IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 16-15895

INDEPENDENT PARTY, and WILLIAM LUSSENHEIDE,

Plaintiff-Appellants,

v.

ALEJANDRO PADILLA, in his official capacity as Secretary of State of California,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Eastern California

Honorable Judge William B. Shubb Presiding

District Court No. 2:16-CV-00316-WBS-CKD

BRIEF OF PLAINTIFF-APPELLANTS

Robert E. Barnes (State Bar No. 235919)

601 South Figueroa Street, Suite 4050

Los Angeles, California 90017

Tel: (310) 510-6211/ Fax: (310) 510-6225

E-mail: robertbarnes@barneslawllp.com

Counsel for Plaintiff-Appellants

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I. STATEMENT OF JURISDICTION

(a) *District Court Jurisdiction*: The District Court had jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 1343(a), and 2201. The cause of action was based on 42 U.S.C. § 1983. Venue of the action was proper in the district pursuant to 28 U.S.C. § 1391(b)(2).

(b) *Appellate Jurisdiction*: This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

(c) *Timeliness of Appeal*: Plaintiff-Appellants' (Appellants') appeal is timely pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A). The Judgment was entered in this action on May 4, 2016. Appellants' Notice of Appeal was filed on May 17, 2016.

(d) *Appeal From Final Judgment*: This case is an appeal of a final judgment entered on May 4, 2016.

II. ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred by finding that the Secretary of State of California's decision to deny the Appellants' political body status because their name was too similar to that of an already existing political party, did not constitute a severe burden on Appellants' First Amendment rights, and therefore did not demand heightened scrutiny.

2. Whether the District Court erred by finding that the Appellants failed to establish that they were treated differently from similarly situated political groups in violation of the Equal Protection Clause of the Fourteenth Amendment.

IV. STATEMENT OF THE CASE

The Parties

Plaintiff-Appellant Independent Party (the "Party") is a political party headquartered in California that sought official political body status in order to participate in the upcoming 2016 Presidential general election with its own column on the official ballot for the general election. Plaintiff-Appellants' Excerpts of Record ("E.R.") 30. Official political body status was crucial for the Party because it would have allowed them to participate in the voter tallying established by California Elections Code Section 2187.

Participation in the voter tally was necessary for the Party to show that it had the support of approximately 60,000 voters, the approximate number required for any party wishing to obtain official political party status for the purposes of placing a candidate on the ballot for the 2016 Presidential election. E.R. 37.

Appellant William Lussenheide is a resident of California who wished to express and associate his support of the Independent Party by placing it on the California ballot for the upcoming Presidential election. E.R. 5.

Appellee Alejandro Padilla (the "Secretary") is the Secretary of State of California, and was 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.

Denial by the Appellee of the Independent Party's Political Body Status

On or about 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. E.R. 30. However, on or about March 26, 2015, Deirdre Avant from Voter Services replied to Mr. Deemer, stating that the official notice did not meet the requirements of Elections Code Section 5001 because the name "Independent Party" was too similar to the name of the existing party, "American Independent Party." *Id*. On or about May 8, 2015, the Party challenged in writing the Secretary'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. *Id*. Despite the clear precedent in the Party's favor, on or about July 14, 2015, the Secretary again denied the Party's request stating again that the proposed name "Independent Party" was too similar to that of the existing American Independent Party. *Id*. Nowhere in his response did the Secretary 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. *Id*. On or about July 27, 2015, the Party, through their counsel at the time, protested the Secretary's denial of its qualification as an official political body with a letter supported by examples and applicable case law, to which no

response was received. *Id*. On or about December 16, 2015, the Party, through its counsel, yet again protested the Secretary's continued denial of its status as an official political body, to which no response was ever received. *Id*.

Presently, because of the District Court's denial of the Party's Motion for a Preliminary Injunction, the Party will not be able to place its candidate on the ballot for the 2016 general election and is seeking a reversal of the District Court's judgment so that it may qualify for future elections.

Procedural History

On February 16, 2016, Appellants filed their Complaint for injunctive and declaratory relief alleging that the Secretary violated their First and Fourteenth Amendment rights by wrongfully applying California Elections Code Section 5001 and denying the Party official political body status because its name was purportedly too similar to that of an already existing political party, "American Independent Party." E.R. 70. The Complaint sought injunctive relief ordering the Secretary to accept the Party's application for political body status, and declaratory relief requesting that the lower District Court declare that the Secretary of State cannot deny political body status to an otherwise qualifying party merely because that

party shares a particular word in their name with another qualifying political party. *Id*. On or about March 14, 2016, the Secretary answered the Complaint and denied that the Appellants' rights had been violated. *Id*.

On or about March 15, 2016, Appellants filed their Motion for Preliminary Injunction due to the time sensitive nature of their requested relief. *Id*. Without immediate injunctive relief, the Appellants would have been prevented from participating in the California voter tally that took place on May 24, 2016, and therefore would have been unable to determine whether they needed more voters to register before the voter registration deadline on July 8, 2016. E.R. 37. In response to the Appellants' Motion, the Secretary filed a Motion for Judgment on the Pleadings on April 4, 2016. E.R. 70. Subsequently, each party filed their oppositions and replies on April 18, 2016, and April 25, 2016, respectively. *Id*. On or about May 2, 2016, the parties argued their cases before the Hon. William J. Shubb, and two days later, Judge Shubb entered his order denying the Appellant's Motion for Preliminary Injunction and granted the Secretary's Motion for Judgment on the Pleadings. E.R. 5. This appeal followed.

The Long History of the "Independent Party" in the United States

One of the reasons the Party was formed was 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." E.R. 7. California law formerly allowed independent candidates to have "independent" as their party label. Proposition 14 changed that and the state now forces these once ''independent'' candidates to have the ballot label "Party preference: none" on the primary and general election ballots. E.R. 6. If the Independent Party was recognized as a political body and was able to obtain a tally of its registered voters in time to become ballot-qualified, then candidates could register into it, and if they ran, their ballot label would state, "Party preference: Independent." E.R. 7.

This purpose, however practical, was not the sole motivation for forming the Party. In fact, 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. E.R. 31

Parties named "Independent Party" have qualified as parties in at least eleven states other than California over the course of the last fifty years. *Id*. 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. *Id*. 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. *Id*. 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. *Id*. In that case, 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. *Id*. In 2014, Hawaii

voters formed the Independent Party. *Id*. Its gubernatorial nominee polled 11.7% and it is still a ballot-qualified party today. *Id.* In 2008, Maryland voters formed the Independent Party. *Id*. Maryland's Independent Party nominated Ralph Nader for President in 2008, but today it is no longer ballot-qualified. *Id.* Also in 2008, New Mexico voters formed the Independent Party. *Id*. The New Mexico Independent Party also 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. E.R. 32. 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. *Id*. 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. *Id*. That state 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. *Id*. 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 *Id*. It polled 2.7% for Governor in 1962, and thus was also ballot-qualified in 1964, but then it went off the ballot. *Id*.

V. SUMMARY OF ARGUMENT

The judgment of the District Court severely undervalued the burden, and irreparable harm, placed on the Appellants' First and Fourteenth Amendment rights by the Secretary's wrongful application of California Election Code Section 5001. Conversely, the District Court overstated any potential confusion that could come from allowing the Party to register as a political body with the name of their choosing.

First, the Secretary'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. 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 Secretary has severely limited both it and its supporters' ability to express their political preferences, and to provide a viable alternative to the maligned two-party system.

Second, the Secretary's interest in avoiding electoral confusion and ensuring efficiency of the ballots does not outweigh the severe burden placed on the Appellants' 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 the Secretary alleges will result from the Party being placed on the ballot could be remedied by means that do not involve the violation of the Appellants' constitutional rights.

Third and finally, the Secretary's Motion for Judgment on the Pleadings and the District Court's judgment mischaracterized the Party's motivations behind choosing the name "Independent Party". In doing so, it incorrectly analogized this case to other ballot access cases wherein the plaintiffs were attempting to use the ballot as a means to convey a political message. Here, the Appellants are not attempting to use the ballot as a means to promote a political message; they merely sought to have the Party

recognized as a qualified political body under the name of their choosing. This, in turn, would have allowed for counties to tally the Party's registered voters to determine whether it had enough registered voters to become a qualified political party. Because they did not achieve qualified political body status, counties are not tallying the Party's registered voters, which in turn, has prevented the Party from even being able to see if it had the requisite support to become a qualified political party. Therefore, due to the Secretary's decision to deny the Independent Party qualified political body status under the name of its choosing, the Appellants will now be forced to falsely state on the ballot that they have no party preference, thus further violating their First Amendment rights.

Appellants request that this Court reverse the judgment of the District Court granting the Secretary's Motion for Judgment on the Pleadings.

VI. STANDARD OF REVIEW

"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.,* (9th Cir.1990) 896 F.2d 1542, 1550. 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,* (2009) 556 U.S. 662, 129 S.Ct. 1937, 1949–1952, 173 L.Ed.2d 868. 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*

A judgment on the pleadings is a decision on the merits, and this Court reviews it *de novo*. *Gen. Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, (9th Cir. 1989) 887 F.2d 228, 229.

VII. ARGUMENT

1. The *Anderson* Balancing Test Applies Here, and Tips In Favor of Appellants, As The Governmental Interests Claimed By The State Do Not Justify The Injuries To Appellants' 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*, (1992) 502 US 279, 288 (quoting *Anderson v. Celebrezze* (1983) 460 U.S. 780).

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 Appellants' favor because the Secretary's refusal to allow the Appellants 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 Secretary has failed to demonstrate a compelling governmental interest to justify said injury. In his Motion for Judgment on the Pleadings, the Secretary offered 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 Secretary asserted 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, the Secretary has offered no evidence that this problem has already occurred in relation to the currently registered "American Independent Party." In reality, the Secretary could easily remedy this potential issue by simply changing the label designating presidential candidates nominated by petition to read "independent candidate." E.R. 47. Alternatively, the Secretary 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." *Id*. "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, the Secretary'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. E.R. 45 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*. Evidently, 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 Secretary has failed to show the existence of a compelling governmental interest that

justifies the violation of the Appellants' First and Fourteenth Amendment rights in the present case.

2. Appellants' First And Fourteenth Amendment Rights Are Severely Burdened By The Secretary'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*, (11th Cir. 1994) 13 F.3d 388 (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*, (9th Cir. 2002) 308 F.3d 1008, 1015. 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*, (1976) 427 U.S. 347, 373-74 (citing *New York Times Co. v. United States*, (1971) 403 U.S. 713).

A. The Secretary's Refusal To Register The Party As A Qualified Political Body Under Its Chosen Name Significantly Limits The Party's Speech And Impairs Its Access To The Ballot, And Thus Severely Burdens the Party's Rights To Freedom Of Speech and Freedom Of Association, And Lussenheide's Right To Vote.

Enshrined in the First and Fourteenth Amendments is one's right to associate with like-minded individuals for the advancement of their shared beliefs. In his Motion for Judgment on the Pleadings, the Secretary attempted to sideline these important Constitutional concepts by claiming that the Appellants have "no particular political ideology." E.R. 61. Contrary to the this assertion, the Appellants 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. E.R. 43. By refusing to allow the Party to register as a qualified political body under the name of its choosing, the Secretary is

acting in direct contravention of the Appellants' 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*, (2000) 530 U.S. 567. 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*, (1968) 393 U.S. 23, 30. 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*, (1974) 415 U.S. 709, 716.

"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*, (1973) 414 U.S. 51, 56-57. "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, (1981) 450 U.S. 107, 122.

By limiting the choices available to voters, the State impairs the voters' ability to express their political preferences. As the Supreme Court held in yet 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 v. Socialist Workers Party*, (1979) 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*, (9th Cir. 2008) 531 F.3d 1028. Thus, "even when pursuing a legitimate interest, a state may not choose means that unnecessarily restrict constitutionally protected liberty." *Kusper v. Pontikes*, (1973) 414 U.S. 51, 59.

Here, the Secretary's wrongful application of Cal. Elections Code Section 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, violated not only the Party's First Amendment right to associate for the advancement of its closely held

political beliefs, but also denied its supporters, such as Mr. Lussenheide, their right to cast their supporting votes effectively in the upcoming Presidential election.

Furthermore, the Secretary and the lower District Court incorrectly analogized the facts of *Chamness v. Bowen* and *Timmons v. Twin Cities Area New Party* to the facts of this case to support the proposition that the burden on the Appellants' rights is only "slight," and that the prohibition against a primary election candidate designating himself as "Independent" was held to be viewpoint neutral. E.R. 9, 61. However, *Chamness* and *Timmons* both involved a completely different factual situations 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*, (9th Cir. 2013) 722 F.3d 1110, 1116. 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. Likewise, in

Timmons, the plaintiff, a chapter of the New Party, was attempting to use the ballot to communicate to the public its support for a particular candidate who was already another party's candidate. *Timmons v. Twin Cities Area New Party*, (1997) 520 U.S. 351, 358. The Supreme Court in *Timmons* found that Minnesota's law prohibiting a candidate from appearing on the ballot as the candidate of more than one party did not impose a severe burden because the plaintiff and its members were still free to communicate ideas to voters and candidates by campaigning, endorsing, supporting, or voting for their preferred candidate. *Id* at 363-4.

In the present case, the Appellants were not attempting to use the ballot as a means to promote a political message; they merely sought to have the Party recognized as a qualified political body under the name of their choosing. This, in turn, would have allowed for counties to tally the Party's registered voters to determine whether it had enough registered voters to become a qualified political party. As noted in *Chamness*, that case was not a discussion of qualified political parties. *Chamness*, at fn 5. Because they did not achieve qualified political body status, counties are not tallying the Party's registered voters, which in turn, has prevented the Party from even being able to see if it had the requisite support to become a

qualified political party. Therefore, due to Secretary's decision to deny the Independent Party qualified political body status under the name of its choosing, the Appellants will now be forced to falsely state on the ballot that they have no party preference, thus further violating their First Amendment rights.

B. Appellants' Equal Protection Rights Are Being Violated, As The Secretary's Denial Of The Use Of The Name "Independent Party" Amounts To Unlawful Discrimination Protected By The U. S. Constitution.

The Equal Protection Clause of the Fourteenth Amendment 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." U.S. Const. amend. XIV.

The Equal Protection Clause 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 limit the voter's freedom of choice, the effectiveness of a right to vote is substantially impaired.

The Supreme Court noted 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 794-5. 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*, (1896) 114 Cal. 480; *Riddell v. National Democratic Party*, (5th Cir. 1975) 508 F.2d 770; *Scofied v. Kiffmeyer*, (2000) 620 N.W.2d 24; *Freedom Socialist Party v. Bradbury*, (2002) 48 P.3d 199; E.R. 45. 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.

VIII. CONCLUSION

For the forgoing reasons, the Plaintiff-Appellants respectfully request that the Court reverse the District Court's Order granting the Secretary's Motion for Judgment on the Pleadings.

Dated this 25th day of August, 2016.

/s/ Robert E. Barnes
Robert E. Barnes, Barnes Law
Counsel for Plaintiff-Appellants

STATEMENT OF RELATED CASES PURSUANT TO NINTH CIRCUIT RULE 28-2.6

Appellants are unaware of any pending related cases before this Court as defined in Ninth Circuit Rule 28-2.6.

Dated this 25th day of August, 2016.

/s/ Robert E. Barnes
Robert E. Barnes, Barnes Law
Counsel for Plaintiff-Appellants

CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure, Rule 32(a)(7)(C), that the attached BRIEF OF PLAINTIFF-APPELLANTS:

(1) complies with Federal Rule of Appellate Procedure, Rule 32(a)(7)(B) because it contains 5,188 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure, Rule 32(a)(7)(B)(iii); and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure, Rule 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure, Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011, in 14-point Book Antiqua font.

Dated this 25th day of August, 2016.

/s/ Robert E. Barnes
Robert E. Barnes, Barnes Law
Counsel for Plaintiff-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit through the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated this 25th day of August, 2016.

/s/ Robert E. Barnes
Robert E. Barnes, Barnes Law
Counsel for Plaintiff-Appellants