

INTRODUCTION

This case strikes at the very heart of the American Political System, the very system that our forefathers designed and intended when creating our Republic. On February 24, 2015, Charles Deemer, the State Chairman of the Independent Party, submitted an official notice of intent to qualify the Independent Party as a political party in California per Section 5001 of the California Election Code. However, on March 26, 2015, Deirdre Avant from Voter Services replied to Mr. Deemer, stating that the official notice does not meet the requirements of Elections Code Section 5001 because “Independent Party” is too similar to the name of the existing party, “American Independent Party.” The Independent Party was formed to make it possible for candidates who wish to be identified as “independent candidates” to be able to run for office with the label, “Independent.” California law formerly allowed independent candidates to have “independent” as their party label; however, because of Proposition 14, the state forces these candidates to have the ballot label “Party preference: none” on the primary and general election ballots. If the Independent Party was ballot-qualified, then candidates could register into it and if they ran, their ballot label would state, “Party preference: Independent.”

First, courts in California and throughout the United States have long been in agreement that two political parties may share a particular word in their names without causing voter confusion. The instant matter here is no different. In 1896, the California Supreme Court permitted the “National Democratic Party” to be on the ballot despite the prior existence of the “Democratic Party.” (*Craig v. Brown*, 114 Cal. 480 (1896)). In 1975, the 5th Circuit Appellate Court permitted the “National Democratic Party” to be on the Mississippi ballot while the “Democratic Party” was already on the ballot. (*Riddell v. National Democratic Party*, 508 F.2d 770 (5th Cir. 1975)). In 2000, the Supreme Court of Minnesota allowed the “Reform Party” and “Reform Party of Minnesota” to appear on the same ballot, finding that the possibility of confusion was not so great as to warrant a court order to change a party designation. (*Scofield v. Kiffmeyer*, 620 N.W.2d 24 (2000)). In 2002, the Oregon Appellate Court found that an Oregon law forbidding two parties from sharing one particular word in their names violated the First Amendment of

1 the U.S. Constitution, thus permitting the “Freedom Socialist Party” to be on the ballot, even though the
2 “Socialist Party” was already on the ballot. (*Freedom Socialist Party v. Bradbury*, 48 P.3d 199 (2002)).

3 Second, forty-four (44) other states have permitted, each at least once, two parties that used a
4 common word in their names on the same ballot. In a very similar situation to the instant matter, Alaska
5 qualified a political party called “Republican Moderate Party” while the “Republican Party of Alaska”
6 was already qualified. In fact, a candidate from that Republican Moderate Party was even elected to the
7 state legislature in 2002. Further, many other states have had a ballot-qualified party named the
8 “Independent Party.” Such parties are on the ballot now in Connecticut, Delaware, Florida, Hawaii, and
9 Oregon. In the past, these parties have been on the ballot in Maryland, New Mexico, North Carolina,
10 South Carolina, and Utah.

12 Third, the previous California Secretary of State, Debra Bowen, took a contrary approach during
13 a similar scenario in 2011. Secretary Bowen permitted “American Elect” to qualify as a party in 2011,
14 while the “American Independent Party” was already on the ballot. In fact, many of Mr. Padilla’s
15 predecessors, as California’s Secretary of State, have permitted other political bodies with the word
16 “American” in their names to qualify as political bodies while the American Independent Party had been
17 a qualified political party.

19 Last, it is not rare for parties to be called “Independent Party.” To deny the Independent Party as
20 a qualified political party merely because it describes itself with the word “independent” is unjust,
21 unreasonable, and effectively grants the American Independent Party exclusive use of the word
22 “independent,” which is broadly and frequently used in the political culture.

24 **PARTIES**

26 1. Plaintiff Independent Party is a political party headquartered in California that seeks
27 political body status to officially participate in the upcoming 2016 Presidential general election with its
28 own column on the official ballot for the general election.

2. Plaintiff William Lussenheide is a resident of California and wishes to express and associate his support of the Independent Party by placing it on the California ballot for the upcoming presidential election.

3. Defendant, ALEJANDRO “ALEX” PADILLA, (“Padilla”) is the Secretary of State of California, and is sued in his official capacity. The Secretary of State oversees the State’s electoral processes including but not limited to the nomination petitions of political parties seeking official ballot recognition, and reviewing the validity of the nomination papers filed by political parties

JURISDICTION AND VENUE

4. This is a civil action seeking declaratory, injunctive, and other legal and equitable relief, and the court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1343(a), and 2201. The cause of action is based on 42 U.S.C. § 1983.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2), on the ground that a substantial part of the events or omissions giving rise to the claims herein occurred in the Northern District of California.

STATEMENT OF FACTS

6. On or about February 24, 2015, Plaintiff Independent Party submitted the paperwork to Defendant Padilla, the Secretary of State of California, indicating intent to qualify as a political party for the purposes of placing their candidate on the ballot for the upcoming presidential election.

7. On or about March 26, 2015, Defendant Padilla denied Plaintiff's paperwork stating that the name of the Independent Party is too similar to the name of the existing party, American Independent Party.

1 8. On or about May 8, 2015, Plaintiff Independent Party challenged in writing Defendant
2 Padilla's assertion that the Independent Party's name is too similar to that of the existing American
3 Independent Party, citing a multitude of case law and referencing decisions of the previous Secretary of
4 State of California in support of their claim.

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6 9. On or about July 14, 2015, Defendant Padilla again denied Plaintiff's request stating again
7 that the proposed name ("Independent Party") is too similar to that of the existing American Independent
8 Party.

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10 10. On or about July 27, 2015, Plaintiffs, through their then-counsel, protested Defendant
11 Padilla's denial of the Independent Party's qualification as a political party with a letter supported by
12 examples and case law, to which no response was received.

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14 11. On or about December 16, 2015, Plaintiffs, through their counsel, yet again protested
15 Defendant Padilla's continued denial of the Independent Party's qualification as a political party, to
16 which no response has been received.

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18 12. As of the date of this filing, Defendant continues to deny Plaintiff Independent Party's
19 application to qualify as an official political party for the purposes of placing their candidate on the ballot
20 in the upcoming presidential election.

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22 **COUNT ONE:**

23 **The Secretary's Decision Violates the First and Fourteenth Amendment Rights to Free Speech,**
24 **Free Association, and Voting Rights of the Independent Party**

25 13. Incorporating all facts stated elsewhere herein, the Defendants' actions, acting under color
26 of state law, deprived and severely burdens the political speech and political association rights of the
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1 Independent Party and its members in direct violation of the First and Fourteenth Amendments to the
2 United States Constitution, as remedial by 42 U.S.C. § 1983.

3 14. Ballot access restrictions diminish the statewide and national viability of the organization
4 whose ballot presence is denied, thereby diminishing the value of votes cast by the harmed parties.
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6 15. Defendant, acting under color of state law, has deprived Plaintiffs of the rights, privileges
7 and immunities secured to them under the First and Fourteenth Amendments to the United States
8 Constitution and § 1983 of title 42 of the United States Code to participate in the democratic process free
9 from unreasonable impediments, undue restraints on core political speech, and discriminatory ballot
10 access restrictions, through which the party members engage one another and through which the party
11 engages in the public at large.
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13 16. The Independent Party has no adequate remedy at law for such deprivation of their rights,
14 privileges and immunities.
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16 17. Plaintiffs have and will incur attorneys' fees, and pursuant to 42 U.S.C. § 1988 are entitled
17 to recover costs and fees in pursuing rights for a violation of 42 U.S.C. § 1983.
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20 **COUNT TWO:**

21 **The Secretary's Decision Violates The First and Fourteenth Amendment Rights to Free Speech,**
22 **Free Association, and Voting Rights of William Lussenheide**

23 18. Incorporating all facts stated elsewhere herein, the Secretary's actions, acting under color
24 of state law, deprived William Lussenheide, a supporter of the Independent Party, of the rights, privileges
25 and immunities secured to him under the First and Fourteenth Amendments to the United States
26 Constitution and § 1983 of title 42 of the United States Code to participate in the democratic process free
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1 from unreasonable impediments, undue restraints on core political speech, and the unjust limitation on
2 his associational and expressive rights afforded him by law.

3 19. William Lussenheide has no adequate remedy at law for such deprivation of his rights,
4 privileges and immunities.
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6 20. Plaintiffs have and will incur attorneys' fees, and pursuant to 42 U.S.C. § 1988 are entitled
7 to recover costs and fees in pursuing rights for a violation of 42 U.S.C. §1983.
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10 **COUNT THREE:**

11 **The Secretary's Decision Violates The Equal Protection Clause of The Fourteenth Amendment to**
12 **The United States Constitution**

13 21. Incorporating all facts stated elsewhere herein, the Secretary's actions, acting under color
14 of state law, deprived Plaintiffs of the rights, privileges and immunities secured to them under the equal
15 protection clause of the Fourteenth Amendment to the United States Constitution and § 1983 of title 42
16 of the United States Code to participate in the democratic process free from discriminatory action, both
17 in intent and deliberate effect, by misapplying California Elections Code section 5001(a), the arbitrary
18 restrictions of which make it impossible to organize and qualify as a political party for election ballot
19 purposes.
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21 22. Plaintiffs have no adequate remedy at law for such deprivation of their rights, privileges
22 and immunities.
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24 23. Plaintiffs have and will incur attorneys' fees, and pursuant to 42 U.S.C. § 1988 are entitled
25 to recover costs and fees in pursuing rights for a violation of 42 U.S.C. §1983.
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27 **PRAYER FOR RELIEF**
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1 WHEREFORE, Plaintiffs respectfully ask this Court:

2 A. To enter a judgment declaring that the Secretary of State cannot deny political party status
3 to an otherwise qualifying party merely because that party shares a particular word in their name with
4 another qualifying political party, in conformity with the Free Speech, Free Expression and Free
5 Association clauses of the First Amendment of the United States Constitution, the Equal Protection
6 Clause of the Fourteenth Amendment of the United States Constitution , each enforced against such state
7 action through the Fourteenth Amendment of the United States Constitution;
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9 B. To grant permanent injunctive relief enjoining and restraining Defendant, his servants,
10 agents, employees, and all other persons in active concert and participation with him from denying the
11 Independent Party political party status for the purpose of getting their name on the ballot for the
12 upcoming presidential election;
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14 C. To award Plaintiffs costs and disbursements associated with the filing and maintenance of
15 this action, including an award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
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17 D. To award such other equitable and further relief as the Court deems just and proper.
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20 DATED: February 16, 2016

Respectfully submitted,

21 BARNES LAW

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24 Robert E. Barnes, Esq.
25 Attorney for Plaintiffs
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