 63 are hereby incorporated by  
28 reference.

1           69. During the recent SD 28 Primary, Defendants Bowen and Logan  
2 violated Plaintiff Chamness' right to state on the ballot that he is "Independent".  
3 That fundamental right is protected under the United States Constitution  
4 (Amendments I & XIV) and 42 U.S.C. §1983.

5           70. Plaintiff Chamness suffered irreparable harm, because SB 6 unlawfully  
6 banned him from stating on the ballot that he is "Independent" during the SD 28  
7 Primary. At the same time, Defendants Bowen and Logan illegally spent public  
8 funds to implement SB 6 for the SD 28 Primary. Consequently, Plaintiff Chamness  
9 is entitled to declaratory and permanent injunctive relief to restrain Defendants  
10 Bowen and Logan from implementing SB 6 for all future elections for federal and  
11 state legislative office.

12           71. An actual controversy now exists between Plaintiff Chamness and  
13 Defendants Bowen and Logan as to whether Defendants violated Plaintiff  
14 Chamness' rights under the United States Constitution (Amendments I & XIV) and  
15 42 U.S.C. §1983. The parties therefore need a declaration from the Court regarding  
16 whether Defendants' actions, as alleged in this Complaint, violated the United  
17 States Constitution (Amendments I & XIV) and 42 U.S.C. §1983.

18                           **THIRD CLAIM FOR RELIEF (Party Preference)**

19                           *Facial Violation of the United States Constitution and 42 U.S.C. §1983*

20   (Elections Clause, Article I, Section 4, Clause 1)

21   By Plaintiff Chamness Against Defendants Bowen and Logan

22           72. The allegations of paragraphs 1 through 63 are hereby incorporated by  
23 reference.

24           73. In the looming CD 36 Primary, the conduct of Defendants Bowen and  
25 Logan threatens to violate Plaintiff Chamness' right to state a party preference on  
26 the ballot. That fundamental right is protected under the United States Constitution  
27 (Elections Clause, Article I, Section 4, Clause 1) and 42 U.S.C. §1983.

28           74. Plaintiff Chamness will be irreparably harmed if Defendants Bowen

1 and Logan violate his constitutional rights, and he has no speedy or adequate  
2 remedy at law. Unless Defendants Bowen and Logan are enjoined, Plaintiff  
3 Chamness will suffer imminent and irreparable harm, while Defendants Bowen and  
4 Logan will illegally spend public funds to implement SB 6. Consequently, Plaintiff  
5 Chamness is entitled to preliminary and permanent injunctive relief to restrain  
6 Defendants Bowen and Logan from implementing SB 6 for the CD 36 Primary and  
7 all future elections for United States Senator and Member of United States  
8 Congress.

9 75. An actual controversy now exists between Plaintiff Chamness and  
10 Defendants Bowen and Logan as to whether Defendants' conduct threatens to  
11 violate Plaintiff Chamness' rights under the United States Constitution (Elections  
12 Clause, Article I, Section 4, Clause 1) and 42 U.S.C. §1983. The parties therefore  
13 need a declaration from the Court regarding whether Defendants' ongoing and  
14 imminent actions, as alleged in this Complaint, violate the United States  
15 Constitution (Elections Clause, Article I, Section 4, Clause 1) and 42 U.S.C. §1983.

### 16 **REQUEST FOR RELIEF**

17 Plaintiffs request the following relief from the Court:

18 A. That the Court issue a preliminary injunction prohibiting Defendants,  
19 and all persons acting under their direction and control, (1) from implementing and  
20 enforcing SB 6 for the CD 36 Primary and all future federal and state legislative  
21 elections, and (2) from illegally spending public funds to implement and enforce  
22 SB 6.

23 B. That the Court issue a permanent injunction prohibiting Defendants,  
24 and all persons acting under their direction and control, (1) from implementing and  
25 enforcing SB 6 for the CD 36 Primary and all future federal and state legislative  
26 elections, and (2) from illegally spending public funds to implement and enforce  
27 SB 6.

28 C. That the Court declare that Defendants violated Plaintiff Chamness'



1 fundamental rights under the United States Constitution (Amendments I & XIV)  
2 and 42 U.S.C. §1983, during the recent SD 28 Primary.

3 D. That the Court declare that SB 6 is unenforceable, because it violates  
4 the United States Constitution.

5 E. That the Court declare that Proposition 14 is not self-executing.

6 F. That the Court declare that Proposition 14 is inoperative, because its  
7 implementing statute (SB 6) has been declared unenforceable.

8 G. That the Court declare that Proposition 14 shall not become operative  
9 unless and until a lawful implementing statute has been enacted and has become  
10 operative.

11 H. That the Court award Plaintiff Chamness all reasonable costs and  
12 expenses, including attorney's fees, pursuant to 42 U.S.C. §1988(b).

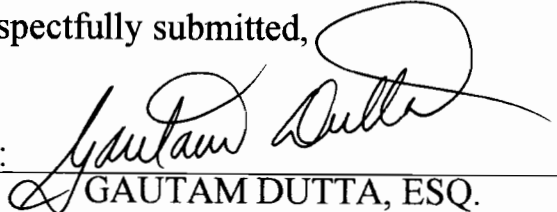
13 I. That the Court award Plaintiff Chamness all other relief deemed just  
14 and equitable.

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DATED: Feb. 17, 2011

Respectfully submitted,

By:   
GAUTAM DUTTA, ESQ.

Attorney for Plaintiff

MICHAEL CHAMNESS

ORIGINAL

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself)
Michael Chamness
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Gautam Dutta, Esq. (State Bar No. 199326)
39270 Paseo Padre Pkwy # 206, Fremont, CA 94538
Phone 415.236.2048; Email Dutta@BusinessandElectionLaw.com

DEFENDANTS
Debra Bowen, in only her official capacity as California Secretary of State; Dean Logan, in only his official capacity as Registrar-Recorder / County Clerk of the County of Los Angeles
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in this State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. ORIGIN (Place an X in one box only.)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify):
6 Multi-District Litigation
7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: Yes No
MONEY DEMANDED IN COMPLAINT: \$

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
28 U.S.C Section 1983: Facial and as-applied constitutional challenge against Senate Bill 6, a California statute that became operative on Jan. 1, 2011.

Table with 6 columns: OTHER STATUTES, CONTRACT, TORTS (PERSONAL INJURY, IMMIGRATION), TORTS (PERSONAL PROPERTY, CIVIL RIGHTS), PRISONER PETITIONS, LABOR. Contains various legal categories and checkboxes for selection.

FOR OFFICE USE ONLY: Case Number: CV11-01479
AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes

If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case?  No  Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Plaintiff Michael Chamness resides in Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Defendant Dean Logan conducts his official duties in Los Angeles County. Defendant Debra Bowen conducts her official duties throughout the State of California, including in Los Angeles County.	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note: In land condemnation cases, use the location of the tract of land involved**

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Date Feb. 17, 2011

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

**Key to Statistical codes relating to Social Security Cases:**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))