

California Court of Appeal, First District, Division 3

MONA FIELD, RICHARD
WINGER, STEPHEN A.
CHESSIN, JENNIFER
WOZNIAK, JEFF
MACKLER, and RODNEY
MARTIN,

Appellants,

vs.

DEBRA BOWEN, et al.,

Respondents;

ABEL MALDONADO, et al.;

Intervenors-Respondents;

CASE NO. A129946

**VERIFIED MOTION TO
INTERVENE BY MICHAEL
CHAMNESS; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Arising from the denial of
Petitioner's Motion for Preliminary
Injunction on Oct. 5, 2010 by Hon.
Charlotte Walter Woolard, Dept. 302,
Superior Court for the County of San
Francisco (Civic Center), 400
McAllister St., San Francisco, CA
94102; 415.551.3723; Case No. CGC-
10-502018]

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VERIFICATION

I, Gautam Dutta, declare:

I have filed the accompanying Motion to Intervene (the “Motion”) in the action captioned above. I have read the Motion and know its contents. I am informed, believe, and allege based upon my information and belief that the contents are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Jan. 10, 2011, in Fremont, California.

Signed: _____

Gautam Dutta

MEMORANDUM OF POINTS AND AUTHORITIES

The “capable of repetition, yet evading review” doctrine, in the context of election cases, is appropriate when there are “as applied” challenges[.]

-- U.S. Supreme Court, *Storer v. Brown*¹

The designation of parties and candidates on the ballot is a matter of continuing public importance, and a challenge to the validity of a statute governing such designations demand[s] final resolution to permit the orderly conduct of future elections.

-- California Supreme Court, *Libertarian Party v. Eu*²

I. Introduction

Within a matter of days, Senate Bill 6 will have inflicted irreparable harm on minor-party candidate Michael Chamness’ fundamental rights. Specifically, SB 6 will have forced Mr. Chamness – a certified candidate for the looming special election in Senate District 28 – to falsely state on the ballot that he has “No Party Preference”. To vindicate his constitutional rights, Mr. Chamness seeks the Court’s leave to intervene, so that it may hear his as-applied challenge to SB 6.

Mr. Chamness’ participation will sharpen the focus of this case, for it will enable the Court to resolve a key issue in dispute. Namely, does SB 6 force minor-party candidates to

¹ *Storer v. Brown* (1974) 415 U.S. 724, 737 n.8 (emphases added).

² *Libertarian Party v. Eu* (1980) 28 Cal.3d 535, 540 (emphases added).

state on the ballot that they have “No Party Preference”? Put another way, does SB 6 impose a “Party Preference Ban”? Significantly, Appellants (who have brought a facial challenge to SB 6) and the Secretary of State both agree that SB 6 does impose a Party Preference Ban on minor-party candidates; while Intervenors deny that it does so. By hearing Mr. Chamness’ as-applied challenge, the Court will gain clarity on how SB 6 has been applied to minor-party candidates.

Finally, both the U.S. and California Supreme Courts have admonished courts to promptly hear and resolve challenges to election laws, particularly when a candidate or voter brings an as-applied challenge.³ Since 1990, California has had nearly five special elections for state and federal office per year. Within the first three months of 2011 alone, California will already have held four special elections.⁴ By

³ *Storer, supra* note 1, 415 U.S. at 737 n.8; *see also Cook v. Gralike* (2001) 531 U.S. 510, 517 n.8; *accord, Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 172 (“If a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot.”) (emphases added); *Eu, supra* note 2, 28 Cal.3d at 539.

⁴ Between January 1 and February 15, 2011, three special state elections will have been held (in Senate Districts 1, 28, and 17). Last week, the winner of one of those elections (Ted Gaines) resigned from his Assembly District 4 seat to accept his new Senate District 1 seat – triggering another special election that will be called shortly. “Ted Gaines to Take Oath Today in Capitol”, Jan. 6, 2011, *Lodi News*, Appellants’ Request for Judicial Notice (hereinafter, “RJN”), Exh. 25.

taking into account Mr. Chamness' plight, the Court will not only gain insight into how SB 6's new election rules have been applied, but will in turn provide critical guidance on whether California's new election rules are enforceable going forward.

II. Introduction to Michael Chamness

Mr. Chamness, a resident of Senate District 28, is registered to vote with the party affiliation of the Coffee Party, a "non-qualified" (non-state-established) party.⁵ On January 4, 2011, he qualified to appear on the ballot for the special primary election in Senate District 28 (hereinafter, the "SD 28 Primary").⁶ However, SB 6 will force him to falsely state on the ballot that he has "No Party Preference" – and thereby inflict irreparable harm on his fundamental rights as a candidate.⁷ In less than two weeks, voters will begin casting vote-by-mail ballots in the SD 28 Primary.⁸

III. Background

A. Superior Court Proceedings

On July 29, 2010, Appellants filed a motion for preliminary injunction (the "PI Motion") to block SB 6 from being implemented.⁹ Their PI Motion claimed that (1) SB 6 unlawfully bans non-qualified-party candidates (i.e., minor-

⁵ Declaration of Michael Chamness in Support of Verified Motion to Intervene by Michael Chamness (hereinafter, "Chamness Declaration") ¶1.

⁶ *Id.* ¶¶14.

⁷ *Id.* ¶¶8, 20.

⁸ *Id.* ¶18.

⁹ Appellants-Plaintiffs' Motion for Preliminary Injunction, Appellants' Appendix (hereinafter "App."), Vol. 1, at 1097.

party candidates) from stating any party preference on the ballot, and (2) SB 6 unlawfully bans lawfully cast write-in votes from being counted in all general (runoff) elections.

On October 5, 2010, the Superior Court upheld the constitutionality of SB 6, and declined to strike down any part of the statute.¹⁰ In so doing, the Superior Court enabled Respondents to implement and enforce Part 325 of SB 6, which forces “independent” (i.e., minor-party) candidates like Mr. Chamness to falsely state on the ballot that they have “No Party Preference”.¹¹

B. Mr. Chamness’ Efforts to Avert Irreparable Harm

One month later, Mr. Chamness learned from media reports that SB 6 would be implemented for the SD 28 Primary.¹² He also learned that SB 6 would force all minor-party candidates to state on the ballot that they have “No Party Preference”.¹³ On or about November 6, 2010, Mr. Chamness decided to run in the SD 28 Primary, as a candidate from the Coffee Party.¹⁴ At that time, no date had yet been set for the SD 28 Primary.¹⁵

In a proactive effort to stop SB 6 from harming his fundamental rights, Mr. Chamness filed a Motion to Intervene

¹⁰ October 5, 2010 Order Denying Plaintiffs’ Motion for Preliminary Injunction, *attached as Exhibit A to Appellants’ Opening Brief.*

¹¹ Part 325 of SB 6 is now Elections Code §325.

¹² Chamness Declaration ¶4.

¹³ *Id.*

¹⁴ *Id.* at 7.

¹⁵ *Id.*

on November 24, 2010, in a related writ proceeding before the Supreme Court of California.¹⁶ His Motion to Intervene asked that the High Court block SB 6 from being implemented. Subsequently, the High Court asked the Attorney General to submit an opposition brief.¹⁷ Respondent Dean Logan, who was a Real Party in Interest in that writ proceeding, took no position with respect to either the writ or Mr. Chamness' Motion to Intervene. On December 15, 2010, the High Court issued an order that summarily dismissed the writ proceeding and Mr. Chamness' Motion to Intervene.¹⁸ The next day, the Governor set the SD 28 Primary for February 15, 2011.¹⁹

C. The Irreparable Harm Inflicted by SB 6

There can be no dispute that candidate acquisition of party labels on [the] ballot ... is a means of garnering the support of those who trust and agree with the party.

-- Justices Scalia and Kennedy²⁰

¹⁶ Nov. 24, 2010 Verified Motion to Intervene by Michael Chamness, RJN Exh. 2.

¹⁷ November 29, 2010 Letter from the Supreme Court of California to Deputy Attorney General Mark Beckington, RJN, Exh. 5.

¹⁸ Dec. 15, 2010 Supreme Court of California ruling, RJN, Exh. 12.

¹⁹ Governor's Proclamation of Special Election in Senate District 28, RJN Exh. 22.

²⁰ *Wash. State Grange v. Wash. Republican Party* (2008) 552 U.S. 442, 466 (Scalia & Kennedy, JJ., dissenting) (emphases added).

On January 4, 2011, Mr. Chamness learned that he had qualified to appear on the ballot of the SD 28 Primary.²¹ The next day, the Secretary of State published two documents that affix Mr. Chamness with the party label of “*No Party Preference*”.²² As Section V shows below, SB 6 foists minor-party candidates with the party label of “No Party Preference”. Furthermore, the Secretary of State agrees with Appellants and Mr. Chamness that SB 6 imposes a Party Preference Ban on minor-party candidates. Thus, it is all but certain that the sample, vote-by-mail, and election-day ballots *will all state that Mr. Chamness has “No Party Preference.”*²³ As a result, Mr. Chamness will suffer irreparable harm beginning on January

²¹ Chamness Declaration ¶¶14.

²² *Id.* ¶¶15-16. On January 5, 2011, the Secretary of State published an online Notice (the “Notice”, attached as Exhibit 1 to Appellants’ Opening Brief) to all candidates for Senate District 28. Page 2 of that Notice, which purported to identify the “party preference” of each candidate, states that Mr. Chamness has “No Party Preference”. That same day, the Secretary of State also published an online “Candidate Party Preference History for the Last 10 Years”. That document (attached as Exhibit 2 to Appellants’ Opening Brief) also states that Mr. Chamness has “No Party Preference”.

²³ Mr. Chamness will provide the Court with a copy of the SD 28 Primary’s sample ballot (whose format will be identical to the vote-by-mail and election-day ballot) as soon as it becomes available. According to the Secretary of State, Respondent Logan may begin sending sample ballots of the SD 28 Primary to voters on January 6, 2011, and must finish sending all sample ballots no later than February 5, 2011. *See* Secretary of State’s SD 28 Primary Calendar, Appellants’ Opening Brief, Exh. 3, at 2.

21, 2011 – when voters will begin casting vote-by-mail ballots in the SD 28 Primary.

IV. The Previous “Qualified Primary” Election System

Had the SD 28 Primary been held before SB 6 had taken effect, Mr. Chamness could have stated on the ballot that he is “Independent”. Under the previous “qualified party” election system, political parties were classified into two categories: qualified parties and non-qualified parties. Only “qualified” parties were entitled to hold party primaries.²⁴

Under the “qualified party” election system, qualified-party candidates in special elections could state the name of their political party on the ballot. In contrast, all non-qualified-party candidates – who are deemed by the California Supreme Court to have “independent” (i.e., minor-party) status²⁵ – could state on the ballot that they are “Independent”.²⁶ Thus, if Mr. Chamness had run in a special election under the “qualified party” election system, he could have stated on the ballot that he is “Independent”.

V. SB 6’s “Top Two” Election System

Unlike the “qualified party” election system, SB 6 forces minor-party candidates like Mr. Chamness to state on the ballot

²⁴ *Eu, supra* note 2, 28 Cal.3d at 540 (“[T]he Legislature ... defined ‘party’ as a political organization that has ‘qualified for participation in any primary election.’”) (emphases added).

²⁵ *Id.* at 540 (defining “independent” candidates as those who “are independent of qualified political parties”) (emphasis added).

²⁶ Elections Code §13105(c) [before it was amended on January 1, 2011 by SB 6].

that they have “No Party Preference”. Under SB 6’s new rules for special elections, candidates registered with a qualified party (e.g., Democratic or Republican) can freely state their party’s name on the ballot. In stark contrast, candidates registered with a minor party *are banned from stating their party’s name* on the ballot – because SB 6 forces them to falsely state that they have “No Party Preference”.²⁷

VI. Three Looming Elections

Significantly, both the U.S. and California Supreme Courts require courts to promptly resolve constitutional challenges brought by candidates like Mr. Chamness –

²⁷ The California Supreme Court deems minor-party candidates as candidates of “independent” status. *See supra* note 23. If a candidate has indicated that he or she has “independent status”, Part 325 of SB 6 presumes that he or she has “No Party Preference” for purposes of his or her voter registration card. (SB 6-amended) Elections Code §325 (*citing* voter-registration-card provisions of SB 6-amended Elections Code §2151 and §2154).

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) (a candidate “may indicate his or her party preference, or lack of party preference, as disclosed upon the candidate’s most recent statement of registration, upon his or her declaration of candidacy.”) (emphases added).

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).

especially when they have already suffered harm.²⁸ In *Storer v. Brown*, the U.S. Supreme Court admonished courts to hear as-applied challenges, so that disputes over an election law could be resolved before another election under that law is held:

The 1972 election is long over, and no effective relief can be provided to the candidates or voters, but *this case is not moot*, since the issues properly presented, and their effects on independent candidacies, will persist as the California statutes are applied in future elections. This is, therefore, a case where the controversy is “capable of repetition, yet evading review.” *The “capable of repetition, yet evading review” doctrine, in the context of election cases, is appropriate when there are “as applied” challenges as well as in the more typical case involving only facial attacks. The construction of the statute, an understanding of its operation, and possible constitutional limits on its application, will have the effect of simplifying future challenges, thus increasing the likelihood that timely filed cases can be adjudicated before an election is held.*²⁹

By hearing Mr. Chamness’ as-applied challenge, the Court will gain insight into how SB 6’s new election rules will

²⁸ *Storer, supra* note 1, 415 U.S. at 737 n.8; *see also Gralike, supra* note 3, 531 U.S. at 517 n.8; *accord, Edelstein, supra* note 3, 29 Cal.4th at 172 (“If a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot.”) (emphases added); *Eu, supra* note 2, 28 Cal.3d at 539.

²⁹ *Storer, supra* note 1, 415 U.S. at 737 n.8 (emphases added, citations omitted).

harm minor-party candidates. As of today, SB 6 is poised to be implemented for three special elections. And given California's track record, as many as two more special elections could be called by year's end.³⁰ In this light, Mr. Chamness' participation would greatly benefit the Court, by shedding light on "the construction of [SB 6], an understanding of its operation, and possible constitutional limits on its application[".]”³¹

A. Senate District 28

The first two special elections to implement SB 6 will be held on February 15, 2011 in Senate Districts 28 and 17. On November 2, 2010, the late Jenny Oropeza was posthumously re-elected to Senate District 28, which covers nearly 1 million residents from West Los Angeles to Torrance to the City of Carson.³² Sen. Oropeza's seat officially fell vacant on December 6, 2010, the date on which all state lawmakers were sworn into office.

³⁰ Since 1990, California has held an average of 4.8 special elections per year for state and federal office. Secretary of State's Apr. 12, 2010 News Release, Appellants' Opening Brief, Exhibit 4, at 1.

³¹ See *Storer*, *supra* note 1, 415 U.S. at 737 n.8 (emphases added).

³² Sen. Oropeza unexpectedly died two weeks before the Nov. 2, 2010 general election.

On December 16, 2010, the Governor set the date of the SD 28 Primary for February 15, 2011; and, if necessary, the special general (runoff) election for April 19, 2011.³³

Significantly, the Secretary of State has set January 21, 2011 as the first date on which voters can cast vote-by-mail ballots for the SD 28 Primary – for which Mr. Chamness has qualified as a candidate.

B. Senate District 17

SB 6 will also be implemented for the special election that has been called for Senate District 17, which covers nearly 1 million residents from Ventura, Los Angeles, Kern, and San Bernardino Counties. On December 21, 2010, George Runner resigned his Senate District 17 seat midway through his four-year term, after he was elected to the State Board of Equalization.

Subsequently, the Governor set the date of the special primary election in Senate District 17 for February 15, 2011; and, if necessary, the special general (runoff) election for April

³³ Under SB 6, if no candidate receives a majority of the vote in the primary special election, the top two votegetters automatically advance to the special general (runoff) election. *See* (SB 6-amended) Elections Code §10706. Significantly, SB 6 did not amend Elections Code Sections 15340 and 15342, which give every voter the right to cast a write-in vote in every election and have that vote counted. In addition, the California Constitution (Article II, Section 2.5) guarantees the right to have all lawfully cast votes counted.

19, 2011.³⁴ As in the SD 28 Primary, the Secretary of State has also set January 21, 2011 as the first date on which voters can cast vote-by-mail ballots for the special election in Senate District 17.

C. Assembly District 4

Finally, in Assembly District 4, SB 6 will soon be implemented for a special election that will be called within ten days. One week ago, Ted Gaines – who was recently re-elected to Assembly District 4 – won a special general (runoff) election in Senate District 1. On January 6, 2011, he resigned from his Assembly seat and was sworn in as a State Senator.³⁵

The Governor has until January 20, 2011 (i.e., 14 days from the date of the vacancy)³⁶ to call a special election to replace Gaines in Assembly District 4, which stretches across Sacramento, Placer, El Dorado, and Alpine Counties. If he calls the election on January 20, the primary special election for Assembly District 4 could be held in late March 2011, and the general special election could be held in late May 2011.

In short, by hearing Mr. Chamness' as-applied challenge, the Court would not only honor the High Court's "capable of repetition, but evading review" doctrine,³⁷ but provide much

³⁴ Governor's Proclamation of Senate District 17 Special Election, RJN Exh. 27.

³⁵ "Ted Gaines to Take Senate Oath Today in Capitol", *Lodi News*, Jan. 6, 2011, *attached as Exhibit 25 to Appellants' Request for Judicial Notice*.

³⁶ Elections Code §10700.

³⁷ *Storer*, *supra* note 1, 415 U.S. at 737 n.8.

needed clarity on SB 6’s new election rules before another special election is called elsewhere.

VII. Mr. Chamness Will Sharpen the Focus of This Case

Mr. Chamness’ as-applied challenge will sharpen the parties’ focus on the central issue of this case, for it will resolve one key issue. Namely, does SB 6 impose a Party Preference Ban? To paraphrase California and federal law, the parties could then argue “whether the particular application of the statute violate[d] [Mr. Chamness’] constitutional rights.”³⁸

By enabling the Court to resolve one key issue, Mr. Chamness will help streamline the underlying litigation. What is more, Mr. Chamness fully agrees with Appellants’ legal strategy, and has retained Appellants’ attorney as his counsel. Moreover, he will join all arguments that have been and will be raised in Appellants’ papers, and will not independently raise any other arguments. In this light, Mr. Chamness qualifies for both mandatory and permissive intervention.

VIII. Mr. Chamness Qualifies for Mandatory Intervention

³⁸ *Coffman Specialties v. Dep’t of Transportation* (2009) 176 Cal.App.4th 1135, 1145 (citing *Hale v. Morgan* (1978) 22 Cal.3d 388) (emphasis added); see also *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084; *Legal Aid Services of Oregon v. Legal Services Corp.* (9th Cir. 2009) 587 F.3d 1006, 1018 (“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”) (emphasis added) (citing *L.A. v. Taxpayers for Vincent* (1984) 466 U.S. 789, 802-03).

An intervenor of right has by definition ... an interest at stake which the other parties will not fully protect, and which the intervenor can fully protect only by joining the litigation.

-- Justice Brennan³⁹

Mr. Chamness unquestionably meets all the criteria for mandatory intervention. To qualify for mandatory intervention, successful applicants must satisfy two conditions. First, they must have “a significantly protectable interest” in “the property or transaction which is the subject of the action”.⁴⁰ Second, the applicants must show that they are “so situated that the disposition of the action may as a practical matter impair or impede that person’s ability to protect that interest.”⁴¹ If the applicants satisfy both conditions, a court must permit them to intervene unless they are “adequately represented by other parties.”⁴²

It is beyond question that Mr. Chamness has a “significantly protectable interest” in the “transaction” at issue: the underlying appellate proceeding. Indeed, the term “transaction” includes “the act of transacting or conducting any

³⁹ *Stringfellow v. Concerned Neighbors* (1987) 480 U.S. 370, 382 n.1 (concurring opinion) (quoted by *Siena Court Homeowners Ass’n v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1424).

⁴⁰ *Siena*, *supra* note 39, 164 Cal.App.4th at 1423-24 (citing *Donaldson v. U.S.* (1971) 400 U.S. 517).

⁴¹ *Siena*, *supra* note 39, 164 Cal.App.4th at 1424 (citations omitted).

⁴² *Id.*

... proceeding[.]”⁴³ Thus, the underlying writ proceeding constitutes a “transaction” for purposes of mandatory intervention.

Moreover, Mr. Chamness has a “significantly protectable interest” in the underlying appellate proceeding, which asks the Court whether Mr. Chamness may be banned from stating his party preference on the ballot. Indeed, the outcome of the underlying appellate proceeding will “as a practical matter impair or impede” his ability “to protect that interest.”⁴⁴ Namely, if the underlying appeal is denied, Mr. Chamness will suffer irreparable harm, for he will be forced to falsely state on the ballot – and thereby tell voters – that he has “No Party Preference”.

Finally, by showing how SB 6 has been applied, Mr. Chamness will not only heed the U.S. Supreme Court’s admonition in *Storer v. Brown*, but help Appellants protect the fundamental rights of minor-party candidates in future elections.⁴⁵ Consequently, Mr. Chamness amply qualifies for mandatory intervention.

IX. Mr. Chamness Qualifies for Permissive Intervention

As a practical matter, because Mr. Chamness qualifies for mandatory intervention, he should also qualify for

⁴³ *California Physicians’ Service v. Superior Court* (1980) 102 Cal.App.3d 91, 96 (emphasis added).

⁴⁴ *Siena*, *supra* note 39, 164 Cal.App.4th at 1424 (citations omitted).

⁴⁵ *Storer*, *supra* note 1, 415 U.S. at 737 n.8.

permissive intervention.⁴⁶ Moreover, he independently meets the criteria for permissive intervention. Successful applicants must show, inter alia, that:

1. They have a “direct and immediate interest” in the action; and
2. The intervention will not “enlarge the issues” in the proceeding; and
3. The reasons for the permissive intervention must “outweigh any opposition by the parties presently in the action.”⁴⁷

Here, Mr. Chamness has a “direct and immediate” interest in this action; that is, he will “either gain or lose by the direct legal operation and effect of the judgment.”⁴⁸ If the underlying appeal is successful, Mr. Chamness’s constitutional rights will be vindicated. But if the appeal does not succeed, Mr. Chamness’ ability to bring an as-applied challenge on his own will be undermined, because appellate courts will then have already ruled on the merits of his case.

Moreover, both federal and state courts have liberally permitted both candidates and individual voters (along with grassroots groups) to intervene in election cases. In fact, the U.S. Supreme Court has held that a candidate may intervene in a constitutional challenge to an election law, even while an

⁴⁶ See *Royal Indemnity Co. v. United Enterprises, Inc.* (2008) 162 Cal.App.4th 194, 75 Cal.Rptr.3d 481, 487.

⁴⁷ *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036 (2005) *review denied*.

⁴⁸ *Id.* at 1038.

appeal is pending.⁴⁹ Similarly, California courts have a longstanding tradition of liberally permitting voters and grassroots groups to intervene in litigation.⁵⁰ In this light, both federal and state case law strongly support permissive intervention, for it would enable Mr. Chamness to defend his fundamental rights as a political candidate.

Furthermore, far from “enlarging” the issues in this proceeding, Mr. Chamness’ participation will streamline the Court’s consideration of this case, for his as-applied challenge will resolve one key issue in dispute: whether SB 6 imposes a Party Preference Ban.

Finally, Mr. Chamness’ urgent need to defend his fundamental rights far outweighs any inconvenience or objection from the parties. Towards that end, Mr. Chamness brought his Motion to this Court in a timely manner. Before seeking this Court’s intercession, Mr. Chamness (1) sought to intervene in the prior writ proceeding before the California Supreme Court, and (2) ensured that he qualified to appear on the ballot in the SD 28 Primary. Accordingly, Mr. Chamness amply qualifies for permissive intervention.

⁴⁹ *Gralike*, *supra* note 3, 531 U.S. at 516 n.6.

⁵⁰ *See, e.g., Simac Design v. Alciati* (1979) 92 Cal.App.3d 146, 154 Cal.Rptr. 676, 682 (grassroots voter group permitted to intervene on motion made during oral argument); *Baroldi v. Denni* (1961) 197 Cal.App.2d 472, 17 Cal.Rptr. 647, 651 (individual voter permitted to intervene); *see also Rominger v. County of Trinity* (1983) 147 Cal.App.3d 655 (grassroots environmental group permitted to intervene); *Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192 (same).

X. Opposition to this Motion Would Be Misguided

It would be misguided, if not disingenuous, for anyone to oppose this Motion. Nevertheless, one of the parties might claim that Mr. Chamness need not participate in this proceeding, ostensibly because Appellants can adequately represent Mr. Chamness's interests. However, the positions already taken by Intervenors and the Secretary of State underscore the need for Mr. Chamness's participation. Indeed, they have asserted that Appellants cannot assert their legal claims on behalf of candidates like Mr. Chamness, for none of them is registered to vote in his legislative district (Senate District 28).⁵¹

Intervenors may also oppose this Motion on two other grounds. First, they may deny that Mr. Chamness has suffered any harm, because they insist that SB 6's Party Preference Ban is lawful. As a last resort, Intervenors may try to disavow their previous legal position (i.e., that SB 6 does impose a Party Preference Ban).⁵² That is, they may argue that SB 6 does not

⁵¹ See Intervenors' opposition papers, App., Vol. 2, at 1362 n.17 ("Thus, Plaintiffs face no threat of harm in the conduct of that special election. Plaintiffs offer no evidence by sworn declaration that any of them is entitled to vote in this election[.]"). See also Secretary of State's opposition papers, App., Vol. 2, at 1438:12-14 (claiming the Appellants cannot assert claims with respect to elections in which they are not candidates).

⁵² As Section V.J. of Appellants' Opening Brief makes clear, the doctrine of judicial estoppel bars Intervenors from changing a position that they had convinced the Superior Court to adopt.

foist minor-parties candidates with the party label of “No Party Preference” – even though Mr. Chamness *has already proven to the contrary*.

In any event, both arguments would only bolster the case for Mr. Chamness’s participation, for they go to a core issue raised in the underlying appeal: Does SB 6’s Party Preference Ban violate the U.S. and California Constitutions? In this light, Mr. Chamness has abundantly shown that he is entitled to both mandatory and permissive intervention.

XI. Conclusion

Mr. Chamness makes a simple plea. As a civic leader whose fundamental rights are about to be violated, he asks that his voice be heard in this proceeding. By virtue of his timely and proactive efforts to intervene – and qualify for the February 15, 2011 ballot in the SD 28 Primary – Mr. Chamness has earned the opportunity to participate in this case. Accordingly, Mr. Chamness respectfully asks this Court for leave to intervene.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately 1.5-spaced, 14-point Times New Roman typeface. According to the Word Count feature in my Microsoft Word for Windows software, this brief contains 4,057 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on Jan. 10, 2011.

GAUTAM DUTTA

By: _____

Gautam Dutta

Attorney for Intervenor-Applicant

Michael Chamness

PROOF OF SERVICE

I, Gautam Dutta, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action.

On Jan. 10, 2011, I served the following document(s):

- (1) Verified Motion To Intervene by Michael Chamness

on the following persons at the locations specified:

A. Mark Beckington, Esq., Office of the Attorney General, 300 South Spring St., Suite 1702, Los Angeles, CA 90013; 213.879.1096 (attorney for Respondent Bowen).

B. Steve Mitra, Esq., Office of Santa Clara County Counsel, 70 W. Hedding St., 9th Floor, East Wing, San Jose, CA 95110; 408.299.5916 (attorney for Respondent Durazo).

C. Raymond Lara, Esq., Office of Alameda County Counsel, 1221 Oak St., Ste. 450, Oakland, CA 94612; 510.272.6700 (attorney for Respondent Macdonald).

D. Mollie Lee, Esq., Office of the San Francisco City Attorney, 1 Dr. Carlton B. Goodlet Place, Ste. 234, San Francisco, CA 94102; 415.554.4705 (attorney for Respondent Arntz).

E. Wendy J. Phillips, Esq., Office of Orange County Counsel, 333 W. Santa Ana Blvd., Ste. 407, Santa Ana, CA 92702; 714.834.6298 (attorney for Respondent Kelley).

F. Kathleen Taylor, Esq., Office of Tulare County Counsel, 2900 W. Burrell St., Visalia, CA 93291; 559.636.4950 (attorney for Respondent Woodard).

G. Patrice J. Salseda, Esq., Office of Los Angeles County Counsel, 500 W. Temple St., Rm. 648, Los Angeles,

CA 90012-2713; 213.974.1895 (attorney for Respondent Logan).

H. Marguerite Mary Leoni, Esq., Nielsen Merksamer, 2350 Kerner Blvd., Ste. 250, San Rafael, CA 94901; 415.389.6800 (attorney for Intervenors-Respondents).

I. The Honorable Charlotte Walter Woolard, Department 302, San Francisco County Superior Court, 400 McAllister St., San Francisco, CA 94102.

Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelopes and placed them, postage prepaid, for collection and mailing with the U.S. Postal Service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed Jan. 10, 2011, in Fremont, California.

Gautam Dutta