Theo Milonopoulos
theo.milonopoulos@gmail.com
11956 Briarvale Lane
Studio City, CA 91604
(323) 301-5707
Plaintiff in Pro Per

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Theo Milonopoulos,
Plaintiff,
vs.

Debra Bowen, in her official capacity as Secretary of State of the State of California; and

Dean C. Logan, in his official capacity as Los Angeles County Registrar-Recorder/County Clerk
Defendants.

Case No.: _____

INFRINGEMENT UPON FIRST AND FOURTEENTH AMENDMENTS RIGHTS THROUGH ENFORCEMENT OF CALIFORNIA ELECTONS CODE § 8606 AND § 15341 BANNING WRITE-IN BALLOTS FROM BEING CAST AND COUNTED IN GENERAL ELECTION

I. JURISDICTION

1. This court has jurisdiction under 28 U.S.C. § 1331. Federal question jurisdiction arises pursuit to the First Amendment and the Fourteenth Amendment

of the Constitution of the United States of America.

II. VENUE

2. Venue is proper pursuant to 28 U.S.C. § 1391 because the events giving rise to this complaint happened in this district.

III. PARTIES

3. Plaintiff's name is Theo Milonopoulos. Plaintiff resides at 11956 Briarvale Lane, Studio City, CA 91604.

4. Defendant Debra Bowen serves in her official capacity as California Secretary of State at 1500 11th Street, Sacramento, CA 95814.

5. Defendant Dean C. Logan serves in his official capacity as Los Angeles County Registrar-Recorder/County Clerk at 12400 Imperial Highway, Norwalk, CA 90650.

IV. STATEMENT OF FACTS

6. In 2010 California voters adopted Proposition 14, which established a nonpartisan blanket primary system for nominating candidates for state and federal elective office. Under this system, implemented through the California legislature's adoption of S.B. 6 in 2009, the names of the candidates who emerge from the statewide direct primary election with the highest and second-highest vote totals regardless of political party preference are placed on the general election ballot.

7. Recognizing the state's long-held practice of permitting qualified write-in candidates who did not meet the requisite qualifications to appear as candidates on the statewide primary ballot, the Los Angeles County Registrar-Recorder/County

Clerk permits prospective candidates to petition for a qualified write-in position in the statewide California primary election. Those who meet Los Angeles County's requirements for qualified write-in candidates will have write-in ballots cast for those candidates counted by the LA County Registrar-Recorder/County Clerk in the statewide primary election.

8. Among the changes that S.B. 6 made to California's Elections Code was an amendment to Section 8606, which states, as amended, "Notwithstanding any other provision of law, a person may not be a write-in candidate at the general election for a voter-nominated office" (Cal. Elec. Code Ann. §8606 (West 2014)). In regulations covering the canvassing of votes cast during the general election, the adoption of Proposition 14 amended California Elections Code Section 15341to state that "no name written upon a ballot in any election shall be counted for an office or nomination" unless the candidate whose name has been written onto a ballot emerged as one of the top two vote-getters in the blanket primary (Cal. Elec. Code Ann. §15341). Only those persons who receive "a plurality of votes cast" – which, Petitioner asserts, constitutes a plurality of votes counted – "for any office is elected or nominated to that office in any election…" (Cal. Elec. Code Ann. §15452 (West 2014)).

9. On April 23, 2014, after reading a news article about the race to succeed Representative Henry Waxman in representing California's 33rd Congressional District in the federal legislature, Petitioner, a political independent, decided to seek the office in the U.S. House of Representatives. Having discovered he missed the February 20, 2014, candidate registration deadline by which he needed to have filed petition signatures in lieu of candidate filing fees to appear on the statewide direct primary ballot, Petitioner believed he could serve as a qualified write-in candidate in the November general election consistent with past election laws guaranteeing political independents access to the ballot as write-in candidates.

10. Upon further investigation, Petitioner discovered that amended

California Elections Code §8606 barred write-in candidates in the general election. Given that he had missed the candidate registration deadline for the California statewide direct primary election, Petitioner filed the requisite 40 signatures with the Los Angeles County Registrar-Recorder/County Clerk to serve as a qualified write-in candidate in the June 3, 2014, statewide direct primary election for the 33rd Congressional district.

11. Petitioner qualified as an official write-in candidate on May 20, 2014.

12. On June 19, 2014, Petitioner traveled to the headquarters of the Los Angeles County Registrar-Recorder/County Clerk in Norwalk, CA, to observe the canvassing of the vote from the June 3, 2014, statewide direct primary election. While at the office, Petitioner asked Francis Guijaro, head of the LA County Registrar-Recorder/ County Clerk Election Planning Section, whether he could obtain the necessary documents to serve as an officially qualified write-in candidate for the general election. Mr. Guijaro indicated that state law prohibits write-in candidates from qualifying for ballot access in the general election.

13. On July 11, 2014, the California Secretary of State certified the results of the 2014 statewide direct primary election. According to those results, Petitioner did not emerge as one of the top two vote-getters permitted to have ballots cast, counted and certified by the California Secretary of State in the 2014 general election.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of Article 1, Section 2, and Article 6, Section 2, of the United States Constitution

(Qualification Clause; Supremacy Clause)

(**As against Defendants**: Debra Bowen, in her official capacity as California Secretary of State, and Dean C. Logan, in his official capacity as Los Angeles County Registrar-Recorder/County Clerk)

14. Petitioner realleges paragraphs 1 through 13.

15. By restricting ballot access to a meaningful electoral process by which Petitioner could serve as a representative of the 33rd Congressional district in the United States Congress, the California Secretary of State and LA County Registrar-Recorder/County Clerk's enforcement of California Elections Code Sections 8606 and 15341 severely burdens Petitioner's rights under the Constitution of the United States to qualify as a representative in the House of Representatives by imposing additional qualifications for office on Petitioner beyond those outlined in Article I, Section 2, Clause 2, of the U.S. Constitution.

16. By prohibiting qualified write-in candidates in the general election, the California Secretary of State and Los Angeles County Registrar-Recorder/County Clerk prevent write-in ballots cast in the general election from being counted, effectively disenfranchising voters who support such candidates from casting meaningful ballots and barring candidates who receive write-in votes during the general election from serving in the United States House of Representatives.

17. According to California's regulations for counting ballots, "no name written upon a ballot in any election shall be counted for an office or nomination" (Cal. Elec. Code Ann. Section 15341 (West 2014)) unless the candidate whose name has been written on the ballot has emerged as one of candidates with the highest or second-highest vote totals in the blanket primary. Only those persons who receive "a plurality of votes cast" -- which, Petitioner asserts, constitutes a plurality of votes counted -- "for any office is elected or nominated to that office in any election…" (Cal. Elec. Code Ann. Section 15452 (West 2014).

18. By counting only those ballots in the statewide general election cast for candidates who received the highest and second-highest vote totals in the statewide primary, the California Secretary of State and LA County Registrar-Recorder/County Clerk imposes an additional *de facto* qualification on those persons seeking to serve in the U.S. House of Representatives, since "no person whose name has been written in upon a ballot for an office at the direct primary may have his or her name placed upon the ballot as a candidate for that office for the ensuing general election unless….(c)[a]t that direct direct primary he or she received for a voter-nominated office the highest number of votes cast for that office or the second highest number of votes cast for that office…" Cal. Elec. Code Ann. Section 8605 (West 2014).

19. This prohibition on counting write-in votes amounts to an additional restriction on California citizens who can serve in the United States House of Representatives beyond those qualifications established under Article I, Section 2. In addition attaining the constitutionally mandated age of twenty-five years, having been for seven years a citizen of the United States, and an inhabitant of the state in which he or she is chosen, California residents must also, according to election laws amended following the passage of Proposition 14, emerge from a statewide blanket primary with the highest or second-highest number of ballots cast in support of their candidacy, since no other ballots cast for any other persons will be counted by the LA County Registrar-Recorder/County Clerk and certified by the California Secretary of State.

20. Quoting Alexander Hamilton in the so-called "Elliot's debates" at the 1788 New York state ratification convention, the Supreme Court of the United States has ruled that "[a] fundamental principle of our representative democracy is, in Hamilton's words, 'that the people should choose whom they please to govern them.' 2 Elliot's Debates 257. As [James] Madison pointed out at the Convention,

this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself." *Powell* v. *McCormack* 395 U.S. 486, 547 (1969).

21. Petitioner does not dispute the authority state legislatures have under the U.S. Constitution to prescribe the "Times, Places and Manner for holding Elections for Senators and Representatives" (U.S. Constitution, Article I, Section 4). Petitioner broadly accepts the Supreme Court's reasoning in *Washington State Grange* v. *Washington State Republican Party*, 552 U.S. 442, 451 (2008), upholding the constitutionality of Washington state's blanket primary system that is almost identical to the one endorsed by California voters in 2010.

22. Petitioner accepts that state legislatures have "important regulatory interests" (*Washington State Grange*, *supra*, at 452, quoting *Anderson* v. *Celebrezze*, 460 U.S. 780, 788 (1983)) to "structur[e] and monitor[ ] the election process, including primaries" *California Democratic Party el al.* v. *Jones* 530 U.S. 567, 572 (2000). The Supreme Court has long recognized that states retain this authority (See *Washington State Grange*, *supra*, at 451, quoting *Clingman* v. *Beaver*, 544 U.S. 581, 586 (2005), quoting *Tashjian* v. *Republican Party of Connecticut*, 479 U.S. 208, 217 (1986); and *Timmons* v. *Twin Cities Area New Party*, 520 U.S. 351, 358 (1997)), including the ability of states to prohibit write-in ballots. *Burdick* v. *Takushi*, 504 U.S. 428 (1992).

23. This authority, however, is not unqualified. Although Article I, Section 4, of the United States Constitution reserves to the state legislatures the authority to determine the "Times, Places and Manner of holding elections for Senators and Representatives," it also grants that "Congress may at any time by law make or alter such regulations."

24. The House of Representatives has on several occasions throughout history exercised this authority to invalidate attempts by state legislatures to impose additional qualifications for its members beyond those enumerated in the U.S. Constitution. In striking down an 1807 attempt by the Maryland legislature to

impose additional residency requirements beyond those in Article I, Section 2, of the U.S. Constitution, "Congress was only protecting the rights of their citizens against encroachments on their liberties by their own State legislatures, which were…restrained by both Federal and State constitutions" from adding qualifications to members serving in the U.S. House of Representatives. 1 Hinds' Precedents of the House of Representatives of the United States §414 (1907).

25. As part of its deliberations over the aforementioned 1807 Maryland case, members of the House in their deliberations concluded, "The Constitution had carefully prescribed in what ways the States might interfere in the elections of their Congressmen. They might prescribe the 'times, places, and manner' of holding elections, reserving to Congress the right to 'make or alter' such regulations. This was all the Constitution gave to the States….The powers reserved to the States were reserved to them as sovereignties, but the qualifications of the Members of the House of Representatives of the nation never belonged to those sovereignties, but flowed from the people of the United States." 1 Hinds' Precedents, *supra*, §414 (1907).

26. In its report in a subsequent 1856 case, the United States Congress concluded: "It is a fair presumption that, when the Constitution prescribes these qualifications as necessary to a Representative in Congress, it was meant to exclude all others. And…it is equally clear that a State of the Union has not the power to superadd qualifications to those prescribed by the Constitution for Representatives, to take away from 'the people of the several States' the right given them by the Constitution to choose, 'every second year,' as their Representatives in Congress, any person who has the required age, citizenship, and residence. To admit such a power in any State is to admit the power of the States, by a legislative enactment, or a constitutional provision, to prevent altogether the choice of a Representative by the people. The assertion of such a power by a State is inconsistent with the supremacy of the Constitution of the United States, and

makes void the provision that the Constitution 'shall be the supreme law of the land,' anything in the constitution or the laws of any State to the contrary notwithstanding….An additional qualification imposed by State authority would necessarily disqualify any person who had only the qualifications prescribed by the Federal Constitution." 1 Hinds' Precedents, *supra*, §415 (1907).

27. Federal courts, including the United States Supreme Court, have consistently held that no state can impose additional qualifications for persons to serve in a federal office beyond those outlined in the U.S. Constitution. See *Minor* v. *Happersett*, 88 U.S. 162 (1874); *Breedlove* v. *Suttles*, 302 U.S. 277 (1937); *U.S. Term Limits, Inc., et al.* v. *Thornton*, *et al.*, 514 U.S. 779 (1995); *Foster* v. *Love*, 522 U.S. 67 (1997). In reference to the states' selection of presidential electors in Article II, Section 1, of the United States Constitution, the Supreme Court stated, "There, of course, can be no question but that this section does grant extensive power to the States to pass laws regulating the selection of electors. But the Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas; these granted powers are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution." *Williams* v. *Rhodes*, 393 U.S. 23, 29 (1968).

28. The founders expressed significant reservations over the improper role of state governments in infringing on the rights of the people to vote directly for their representatives in the federal legislature and in the House of Representatives in particular, since that was the only body in the federal government that was popularly elected under the original 1787 Constitutional design.

29. In justifying the reservation of Congressional authority to be an ultimate arbiter over the provisions governing the election of its members, James Madison argued in *Federalist No. 52* that reserving the authority to regulate elections of members of the U.S. House of Representatives exclusively to "the legislative discretion of the states, would have been improper….[in] that it would have

rendered too dependent on the state governments, that branch of the federal government which ought to be dependent on the people alone."

30. The founders, according to Madison, intended for the U.S. House of Representatives to be composed of members directly representative of the people's interest as distinct from the influence of state legislatures, who under the original constitutional design elected the Senators populating Congress' upper chamber. In discussing the proper role of routine elections for members of the House, Madison wrote in *Federalist No. 52*, "As it is essential to liberty, that the government in general should have a common interest with the people; so it is particularly essential, that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people."

31. This interest in protecting the election of members of the U.S. House of Representatives from undue influence by state legislatures is reinforced in *Federalist No. 60*, in which Alexander Hamilton, when addressing charges that the particular electoral schemes would favor one class of individuals over another, asserts: "The truth is, that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect, or be elected. But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections. The qualification of persons who may choose or be chosen, as has been remarked upon another occasion, are defined and fixed in the constitution, and are unalterable by the legislature."

32. By enforcing California Elections Code Section 8606, stating that "notwithstanding any other provision of law, a person...may not be a write-in candidate at the general election for a voter-nominated office" (Cal. Elec. Code Ann. Section 8606 (West 2014)), the California Secretary of State and Los Angeles County Registrar-Recorder/County Clerk undermines the very principle to which

Madison and Hamilton alluded by "limiting whom the people can select" to represent them in the United States House of Representatives in imposing an additional *de facto* qualification beyond those enumerated in the Constitution that "are unalterable by the legislature." Hamilton, supra.

33. They do so in violation of the Supremacy Clause of Article VI of the U.S. Constitution, stating that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding" (U.S. Const. Article VI, Clause 2).

34. Since California's ban on qualified write-in candidates in the general election and its prohibition on counting names written onto ballots cast during such elections imposes additional requirements on those California citizens seeking to serve in the U.S. House of Representatives, California Election Code Sections 8605, 8606 and 15452 conflict with the Qualification Clauses outlined in Article I, Section 2, of the U.S. Constitution and therefore must be ruled unconstitutional, as the Supreme Court found in *Powell*, *supra*, and *U.S. Term Limits*, *supra*.

SECOND CAUSE OF ACTION

Infringement on First Amendment of the United States Constitution (Petition Clause)

(**As against Defendants**: Debra Bowen, in her official capacity as California Secretary of State, and Dean C. Logan, in his official capacity as Los Angeles County Registrar-Recorder/County Clerk)

35. Petitioner realleges paragraphs 1 through 13.

36. By enforcing provisions banning qualified write-in candidates from participating in the statewide general election (Cal. Elec. Ann. Code Section 8606 (West 2014)) and prohibiting the counting of individuals whose names are written into the ballot beyond those who emerged from the California statewide direct primary election with the highest or second-highest number of votes (Cal. Elec. Code Ann. Section 15341 (West 2014)), the California Secretary of State and LA County Registrar-Recorder/County Clerk infringe upon Petitioner's right under the First Amendment of the U.S. Constitution "to petition the Government for a redress of grievances."

37. In appealing to the Petition Clause of the First Amendment, Petitioner does not claim that the act of serving as a candidate for public office itself is a protected form of petition. Instead, Petitioner claims that the act of holding public office, including federal office, is perhaps the most direct way "to petition the Government for a redress of grievances," since persons can most directly compel the United States Government to redress their grievances by petitioning changes to its policies through the introduction and adoption of legislation as official representatives in the United States House of Representatives.

38. The vast majority of aforementioned federal challenges to state and local election laws and regulations rest on First Amendment claims of infringement on the rights of individuals and political parties to freely associate and the rights of voters to freely express their preferred choice of candidates (See, in addition, *Wiley* v. *Sinkler*, 179 U.S. 58 (1900); *United States* v. *Classic*, 313 U.S. 299 (1941); and *Eu* v. *San Francisco Democratic Central Committee*, 489 U.S. 214 (1989)). The limited number of existing legal challenges to California's 2010 ban on write-in candidates in the general election have themselves rested on such claims. See *Chamness* v. *Bowen*, C.A. 9 (Cal.)2013, 722 F.3d 1110, and *Field* v. *Bowen* (App. 1 Dist. 2011) 131 Cal.Rptr.3d 721, 199 Cal.App.4th 346.

39. Petitioner's claim departs from these challenges by asserting that, by enforcing California Elections Code Sections 8606 and 15341, the California Secretary of State and LA County Registrar-Recorder/County Clerk infringes upon and severely burdens Petitioner's First Amendment petition rights by unduly restricting his right to hold federal elective office as well as constitutionally-protected ballot access rights.

40. This claim most resembles one made in a motion to intervene in *Field* v. *Bowen*, *supra*, by a write-in candidate for the U.S. House of Representatives challenging California's prohibition on write-in candidates during the general election. The federal trial court denied the motion to intervene as untimely without addressing the substantive merits of the claim. See *Chamness* v. *Bowen*, *supra*, at 1121-1122.

41. By barring Petitioner's ability to petition the Government through the holding of elective office, the California Secretary of State and LA County Registrar-Recorder/County Clerk infringes on Petitioner's rights the First Amendment of the United States Constitution to petition the government as an politically independent office-holder in the federal legislature.

42. As noted above, the Supreme Court found in *Powell* that "[a] fundamental principle of our representative democracy is, in Hamilton's words, 'that the people should choose whom they please to govern them.' 2 Elliot's Debates 257. As [James] Madison pointed out at the Convention, this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself." *Powell*, 395 U.S. 486, 547 (1969).

43. Petitioner asserts that constitutionally protected ballot access rights and the ability to serve the public are protected under the First Amendment's Petition Clause. The Supreme Court has identified the "right of the people…to petition the Government for a redress of grievances" as "essential to freedom." *Borough of Duryea* v. *Guarnieri*, 564 U.S. ___, ____ (2011) (slip op., at 1). The Court has

recognized that the ability to petition the government is "integral to the democratic process" and that it allows "citizens to express their ideas, hopes, and concerns to their government and elected representatives." *Borough of Duryea*, *supra*, at 7. Drawing a distinction from the broader speech rights protecting general expression, the Court asserted that "the right to petition is generally concerned with expression directed to a government seeking redress of a grievance." *Borough of Duryea*, *supra*, at 7.

44. The Supreme Court recognized in *Connick* v. *Myers* the "Constitution's special concern with threats to the right of citizens to participate in political affairs." *Borough of Duryea*, 564 U.S. ___, ___ (2011) (slip op., at 14), quoting *Connick* v. *Myers*, 461 U.S. 138, 145 (1983). Tracing the rights of citizens to petition their governments from the earliest days of the Anglo-American legal tradition of representative government, the Court asserted that "[p]etitions assume an added dimension when they seek to advance political, social or other ideas of interest to a community as a whole." The right to petition, the Court concluded in *Duryea*, "is in some sense the source of other fundamental rights, for petitions have provided a vital means for citizens to request recognition of new rights and to assert existing rights against the sovereign." *Borough of Duryea*, *supra*, at 16.

45. By serving in the federal legislature, a representative is in essence petitioning the government to address certain grievances and thereby "seek[ing] to advance political, social, or other ideas of interest to a community as a whole." *Borough of Duryea*, 564 U.S. ___, ___ (2011) (slip op., at 14). There is no guarantee that through the introduction of legislation, as with the circulation of a physical petition for signature, that the government will address this grievance, as evidenced by the thousands of bills introduced in each term of the federal legislature that do not become law. Federal legislators are therefore, Petitioner asserts, the most direct petitioners of the government available, and their rights to

petition are therefore protected under the First Amendment of the United States Constitution.

THIRD CAUSE OF ACTION

Infringement on Fourteenth Amendment of the United States Constitution (Due Process Clause)

(**As against Defendants**: Debra Bowen, in her official capacity as California Secretary of State, and Dean C. Logan, in his official capacity as Los Angeles County Registrar-Recorder/County Clerk)

46. Petitioner realleges paragraphs 1 through 13.

47. When assessing questions of ballot access to candidates against the interests of states in structuring and managing elections, federal courts have applied different standards to weigh the interests of states in enforcing election restrictions and candidates' ballot access rights. When those rights "are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Norman v. Reed*, 502 U.S. 279, 289 (1992), quoted in *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). But when a state election law "imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1993), quoted in *Burdick*, *supra*, at 434.

48. The Supreme Court has ruled that the existence of state-imposed "barriers to candidate access to the primary ballot, thereby tending to limit the field of candidates from which voters might choose" does not "of itself compel close scrutiny." *Bullock v. Carter*, 405 U.S. 134, 143 (1972). However, in its opinion in

Washington State Grange v. Washington State Republican Party, 552 U.S. 442 (2008), the Supreme Court stated it had applied strict scrutiny in striking down California's 2000 open primary system -- distinct from today's blanket primary system -- because it "severely burdened the parties' associational rights." *Washington State Grange*, 552 U.S. 442, 446 (2008). After "carefully examining each of the state interests offered by California in support of its primary system….[w]e rejected as illegitimate three of the asserted interests" and "concluded that the remaining interests...were not compelling on the facts of the case." Even if they had been, the Court argued, "the partisan California primary was not narrowly tailored to further these interests because a nonpartisan blanket primary in which the top two vote-getters advance to the general election regardless of party affiliation, would accomplish each of these [remaining] interests without burdening the parties' associational rights." *Washington State Grange*, 552 U.S. 442, 446 (2008).

49. In other cases, federal courts have applied less stringent standards of scrutiny to state restrictions on ballot access and voting rights. In evaluating Hawaii's prohibition on write-in voting, the Supreme Court drew on a test it established in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), asserting the Court need only "weigh the character and magnitude of the asserted injury to the First and Fourteenth Amendment rights that the plaintiff seeks to vindicate against the precise interests put forward by the State as justification for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights."

50. In *Burdick v. Takushi*, the Supreme Court applied this less stringent test to conclude that Petitioner's claims that Hawaii's ban on write-in votes did not unreasonably infringe on voters' First and Fourteenth Amendment rights to cast a meaningful ballot. *Burdick*, *supra*, at 437. However, the Court left unresolved the question of whether the ban infringed on the petitioner's rights to stand as a write-

in candidate for office since the petitioner "characterized this as a voting rights, rather than ballot access, case…." *Burdick*, *supra*, 437.

51. The current complaint before this court tests this unresolved question. The Ninth Circuit Court of Appeals was presented with this question in the context of California's ban on write-in candidates in the general election by a prospective write-in candidate seeking a federal office in *Chambliss v. Bowen*, 722 F.3d 1110 (2013), but the Ninth Circuit rejected the candidate's motion to intervene for lack of timeliness, not the substantial merits of his claim.

52. Petitioner asserts that the court should apply strict scrutiny given the substantial burden imposed on Petitioner's First Amendment petition rights to serve in the United States Congress. The Los Angeles County Registrar/Recorder's refusal to count and the California Secretary of State's refusal to certify write-in votes cast for Petitioner in the general election prohibit Petitioner from being able to serve in the United States Congress and impose an additional de facto qualification on him to serve in the House of Representatives beyond those enumerated in Article I, Section 2, of the United States Constitution.

53. In order to qualify for service in the U.S. House of Representatives without this additional requirement imposed by California, Petitioner would have to relocate to neighboring Oregon or Arizona, where write-in ballots are counted in the general election for qualifying candidates. Such a relocation forced by California's ban on write-in candidates poses a substantial burden on Petitioner's ballot access rights.

54. The State of California falls short in identifying compelling regulatory interests to justify the severe burden that Elections Code Section 8606 imposes in infringing on Petitioner's First and Fourteenth Amendment rights. In *Burdick*, the Supreme Court asserted that Hawaii served a substantial interest in avoiding "unrestrained factionalism" that could amount to a repeat of a party primary in the general election should "divisive sore-loser candida[tes]" who did not win their

party's primary compete against the same opponents in the general election as a write-in candidate.

55. Proponents of California's nonpartisan blanket primary system suggest that a ban on write-in candidates is necessary to avoid a similar outcome. Although factionalism within political parties of the kind envisioned by the Court in *Burdick* would not be a concern in California's nonpartisan two-stage electoral process, the desire to avoid sore-loser candidacies of those who did not emerge as one of the top-two vote-getters in the primary no doubt motivates California's prohibition on write-in candidates and, by extension, the counting of write-in ballots.

56. In doing so, however, California unwittingly promulgates circumstances that cut against the intent of voters who adopted Proposition 14. Under the blanket primary system, no contingency is possible should one or both of the top-two vote-getters perish after the primary but before the general election. In other words, should one of the top two vote-getters die, no candidate would be legally permitted to assume his or her position in the race. This unduly restricts voters' choice as one between a deceased candidate and one whom they may have preferred less than his or her late opponent. Should both perish, no candidate can be sworn into office and the state would need to hold a special election to fill the vacancy in office.

57. Should a candidate decide to withdraw his candidacy, the blanket primary system permits the third-highest vote-getter to fill the vacancy in the general election. Although this provision permits greater voter choice than that for deceased candidates, the blanket primary system provides ample opportunity for candidate collusion and strategic voting akin to the hazards associated with party raiding that leaves voters vulnerable to the whims of candidate and party manipulation. For example, in a district that highly favors candidates from one particular political party, there would be nothing stopping ideologically similar candidates from one party emerging as the top-two vote-getters and, months into the general election campaign, coordinating a collusion strategy where one drops

out of the race with insufficient time for the third-highest vote-getter to mount a viable campaign. Similarly, the third-highest vote-getter in a primary race with multiple candidates could persuade one of the top-two vote-getters to withdraw and thereby allow him or her to mount a campaign under conditions that would be more favorable against a single opponent in the general election than they were in a blanket primary with a higher number of candidates.

58. By permitting write-in candidates to campaign and having write-in ballots cast in the general election counted, California would more feasibly protect voters' rights to cast meaningful ballots and to participate in a free and fair electoral process that is the bedrock of the U.S. Constitution's representative government. As the Supreme Court noted in *Reynold v. Sims*, "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of reresentative government." *Reynold v. Sims*, 377 U.S. 533, 555 (1964). As Justice Anthony Kennedy noted in his dissent in *Burdick*, "In effect, a write-in ban, in conjunction with other restrictions, can deprive the voter of the opportunity to cast a meaningful ballot. As a consequence, write-in prohibitions can impose a significant burden on voting rights….For those who are affected by write-in bans, the infringement on the right to vote for the candidate of their choice is total." *Burdick,* 504 U.S. 428, 447 (1992).

59. Justice Kennedy argues that voters' ability to cast meaningful write-in ballots preserves a necessary safety valve to protect voter choice from adverse circumstances in the general election. "Write-in voting can serve as an important safety mechanism in those instances where a late-developing issue arises or where new information is disclosed about a candidate late in the race. In these situations, voters may become disenchanted with the available candidates when it is too late for other candidates to come forward and qualify for the ballot. [Hawaii's] prohibition on write-in voting imposes a significant burden on voters, forcing them

to either vote for a candidate whom they no longer support or to cast a blank ballot. Write-in voting provides a way out of the quandary, allowing voters to switch their support to candidates who are not on the official ballot. Even if there are other mechanisms to address the problem of late-breaking election developments (unsuitable candidates who win an election can be recalled), allowing write-in voting is the only way to preserve the voters' right to cast a meaningful vote in the general election." *Burdick*, 504 U.S. 428, 445-446 (1994) (Kennedy, JJ., dissenting).

60. Preserving voters' ability to cast meaningful write-in ballots would assuage concerns that candidates might collude during the blanket primary to predetermine the result of a general election. This hypothetical is not a remote conspiracy: in the 2014 primary election campaign to represent California's 17th Congressional district, Democratic challenger Ro Khanna accused incumbent Representative Mike Honda, also a Democrat, of financing a third party political action committee to promote a third candidate, Vanila Singh Mathur, a Republican who would be a weaker challenger against Honda in the November general election in the heavily Democratic 17th Congressional district. A meaningful write-in candidacy process would provide an alternative avenue for redressing similar types of collusion among candidates eager to promote strategic voting among their core constituencies.

61. Even if the state's prohibition on write-in candidacies in the general election did serve a compelling state interest, an outright ban on the casting and counting of write-in ballots is not sufficiently narrow enough to accomplish the interests without imposing substantial burdens on ballot access and voting rights. Although he recognizes that the most important interest advanced by Hawaii in prohibiting write-in voting was to prevent sore-loser candidacies from being mounted in the general election, Justice Kennedy suggests that Hawaii could accomplish the same objective with a more narrowly tailored policy of prohibiting

write-in candidacies of only those candidates whose names officially appeared on the printed ballot in the primary. "[W]ith respect to general elections," Justice Kennedy argues in his dissent in *Burdick*, "a write-in ban is a very overinclusive means of addressing the problem; it bars legitimate candidacies as well as undesirable sore-loser candidacies. If the State desires to prevent sore-loser candidacies, it can implement a narrow provision aimed at that particular problem."

VI. Request for Relief

62. WHEREFORE, the Plaintiff requests:

63. The court impose a preliminary injunction and temporary restraining order on the California Secretary of State and Los Angeles County Registrar-Recorder/County Clerk's enforcement of California Election Code Sections 8606 and 15341.

64. The court mandate that the California Secretary of State and Los Angeles County Registrar-Recorder/County Clerk make provisions for Petitioner to qualify as a write-in candidate to represent California's 33rd Congressional district in the November 4, 2014, general election and that write-in ballots cast for Petitioner be counted and certified by the proper election authorities.

65. Any further relief which the court may deem appropriate.

Dated: _____

Sign: _____

Print Name: _____

Plaintiff in pro per