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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

INDEPENDENT PARTY, and WILLIAM LUSSENHEIDE Plaintiffs, v. ALEJANDRO "ALEX" PADILLA, in his official capacity as Secretary of State of California Defendant.	Case No. 2:16-cv-00316-WBS-CKD Filed: February 16, 2016 Assigned to: Hon. William B. Shubb Trial Date: None **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS, DECLARATION OF RICHARD WINGER.** **DATE: May 2, 2016** **TIME: 1:30 p.m.** **COURTROOM: 5**

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Defendant Secretary of State's ("Defendant's") Motion for Judgment on the Pleadings (the "Motion") undervalues the severe burden placed on the Plaintiffs' First and Fourteenth Amendment rights by the Defendant's wrongful application of California Election Code Section 5001, exaggerates any potential confusion that could come from allowing the Independent Party (the "Party") to register as a political body with the name of their choosing, and mischaracterizes the Party's motivations for choosing the name "Independent Party."

First, the Defendant's wrongful application of California Elections Code 5001 and denial of the Party's application for political body status for the purposes of placing its name on the ballot for the upcoming presidential elections not only severely burdens the Party's First and Fourteenth Amendment rights to association for the advancement of its political beliefs and to equal protection under the law, but also those of its supporters in California, such as William Lussenheide, and across the nation. A presidential election campaign is both a method of obtaining political office and a means of disseminating ideas. By denying the Party the ability to associate under its name of choice, the Defendant is severely limiting both it and its supporters' ability to express their political preferences.

Second, the Defendant's interest in avoiding electoral confusion and ensuring efficiency of the ballots does not outweigh the severe burden placed on the Plaintiffs' First and Fourteenth Amendment rights by the outright denial of their ability to associate and register as a political body under the name of their choosing. In fact, all of the potential problems Defendant alleges will result from the Party being placed on the ballot are easily remedied by means that do not involve the violation of the Plaintiffs' constitutional rights. If the Defendant believes that allowing a political party named "Independent Party" to be on the ballot would cause confusion with the ballot label "independent" for presidential candidates nominated by petition, then they could simply change that label to read "independent candidate." Alternatively, the Defendant is free to change the label designating presidential candidates nominated by petition from "independent" to one of the numerous labels used by other states such as, "no party", "non-partisan", "by petition", or "unaffiliated." "Independent" as a label for presidential candidates nominated by petition is not even an accurate label to begin with, as many of these candidates are actually nominees of various unqualified parties, and therefore would prefer the label "by petition" as opposed to "independent" and the various connotations that accompany it. Likewise, Defendant's assertion that the name "Independent Party" is too similar to that of the existing "American Independent Party" is unsupported by election history in California and nationwide.

Last, the Defendant's Motion mischaracterizes the Party's motivations behind choosing the name "Independent Party." Contrary to the Defendant's assertion, the name "Independent Party" was not chosen to be deceptive or circumvent California election law, but rather the Party's motivations were twofold: First, the Party chose the name "Independent Party" because the founders of the Party

truly believed that the title "Independent" reflected the Party's closely held values; Secondly, the Party chose its name because it was participating in a long and nationwide tradition of using the name "Independent Party" to assist candidates who held independent values in getting on the ballot.

The Court should recognize the severe burden placed on the Plaintiffs' First and Fourteenth Amendment rights, the myriad of ways in which the Defendant could remedy any ballot confusion without violating the Plaintiffs' rights, and deny the Defendant's Motion.

STATEMENT OF FACTS

I. DEFENDANT'S DENIAL OF THE INDEPENDENT PARTY'S POLITICAL BODY STATUS

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 body 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." On or about May 8, 2015, the Party challenged in writing Defendant's assertion that the name "Independent Party" is too similar to that of the existing American Independent Party, citing a multitude of case law and referencing decisions of the previous Secretary of State of California in support of its claim. Despite the clear precedent in the Party's favor, on or about July 14, 2015, Defendant again denied the Party's request stating again that the proposed name "Independent Party" is too similar to that of the existing American Independent Party. Nowhere in his response did the Defendant claim that the Party could not qualify because the name "Independent Party" was too similar to the label of "independent" for presidential candidates who are nominated by petition. On or about July 27, 2015, the Party, through their then-counsel, protested the Defendant's denial of its qualification as an official political body with a letter supported by examples and case law, to which no response was received. On or about December 16, 2015, the Party, through its counsel, yet again protested the Defendant's continued denial of its status as an official political body, to which no response has been received. As of the date of this filing, Defendant continues to deny the Party official

political body status, and thus denies its ability to qualify as an official political party for the purposes of placing its candidate on the ballot in the upcoming presidential election.

II. THE LONG HISTORY OF THE "INDEPENDENT PARTY" IN THE UNITED STATES

Contrary to the assertions in Defendant's Motion, the Party's reasons for choosing the name "Independent Party" were two-fold: First, the Party chose the name "Independent Party" because the founders of the Party truly believed that the title "Independent" reflected the Party's closely held values; Secondly, the Party chose its name because it was participating in a long and nationwide tradition of using the name "Independent Party" to assist candidates who held independent values in getting on the ballot. (Declaration of Richard Winger ("Winger Decl.") ¶ 2.)

Parties named "Independent Party" have qualified as parties in at least eleven states other than California over the course of the last fifty years. In 1992, supporters of Ross Perot in Arkansas organized a party named the Independent Party, and placed it on the ballot with Perot as its presidential nominee. (Winger Decl. ¶ 3.) Because it polled over 3% for President in 1992, it continued to exist in Arkansas through the 1994 election. *Id.* In 2008, voters in Connecticut expanded the Independent Party (which had existed only to contest partisan city offices in Waterbury) into a statewide party with no particular ideology. (Winger Decl. ¶ 4.) It nominated Ralph Nader for President, one candidate for the U.S. House, and fifteen candidates for the legislature. (*Id*.) In 2000, voters in Delaware organized the Independent Party and placed it on the ballot. (Winger Decl. ¶ 5.) At the time, parties could become recognized in Delaware if they had registration membership of at least five one-hundredths of 1% of the state registration. (*Id.*) The party is still on the ballot and runs candidates in every statewide election. (*Id*.) In 1996, Florida voters formed the Independent Party, which has been ballot-qualified since 1999 and nominated two candidates for the legislature in 2012. (Winger Decl. ¶ 6.) In 2014, Hawaii voters formed the Independent Party. (Winger Decl. ¶ 7.) Its gubernatorial nominee polled 11.7% and it is still a ballot-qualified party today. (*Id.*) In 2008, Maryland voters formed the Independent Party. (Winger Decl. ¶ 8.) It nominated Ralph Nader for President that year, but today it is no long ballot-qualified. (*Id.*) Also in 2008, New Mexico voters formed the Independent Party. (Winger Decl. ¶ 9.) It nominated Ralph Nader for President that year, but today it is no longer ballot-

qualified. (*Id.*) In 1980, North Carolina voters formed the Independent Party. (Winger Decl. ¶ 10.) It nominated John Anderson for President that year, but today it is no longer ballot-qualified. (*Id.*) In 2005, Oregon voters formed the Independent Party. (Winger Decl. ¶ 11.) In 2015 its registration membership exceeded 5% of the state total, so in 2016 it is eligible for its own primary, the first party, other than the Democratic and Republican Parties, to qualify for its own primary in Oregon since 1914. (*Id.*) In 1970, South Carolina voters formed the Independent Party. (Winger Decl. ¶ 12.) It ran John G. Schmitz for President in 1972, Lester Maddox in 1976, and John Rarick in 1980 (*Id.*) It is no longer on the ballot. (*Id.*) In 1992, Utah voters formed the Independent Party. (Winger Decl. ¶ 13.) It polled 33.5% for Governor that year, placing second and carrying two counties. (*Id.*) It had seven legislative candidates in 1994, and three in 1996, but it is no longer on the ballot. (*Id.*) In 1962, Vermont voters formed the Independent Party. (Winger Decl. ¶ 14.) It polled 2.7% for Governor in 1962, and thus was also ballot-qualified in 1964, but then it went off the ballot. (*Id.*)

LEGAL STANDARD

"After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed.R.Civ.P. 12(c). "Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.,* 896 F.2d 1542, 1550 (9th Cir.1990). The standard applied on a Rule 12(c) motion is essentially the same as that applied on a Rule 12(b)(6) motion for failure to state a claim: "the allegations of the non-moving party must be accepted as true, while the allegations of the moving party which have been denied are assumed to be false." *Id.* However, the Court is not required to accept as true mere legal conclusions unsupported by alleged facts. *Ashcroft v. Iqbal,* 556 U.S. 662, 129 S.Ct. 1937, 1949–1952, 173 L.Ed.2d 868 (2009). To survive a motion to dismiss, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Id.* at 1949 (citation omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

ARGUMENT

I. THE *ANDERSON* BALANCING TEST TIPS IN FAVOR OF PLAINTIFFS, AS THE GOVERNMENTAL INTERESTS CLAIMED BY THE STATE DO NOT JUSTIFY THE INJURIES TO PLAINTIFFS' FIRST AND FOURTEENTH AMENDMENT RIGHTS.

The Constitutional right of United States citizens to create and develop new political parties is derived from the First and Fourteenth Amendments and advances the Constitutional interests of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences. *Norman v. Reed*, 502 US 279, 288 (1992) (quoting *Anderson v. Celebrezze* 460 U.S. 780, (1983)).

In *Anderson*, the United States Supreme Court set forth a balancing test that weighs "the character and magnitude of the asserted injury to the rights protected by the First and Fourteen Amendments" against "the precise interests put forth by the State as justifications for the burden imposed," and the court evaluates "the extent to which those interests make it necessary to burden the plaintiff's rights." *Anderson*, 460 U.S. at 789. The balancing standard in *Anderson* requires the Court to review the interests the government cites as justification for limiting access to the ballot, and to assess whether the interests cited are actual potential problems. *Id.* The *Anderson* test also requires courts to review the burden placed on candidates and their voters. "Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional." *Id.* at 789.

In the present case, the *Anderson* balancing test weighs in the Plaintiffs' favor because the Defendant's refusal to allow the Plaintiffs to associate as a political body under the name of their choosing constitutes a severe injury to their First and Fourteenth Amendment rights, and the Defendant has failed to demonstrate a compelling governmental interest to justify said injury. In lieu of a compelling governmental interest, the Defendant offers two hypothetical situations wherein allowing the Party to use the name "Independent Party" could create confusion at the polling place.

In his first hypothetical, the Defendant asserts that allowing a political party named "Independent Party" to be on the ballot would cause voters to confuse the party with the currently used

ballot label "independent" for presidential candidates nominated by petition. Yet despite this assertion, there is no law on the books to date preventing a party that uses the word "independent" in its name from registering as an official political body. Similarly, Defendant has offered no evidence that this problem has already occurred in relation to the currently registered "American Independent Party." In reality, the Defendant could easily remedy this potential issue by simply changing the label designating presidential candidates nominated by petition to read "independent candidate." (Winger Decl. ¶ 17.) Alternatively, the Defendant is free to change the label designating presidential candidates nominated by petition from "independent" to one of the numerous labels used by other states such as, "no party", "non-partisan", "by petition", or "unaffiliated." "Independent" as a label for presidential candidates nominated by petition is not even an accurate label to begin with, as many of these candidates are actually nominees of various unqualified parties, and therefore would prefer the label "by petition" as opposed to "independent" and the various connotations that accompany it. *Id*.

Likewise, Defendant's claim that the name "Independent Party" is too similar to that of the already existing "American Independent Party" as to run afoul of California Elections Code Section 5001 is unsupported by election history in both California and nationwide. In fact, at least 44 states, including California, have in the past had two parties on the ballot for the same election, when both of those parties shared a common word in their names as shown on the ballot. (Winger Decl. ¶ 15.) For example, the American Independent Party has been on the ballot in California since January 1968, yet the following political bodies have been officially recognized by the Secretary of State in the time since: Constitutional American (see Report of Registration, January 1978); American National Socialist (January 1980); American Nationalist (January 1982); American Christian (October 1995); Real American (October 1995); American Eagle (September 2007); American Centrist (January 2010); American Resurrection (January 2010); American Third Position (January 2010 and January 2012); American Concerned (January 2012); and Independent California (currently). *Id*. Clearly there was no significant confusion caused by any of the aforementioned parties being officially recognized, despite their shared use of the words "American" and "independent."

For the aforementioned reasons, it is clear that the Defendant has failed to show the existence of a compelling governmental interest that justifies the violation of the Plaintiffs' First and Fourteenth Amendment rights in the present case.

II. PLAINTIFFS' FIRST AND FOURTEENTH AMENDMENT RIGHTS ARE SEVERELY BURDENED BY DEFENDANT'S REFUSAL TO REGISTER THE PARTY AS A QUALIFIED POLITICAL BODY UNDER THE NAME OF ITS CHOOSING.

The regulation of ballot access involves fundamental First Amendment rights. *See Anderson*, 460 U.S. at 786, fn. 7. Restrictions by state officials are particularly suspect "in the context of a Presidential election" where "state imposed restrictions implicate a uniquely important national interest." *Anderson* at 781. Even the most state-friendly federal appellate courts recognize that exclusion from the ballot implicates fundamental First and Fourteenth Amendment rights. *Duke v. Smith*, 13 F.3d 388 (11th Cir. 1994) (striking down as unconstitutionally vague a law that empowered a state actor to exclude candidate from the Presidential ballot). A regulation imposes a severe speech restriction if it "significantly impair[s] access to the ballot, stifle[s] core political speech, or dictate[s] electoral outcomes." *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1015 (9th Cir. 2002). As the Supreme Court has clearly stated, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)).

A. The Party's Rights To Freedom Of Speech and Freedom Of Association, And Plaintiff William Lussenheide's Right To Vote, Are Severely Burdened As Defendant's Refusal To Register The Party As A Qualified Political Body Under The Name Of Its Choosing Significantly Limits The Party's Speech And Impairs Its Access To The Ballot.

Enshrined in the First and Fourteenth Amendments is the right of one to associate with like-minded individuals for the advancement of their shared beliefs. In his Motion, the Defendant attempts to sideline these important Constitutional concepts by claiming that the Plaintiffs have "no particular political ideology." Contrary to the Defendant's baseless and nonsensical assertion, the Plaintiffs are attempting to associate as an official political body under the name "Independent Party" precisely

because they believe this name most accurately represents their closely held political beliefs. By refusing to allow the Party to register as a qualified political body under the name of its choosing, Defendant is acting in direct contravention of the Plaintiffs' constitutionally protected rights. "Freedom of association would be an empty guarantee if associations could not limit control over their decisions to share the interests and persuasions that underlie the association's being." *California Democratic Party v. Jones*, 530 U.S. 567 (2000). Restrictions on access to the ballot burden two distinct and fundamental rights: "The right of individuals to associate for the advancement of political beliefs" and "the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." *Williams v. Rhodes*, 393 U.S. 23, 30 (1968) Access restrictions also implicate the right to vote because absent recourse to referendums, "voters can assert their preferences only through candidates or parties or both." *Lubin v. Panish*, 415 U.S. 709, 716 (1974).

"There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of orderly group activity protected by the First and Fourteenth Amendments. The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973). "Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981).

By limiting the choices available to voters, the State impairs the voters' ability to express their political preferences. As the Supreme Court previously held in another case concerning a state law preventing a third party's access to the ballot, "an election campaign is a means of disseminating ideas as well as attaining political office." *Illinois Bd. of Elections vs. Socialist Workers Party*, 440 U.S. 173, 186. When such vital individual rights are at stake, a state must establish that its classification is necessary to serve a compelling interest. *See Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008). Thus, "even when pursuing a legitimate interest, a state may not choose means that unnecessarily restrict constitutionally protected liberty." *Kusper v. Pontikes*, 414 U.S. 51, 59 (1973).

Here, the Defendant's wrongful application of California Elections Code 5001 and denial of the Party's application for political body status under the name of its choosing for the purposes of placing its name on the ballot for the upcoming presidential election violates not only the Party's First

Amendment right to associate for the advancement of its closely held political beliefs, but also denies its supporters, such as Mr. Lussenheide, their right to cast their supporting votes effectively in the upcoming Presidential election.

Furthermore, Defendant attempts to analogize the facts of *Chamness v. Bowen* to the facts of this case to support his proposition that the Plaintiffs' burden was held by the Ninth Circuit to be "slight" and that the prohibition against a primary election candidate designating himself as "Independent" was held to be viewpoint neutral. Motion, 8:14-23. However, *Chamness* involved a completely different factual situation than that present in the instant matter. In *Chamness*, a political candidate challenged the constitutionality of California Senate Bill 6, arguing that the state violated his First Amendment rights by prohibiting him from using the ballot label "Independent" and forcing him to choose between a preferred party designation, "No Party Preference," or a blank space on the ballot. *Chamness v. Bowen*, 722 F.3d 1110, 1116 (9th Cir. 2013). The Court found that the candidate who sought to run for office tried to use the ballot to promote a political message and that he failed to show that the statute he challenged severely burdened his First Amendment Rights. *Id*. at 1117.

Here, Plaintiffs are not attempting to use the ballot as a means to promote a political message; they merely seek to have the Party recognized as a qualified political body under the name of their choosing. This, in turn, allows for counties to tally the Party's registered voters to determine whether it has enough registered voters to become a qualified political party. As noted in *Chamness*, that case was not a discussion of qualified political parties. *Id.* at fn 5. Without qualified political body status, counties will not tally the Party's registered voters, which in turn, will not even afford the Party a chance to see if it has the requisite support to become a qualified political party. Therefore, due to Defendant's decision to deny the Independent Party qualified political body status under the name of its choosing, Plaintiffs will be forced to falsely state on the ballot that they have no party preference, thus further violating their First Amendment rights.

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B. Plaintiffs' Equal Protection Rights Are Being Violated As Defendant's Denial Of The Use Of The Name "Independent Party" Amounts To Unlawful Discrimination Protected By The Constitution.

The Equal Protection Clause of the Fourteenth Amendments reads in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction equal protection of the laws."

Equal protection protects against the unlawful administration by state officers of a state statute that is fair on its face, resulting in unequal application to those who are entitled to be treated alike. To be a "class of one," a plaintiff alleging an equal protection violation must establish: (1) he was intentionally treated differently from others similarly situated; and (2) there was no rational basis for any such difference. When insular minorities are the targets of exclusion from political participation, this decreases the stability and legitimacy of our political system. When unnecessary restrictions on the field of candidates thus limit the voter's freedom of choice, the effectiveness of a right to vote is substantially impaired.

The Supreme Court noted that a "burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and – of particular importance – against those voters whose political preferences lie outside the existing political parties." *Anderson,* 460 U.S. at 794-795. Such restrictions are particularly suspect "in the context of a Presidential election" where "state imposed restrictions implicate a uniquely important national interest." *Id.* at 781. The voters outside the state's borders have a heightened interest, impacting their rights to vote and expressive association, while the state enjoys a "less important interest" than would be the case in elections limited to within its borders. *Id*. Any such restriction "places a significant state-imposed restriction on a nationwide electoral process." *Id.* at 795. The combination of an independent candidate – unlikely protected and most likely discriminated against by major party provincialism in state politics – and a national election for the country's only national office renders the state interest "minimal" and the voter's interest in freedom of choice and association "unquestionably" more important. *Id.* at 806.

In the present case, the decades of precedent in both California and nationwide, along with the decision of the previous California Secretary of State regarding the Americans Elect Party, show conclusively that the Independent Party was treated differently from others similarly situated and that there was no rational basis for the difference. *See Craig v. Brown*, 114 Cal. 480 (1896); *Riddell v. National Democratic Party*, 508 F.2d 770 (5th Cir. 1975); *Scofield v. Kiffmeyer*, 620 N.W.2d 24 (2000); *Freedom Socialist Party v. Bradbury*, 48 P.3d 199 (2002); Winger Decl. ¶ 15. Denying the Independent Party qualified political body status under the name of its choosing discriminates against minor political parties in a way that diminishes its ability to effectively compete in the political process.

III. THIS COURT SHOULD NOT ABSTAIN BECAUSE THE INSTANT MATTER IS NOT AN "EXCPETIONAL" CASE

Contrary to Defendant's assertion, abstention is not proper here because this is not an "exceptional" case in which the *Pullman* abstention doctrine applies. The two simultaneous criteria that must be present for the *Pullman* doctrine to apply are: 1) that "the case touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open[;]" and 2) [s]uch constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy." *Railroad Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 498 (1941).

Here, neither criterion is present. First, this is not a sensitive area of social policy where federal courts should not enter; federal district courts have, time and time again, determined constitutional issues related to state election laws and ballot access cases in particular. *Arizona Libertarian Party v. Reagan*, 798 F.3d 723 (9th Cir. 2015) (affirming a district court's decision on the constitutionality of a state law requiring voter registration forms to list the two largest political parties and provide a blank line for other party preferences); *Daien v. Ysursa*, 711 F.Supp.2d 1215 (D. Idaho, 2010) (holding that certain Idaho statutes restricting ballot access to independent presidential candidates unconstitutional); Second, a definitive ruling on the state law issue terminating this controversy is doubtful because the primary issue here is a Constitutional one implicating the rights to vote, freedom of speech, association and equal protection in connection with a political party's access to the ballot.

Defendant's attempt to compare the facts of the instant matter to *Pearl Inv. Co. v. City of Cnty. Of San Francisco*, a case in which a city planning commission's decision to condition the issuance of a building permit on the provision of relocation services and replacement housing was challenged, is not well-founded. *See Pearl Inv. Co. v. City of Cnty. of San Francisco*, 774 F.2d 1460 (9th Cir. 1985). The factual issues presented in the instant matter are drastically different as one cannot compare a planning commission's decision to issue a conditional building permit on the one hand, to a Secretary of State acting as a gatekeeper to the ballot and his decision to deny a political party qualified political body status, thus denying it and its supporters the right to exercise their freedom to associate, freedom of speech, and right to vote.

Furthermore, bringing a writ of mandate in state court, as Defendant suggests, would unnecessarily waste both the parties' and the Court's time, judicial resources, and work against achieving efficiency in the judicial system. By the time this issue is heard on May 2, 2016, both parties would have fully briefed, and the Court would have read not only the briefs regarding the instant Motion, but also the parties' briefs on Plaintiffs' Motion for Preliminary Injunction. In addition to amounting to a waste of the Court's time and judicial inefficiency, abstention would also prejudice Plaintiffs' rights, as there would not be enough time for a writ of mandate in state court to be decided on by the tally deadline of May 24, 2016. Having this issue decided by May 24, 2016 is crucial to Plaintiffs' rights as it would allow just enough time for the Independent Party to determine whether it has enough registered voters to qualify as a political party, and to obtain more, if necessary, before the voter registration period deadline in California on July 8, 2016.

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CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court to deny Defendant's Motion for Judgment on the Pleadings, as Plaintiffs have sufficiently stated each of their claims for relief.

DATED: April 18, 2016

Respectfully submitted,

BARNES LAW

/s/ Robert E. Barnes
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