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4 Attorney for Plaintiffs

5 MICHAEL CHAMNESS, DANIEL FREDERICK,
6 and RICH WILSON

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

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11 MICHAEL CHAMNESS, DANIEL
FREDERICK, and RICH WILSON,

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

12 *Plaintiffs,*

13
14 vs.

**PLAINTIFFS' STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

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

HEARING DATE: June 6, 2011
HEARING TIME: 1:30 pm
JUDGE: Hon. Otis D. Wright

18 *Defendants.*

19 COURTROOM: 11_

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UNDISPUTED FACT	SUPPORTING EVIDENCE
1. Plaintiff Chamness is registered to vote in Congressional District 36 and Senate District 28 with the party affiliation of the Coffee Party.	May 6, 2011 Declaration of Michael Chamness (“Chamness Decl.”) ¶¶1, 3 & Exh. 1 (voter registration form).
2. Plaintiff Chamness has qualified for and appeared on the ballots of the Feb. 15, 2011 special primary election for Senate District 28 (the “SD 28 Primary”) and the May 17, 2011 special primary election for Congressional District 36 (the “CD 36 Primary”).	May 6, 2011 Declaration of Gautam Dutta (“Dutta Decl.”), Exh. E (p. 15, CD 36 Primary sample ballot), Exh. G (p. 67, SD 28 Primary ballot), Exh. H (p. 71, List of CD 36 Primary certified candidates) and I (p. 75, list of SD 28 Runoff certified candidates).
3. In both the CD 36 and SD 28 Primaries, Plaintiff Chamness was barred from using the ballot label of “Independent”, and instead forced to use the ballot label of “No Party Preference”.	Dutta Decl., Exh. E (p. 15, CD 36 Primary sample ballot), Exh. G (p. 67, SD 28 Primary ballot), Exh. H (p. 71, List of CD 36 Primary certified candidates) and I (p. 75, List of SD 28 Runoff certified candidates).
4. Plaintiff Frederick is registered to vote in Assembly District 4.	May 6, 2011 Declaration of Daniel Frederick (“Frederick Decl.”) ¶1 & Exh. 1 (voter registration card).
5. Plaintiff Frederick sought to run as a write-in candidate in the AD 4 Runoff over two months before the May 3, 2011 special general election in Assembly District 4 (the “AD Runoff”).	Frederick Decl. ¶¶8-11, 14-15; Dutta Decl. Exh. W (p. 107, Plaintiffs’ counsel’s letter to Secretary Bowen), Exh. X (p. 109, Secretary Bowen’s Chief Counsel’s response to Plaintiffs’ counsel).

1	was held, but was barred from doing so.	
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3	6. Plaintiff Wilson is registered to vote in Assembly District 4.	May 6, 2011 Declaration of Rich Wilson (“Wilson Decl.”) ¶1.
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5	7. Plaintiff Wilson cast a write-in vote for Plaintiff Frederick in the AD 4 Runoff.	Wilson Decl. ¶¶4, 5; Exh. 1 (copy of write-in ballot) & Exh. 2 (copy of envelope in which ballot was mailed, with the “May 3, 2011” date of the AD 4 Runoff pre-printed on the front).
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8	8. On May 3, 2011, Plaintiff Wilson’s vote for Plaintiff Frederick was not counted.	Wilson Decl. ¶¶6, 7 & Exh. 3 (Secretary Bowen’s Memorandum on SB 6’s Vote Counting Ban); Dutta Decl. ¶¶2-4; SB 6-amended Elections Code §8606 (SB 6’s Vote Counting Ban).
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11	9. SB 6 was passed in the middle of the night on Feb. 19, 2009, without any public debate or discussion.	Dutta Decl. Exh. C (p. 13, legislative history shows that no public hearings were held for SB 6) & J (at p. 76, Proposition 14 / SB 6 “open primary” bills passed between 3:40 am and 6:55 am on Feb. 19, 2009).
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16	10. Last summer, Secretary Bowen’s staff publicly stated that SB 6’s Vote Counting Ban (a) gave candidates the “illusion” that they could “run as a write-in”, and (b) gave voters the “illusion” that their votes would be counted if they voted for a write-in candidate.	Dutta Decl. Exh. C (p. 26, Office of Secretary Bowen’s email to the Office of the Lieutenant Governor).
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24	11. Last summer, Secretary Bowen’s staff publicly stated that it is not “permissible” to force canddates to state on the ballot that they have “No Party Preference”.	Dutta Decl. Exh. C (p. 21, Office of Secretary Bowen’s email to the Office of the Lieutenant Governor).
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<p>1 2 3 4 5 6 7 8 9 10 11</p>	<p>12. Proposition 14 did <u>not</u> confer any new rights on politically independent voters. Before SB 6 took effect, unaffiliated voters had been allowed to vote in Democratic and Republican primaries for the past decade. Neither SB 6 nor Proposition 14 gave unaffiliated voters the right to vote in the Democratic or Republican Presidential Primaries.</p>	<p>Between 2001 and 2010, unaffiliated (“decline to state”) voters were allowed to vote in <u>every</u> Democratic or Republican primary for state and federal (non-Presidential) office. Elections Code §13102(b), <i>codified at</i> Ch. 98, Stats. 2000 (giving qualified parties the option of allowing “decline to state” voters to vote in their primaries).</p>
<p>12 13 14 15 16</p>	<p>13. It would have cost between \$27,200 and \$108,800 for Plaintiff Chamness to publish candidate statements in the voter guides for <u>both</u> the CD 36 Primary and the SD 28 Primary.</p>	<p>It would have cost Plaintiff Chamness between \$15,600 to \$62,400 to publish a candidate statement in the SD 28 Primary. Dutta Decl. Exh. L (p. 79, candidate handbook for SD 28 Primary). It would have cost \$11,600 to \$46,400 to do so in the CD 36 Primary. Dutta Decl. Exh. K (p. 78. candidate handbook for CD 36 Primary).</p>
<p>17 18 19 20</p>	<p>14. On Nov. 2, 2010, Cecilia Iglesias ran as an Independent candidate in the 47th Congressional District.</p>	<p>Dutta Decl., Exh. M (p. 80, official sample ballot for Nov. 2, 2010 statewide general election).</p>
<p>21 22 23 24 25 26 27 28</p>	<p>15. Between 1891 and 1915, California law permitted minor-party candidates to state their party’s name on the ballot. In 1912, a minor-party candidate (William Kent of the Progressive Party) was elected by California’s 1st Congressional District.</p>	<p>Former Political Code §1188, <i>codified at</i> Ch. 130 Stats 1891 (allowing minor-party candidates to state their party’s name on the ballot), <i>amended by</i> Ch. 136 Stats. 1915, p.274 (allowing minor-party candidates to use the ballot label of “Independent”, but not allowing them to state their party’s name on the ballot). Dutta Decl., Exh. O (p. 82, <i>Ballot Access News</i>, June 1, 2001).</p>

1	16. Within the last two decades, Quentin Kopp and Lucy Killea were both elected the State Senate as Independent candidates.	Dutta Decl. Exh. N (at p. 81, Wikipedia records showing that Independent candidate Lucy Killea won her State Senate race in 1992); Exh. P (at p. 87, showing that independent candidate Quentin Kopp won State Senate races in 1986, 1990, and 1994).
6	17. Currently, over one-fifth of California's voters are not registered with a major political party.	According to Secretary Bowen's website, 20.4 percent of registered voters did not belong to a qualified (major) party as of Feb. 20, 2011. Dutta Decl., Exh. R (at p. 97, Secretary Bowen's Historical Voter Registration Statistics).
10	18. Two years ago, then-State Senator Abel Maldonado cast the deciding vote to pass the state budget by a two-thirds majority.	"The Senate had been one GOP vote short until Sen. Abel Maldonado ... changed his mind to support the budget plan, but only after Schwarzenegger and legislative leaders agreed to his demands." Dutta Decl., Exh. J (at p. 76); Dutta Decl. Exh. C (p. 13, legislative history showing that Maldonado authored SB 6); Dutta Decl., Exh. D (p. 14, legislative history showing that Maldonado authored Senate Constitutional Amendment 4 / Proposition 14).
17	19. In exchange for his vote on the budget, Maldonado demanded legislation eliminated the qualified-party election system.	Dutta Decl., Exh. J (at p. 76, in exchange for his vote on the budget, Sen. Maldonado successfully demanded that the Legislature pass his "open primary" SB 6 and Senate Constitutional Amendment / Proposition 14 bills).
21	20. The Legislature obliged by (1) putting Maldonado-authored Proposition 14 on the June 8, 2010 ballot, and (2) passing Maldonado-authored SB 6, which implemented the provisions of Proposition 14.	Dutta Decl. Exh. C (p. 13, bill history showing that Maldonado authored SB 6); Dutta Decl., Exh. D (p. 14, bill history showing that Maldonado authored Senate Constitutional Amendment 4 / Proposition 14); Exh. Q (p. 90-91, June 8, 2010 official voter information guide).
27	21. Between 3:40 am and 6:55 am on	Dutta Decl., Exh. J (at p. 76, showing that the Legislature passed

<p>1 2 3 4 5 6 7 8</p>	<p>February 19, 2009, the Legislature passed SB 6 and voted to put Proposition 14 on the June 8, 2010 ballot, without holding a single hearing or giving the public any notice.</p>	<p>Maldonado’s “open primary” SB 6 / Proposition 14 bills between 3:40 am and 6:55 am); Dutta Decl. Exh. C [p. 13-14, legislative history showing that no committee hearings were held for either SB 6 or Senate Constitution Amendment 4 / Proposition 14); Dutta Decl., Exh. D (p. 14, legislative history showing that Maldonado authored Senate Constitutional Amendment 4 / Proposition 14); Exh. Q (p. 90-91, June 8, 2010 official voter information guide for Proposition 14).</p>
<p>9 10 11 12 13</p>	<p>22. Subsequently, Secretary Bowen’s Voter Information Guide for Proposition 14 did not provide either a summary or the text of SB 6, which fleshes out critical details of Proposition 14.</p>	<p>Dutta Decl., Exh. Q (p. 90-96, June 8, 2010 official voter information guide for Proposition 14).</p>
<p>14 15 16 17 18</p>	<p>23. On June 8, 2010, a narrow majority of voters approved Proposition 14.</p>	<p>Dutta Decl., Exh. S (p. 99, Secretary Bowen’s Statement of Vote showing that 53.8 percent of voters voted in favor of Proposition 14).</p>
<p>19 20 21 22</p>	<p>24. The California Association of Clerks and Election Officials has stated that SB 6 mandates a “complex set of changes [that] <i>has not occurred in recent memory</i>[.]”</p>	<p>Dutta Decl., Exh. T (p. 104, Mar. 2, 2010 letter from California Association of Clerks and Election Officials to State Assembly Elections Committee).</p>
<p>23 24 25 26 27 28</p>	<p>25. The California Association of Clerks and Election Officials has stated that SB 6 will not only force counties to spend “<i>millions of dollars</i> statewide in ballot production and postage costs”,</p>	<p>Dutta Decl., Exh. T (p. 104, Mar. 2, 2010 letter from California Association of Clerks and Election Officials to State Assembly Elections Committee).</p>

1 2 3	but could force them to spend millions more in new voting equipment.	
4 5 6 7 8 9 10 11 12	26. Last year, Defendant Logan stated that the changes required by SB 6 would have “ <i>overwhelmed the capacity of our ballot</i> .” If the proposed open primary process were in place back in 2006 <i>our voting system would not have been able to accommodate</i> all of the contests and measures on the ballot.”	Dutta Decl., Exh. T (p. 101, Mar. 10, 2010 Memorandum to Los Angeles County Board of Supervisors).
13 14 15 16 17 18 19 20	27. On February 27, 2010, Plaintiffs Frederick and Wilson asked Secretary Bowen (1) whether Plaintiff Frederick would be allowed to run as a write-in candidate in the AD 4 Runoff, and (2) whether Plaintiff Wilson’s vote would be counted, if he voted for Plaintiff Frederick in the AD 4 Runoff.	Dutta Decl., Exh. W (p. 107, Feb. 27, 2011 letter from Plaintiffs’ counsel to Secretary Bowen).
21 22 23 24 25 26 27 28	28. On March 2, 2011, Secretary Bowen’s Chief Counsel responded that (a) SB 6 banned Plaintiff Frederick from running as a write-in candidate in the AD 4 Runoff, and (b) Secretary Bowen would enforce SB 6’s Vote Counting Ban.	Dutta Decl., Exh. X (p. 109, Mar. 2, 2011 letter from Secretary Bowen’s Chief Counsel to Plaintiffs’ counsel).

1	29. Relying on the response by Secretary Bowen's Chief Counsel (i.e., that write-in candidacies were banned from the general election), Plaintiff Frederick did not file any papers to run as a write-in candidate for the AD 4 Runoff.	Frederick Decl. ¶14.
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8	30. Subsequently, Plaintiff Wilson cast a write-in vote for Plaintiff Frederick.	Wilson Decl. ¶¶4, 5; Exh. 1 (copy of write-in ballot) & Exh. 2 (copy of envelope in which ballot was mailed, with the "May 3, 2011" date of the AD 4 Runoff pre-printed on the front).
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11	31. On May 3, 2011, Plaintiff Wilson's write-in vote was not counted in the AD 4 Runoff.	Wilson Decl. ¶¶6, 7 & Exh. 3 (Secretary Bowen's Memorandum on SB 6's Vote Counting Ban); Dutta Decl. ¶¶2-4; SB 6-amended Elections Code §8606 (SB 6's Vote Counting Ban).
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14	32. Last winter, Plaintiff Chamness asked the California Supreme Court for permission to intervene in the state-court SB 6 litigation during a mandamus proceeding, in which the Secretary of State, Registrar Logan, and Intervenor were Real Parties in Interest.	Chamness Decl. ¶9.
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22	33. While Registrar Logan took no position regarding Plaintiff Chamness' request to intervene, the Secretary of State and Intervenor vigorously opposed it.	Chamness Decl. ¶10.
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27	34. On December 15, 2010, the	Chamness Decl. ¶10; Dutta Decl., Exh. U (p. 105, Dec. 15, 2010)
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1	California Supreme Court denied both	Supreme Court order denying all
2	Plaintiff Chamness' request to intervene	motions to intervene).
3	and the underlying mandamus petition.	
4	35. Plaintiff Chamness first	Chamness Decl. ¶13.
5	sought to bring his as-applied	
6	challenge to the California Court of	
7	Appeal (First District). Toward	
8	this end, he asked the Court of Appeal	
9	for permission to intervene in the	
10	state-court SB 6 litigation.	
11	36. Registrar Logan took no position	Chamness Decl. ¶13.
12	with respect to Plaintiff Chamness'	
13	request to intervene in the Court of	
14	Appeal, while the Secretary of State	
15	and Intervenors vigorously opposed	
16	his request.	
17	37. On January 31, 2011, the Court of	Chamness Decl. ¶14; Dutta Decl.,
18	Appeal denied Plaintiff Chamness'	Exh. V (p. 106, Jan. 31, 2011 Court
19	request to intervene. Had he been	of Appeal order denying Plaintiff
20	permitted to intervene, Plaintiff	Chamness' motion to intervene).
21	Chamness would not have brought	
22	his claims to this Court.	
23	38. Secretary Bowen also appeared on	Dutta Decl., Exh. E (p. 15, official
24	the ballot of the CD 36 Primary (with	sample ballot sent to overseas
25	the ballot label of "Democratic").	voters).
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27	39. Secretary Bowen has published	Dutta Decl., Exh. H (p. 68, 71) &
28	CD 36	Exh. I (p. 73, 75).

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<p>and SD 28 Lists of Certified Candidates; both lists falsely stated that Plaintiff Chamness had “No Party Preference”.</p>	
<p>40. Tonia Reyes Uranga finished second in her 2010 race for Long Beach City Council; write-in candidate Ron Packard was elected to Congress in 1982.</p>	<p><i>Ballot Access News</i>, June 1, 2001, Dutta Decl. Exh. O, p. 84 (Ron Packard won write-in bid for Congress in 1982); Dutta Decl., Exh. Y, at 111 (<i>Long Beach Post</i> article reporting that write-in candidate Reyes Uranga finished second in the Apr. 13, 2010 Long Beach City Council election).</p>
<p>41. Secretary Bowen’s office claims that SB 6 Section 8605 bans all write-in candidates from running in the general election.</p>	<p>Dutta Decl., Exh. B (p. 11 n.2, Secretary Bowen’s Information Sheet on the AD 4 Runoff); Exh. X (p. 109, Secretary Bowen’s Chief Counsel letter); Frederick Decl. ¶¶10, 11.</p>
<p>42. Registrar Logan published CD 36 and SD 28 Primary ballots that falsely stated that Plaintiff Chamness had “No Party Preference”.</p>	<p>Dutta Decl., Exh. E (p. 15, CD 36 Primary sample ballot), Exh. G (p. 67, SD 28 Primary ballot).</p>
<p>43. Plaintiff Chamness has already been incorrectly described as one of three candidates “who decline to state their political parties[.]”</p>	<p>Dutta Decl., Exh. A (p. 5, <i>The Argonaut</i> news piece published on May 5, 2011).</p>
<p>44. Between 1891 and 2010, candidates for state and federal office were permitted to use the ballot label of “Independent”.</p>	<p>Between 1891 and Dec. 31, 2010 (the day before SB 6 took effect), candidates were allowed to use the ballot label of “Independent”. Former Political Code §1188, <i>codified at</i> Ch. 130 Stats 1891, <i>amended by</i> Ch. 136 Stats. 1915, p.274.</p>

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DATED: May 6, 2011

Respectfully submitted,

By: /s/ GAUTAM DUTTA, ESQ.

Attorney for Plaintiffs

MICHAEL CHAMNESS, DANIEL
FREDERICK, and RICH WILSON