

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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|----|----------------------------------|---|-------------------------------------|
| 7 | Robert RAYMOND, |) | 2:12-cv-02215-GEB-EFB and |
| | |) | related cases: |
| 8 | Plaintiff, |) | 2:12-cv-02217-GEB-EFB |
| | |) | 2:12-cv-02219-GEB-EFB |
| 9 | v. |) | 1:12-cv-01407-GEB-EFB |
| | |) | 1:12-cv-01408-GEB-EFB |
| 10 | Barbara HOWARD, Sheldon D. |) | 1:12-cv-01412-GEB-EFB |
| | Johnson, Jim McCauley, Kammi |) | 2:12-cv-02220-GEB-EFB |
| 11 | Foote, Lee Lundigran, Ken Baird, |) | 2:12-cv-02221-GEB-EFB |
| | Sheryl Thur, Austin Erdman, |) | 2:12-cv-02222-GEB-EFB |
| 12 | Kathy Darling Allen, Beverly |) | 2:12-cv-02223-GEB-EFB |
| | Ross, Freddie Oakley, and |) | 2:12-cv-02225-GEB-EFB |
| 13 | Kathleen Williams, |) | 2:12-cv-02259-GEB-EFB |
| | |) | |
| 14 | Defendants. |) | <u>ORDER DENYING EACH MOVANT'S</u> |
| | |) | <u>MOTION FOR COMPULSORY</u> |
| 15 | |) | <u>JOINDER; ORDER TO SHOW CAUSE</u> |
| | |) | <u>WHY RELATED ACTIONS SHOULD</u> |
| 16 | |) | <u>NOT BE STAYED</u> |
| | |) | |
| 17 | _____ |) | |

18 Defendants Howard, Johnson, McCauley, Foote, Lundigran, Thur,
19 Erdman, Allen, Ross, Oakley, and Williams (hereinafter "Defendants")
20 each move to compel the joinder of the California Secretary of State
21 ("Secretary") and California Attorney General ("Attorney General") as
22 defendants. Each movant argues these state officers are required parties
23 under Federal Rule of Civil Procedure ("Rule") 19. Plaintiff opposes
24 each motion, arguing compulsory joinder is inappropriate because "the
25 state non-party defendants refuse to join the action, have not requested
26 joinder, and . . . the present parties can adequately represent the
27 interest of the state" (E.g., Pl.'s Opp'n to Def. Williams' Mot.

1 for Compulsory Joinder, Raymond v. Williams, No. 2:12-cv-02259, at
2 1:25-28, ECF No. 16.)

3 **I. BACKGROUND**

4 Plaintiff seeks, in each related case, declaratory and
5 injunctive relief against various county clerk-registrars to prevent
6 them from enforcing certain California election laws that preclude non-
7 residents from circulating state initiative petitions. An order issued
8 in each case, certifying under 28 U.S.C. § 2403(b) that Plaintiff is
9 challenging the constitutionality of state statutes. The Attorney
10 General was served a copy of the certifications, and the hearing on each
11 Defendant's joinder motion was continued since it was unclear whether
12 the Attorney General would elect to intervene. The Attorney General did
13 not intervene within the time period anticipated in that order.

14 **II. LEGAL STANDARD**

15 "Federal Rule of Civil Procedure 19 governs compulsory party
16 joinder in federal district courts." E.E.O.C. v. Peabody W. Coal Co.,
17 610 F.3d 1070, 1077 (9th Cir. 2010).

18 Rule 19 provides in relevant part¹:

19 **(a) Persons Required to Be Joined if Feasible.**

20 **(1) Required Party.** A person who is
21 subject to service of process and
22 whose joinder will not deprive the
23 court of subject-matter jurisdiction
24 must be joined as a party if:

23 **(A)** in that person's absence, the
24 court cannot accord complete
25 relief among existing parties;
26 or

26 ¹ Rule 19 was revised in 2007, and the "Rules Committee advised
27 the changes were stylistic only [T]he word 'required' replaced
28 the word 'necessary' in [Rule 19](a)." Republic of Phil. v. Pimentel,
553 U.S. 851, 855 (2008). Therefore, the terms "required" and
"necessary" are used interchangeably in this order.

1
2 (B) that person claims an interest
3 relating to the subject of the
4 action and is so situated that
5 disposing of the action in the
6 person's absence may:

7 (i) as a practical matter
8 impair or impede the
9 person's ability to
10 protect the interest; or

11 (ii) leave an existing party
12 subject to a substantial
13 risk of incurring double,
14 multiple, or otherwise
15 inconsistent obligations
16 because of the interest.

17 (2) **Joinder by Court Order.** If a person
18 has not been joined as required, the
19 court must order that the person be
20 made a party. A person who refuses
21 to join as a plaintiff may be made
22 either a defendant or, in a proper
23 case, an involuntary plaintiff.

24

25 (b) **When Joinder Is Not Feasible.** If a person
26 who is required to be joined if feasible
27 cannot be joined, the court must
28 determine whether, in equity and good
conscience, the action should proceed
among the existing parties or should be
dismissed. . . .

29 "A Rule 19 motion poses three successive inquiries." Peabody
30 W. Coal, Co., 610 F.3d at 1078 (internal quotation marks omitted).

31 First, the court must determine whether a
32 nonparty should be joined under Rule 19(a). That
33 nonparty (or "absentee") is now referred to as a
34 "person required to be joined if feasible." If an
35 absentee meets the requirements of Rule 19(a), the
36 second stage is for the court to determine whether
37 it is feasible to order that the absentee be
38 joined. Finally, if joinder is not feasible, the
court must determine at the third stage whether the
case can proceed without the absentee or whether
the action must be dismissed.

39 Id. (internal quotation marks and citations omitted).

1 matter[s] would impair or impede the Secretary's ability to protect
2 enforcement of the Elections Code should Plaintiff reach stipulated
3 settlements in th[ese] matter[s], or choose not to enforce the Elections
4 Code," and "[t]he California Attorney General likewise has weighty
5 interests at stake, and is no less necessary for its resolution." (Mot.
6 7:6-9.) Plaintiff counters that the fact that "[n]either non-party
7 government [official] expressed any interest in joining th[ese] case[s],
8 [is] itself sufficient for denial of the motions for compulsory
9 joinder." (Opp'n 4:25-27.)

10 Third, Defendants assert that in the absence of the Secretary
11 and Attorney General, Defendants will be subject to a substantial risk
12 of multiple or inconsistent obligations. Specifically, Defendants
13 contend: "If all or some of the Defendants in th[ese] matter[s] reach a
14 settlement with Plaintiff in which they agree not to enforce the laws in
15 question, then the Secretary . . . or Attorney General may use their
16 enforcement powers to require Defendants to enforce those law [in
17 violation of] any such resolution." (Mot. at 8:9-11 (citing People ex
18 rel. Lockyer v. Cnty. of Santa Cruz, 416 F. Supp. 2d 797 (N.D. Cal.
19 2006)).) Plaintiff rejoins that this argument "speculates on future
20 events without any actual evidence of any intention by the non-party and
21 unwilling government officials] to take any action" (Id. at
22 5:10-19 (citing Dawavendewa v. Salt River Project Agric. & Power Dist.,
23 276 F.3d 1150, 1155 n.5 (9th Cir. 2002)).)

24 "There is no precise formula for determining whether a
25 particular nonparty should be joined under Rule 19(a)." Bakia v. L.A.
26 Cnty., 687 F.2d 299, 301 (9th Cir. 1982). "The determination is heavily
27 influenced by the facts and circumstances of each case." Id.
28 Considerations "include plaintiff's right to decide whom he shall sue,

1 avoiding multiple litigation, providing the parties with complete and
2 effective relief in a single action, protecting the absentee, and
3 fairness to the [moving] party.” Id.

4 Plaintiff’s right to decide whom to sue weighs against
5 compelling joinder, since Plaintiff opposes joinder and asserts that he
6 does not seek relief from the Secretary or the Attorney General.

7 Nor have the Defendants shown that the factor concerning
8 avoiding multiple litigation favors compelling joinder, in light of
9 Defendant Jim McCauley’s request for judicial notice filed in Case No.
10 12-cv-2219 on February 15, 2013, which is granted. Attached to that
11 judicial notice request are cases evincing that multiple other lawsuits
12 are pending on the same California election laws at issue in these
13 related cases. Specifically, the same California election laws are the
14 subject of pending litigation in the Central District of California case
15 captioned Libertarian Party of L.A. Cnty. v. Bowen, Case No. 11-55316
16 (2011) (“Libertarian Party”). The Secretary is a party in Libertarian
17 Party, and is represented by the Attorney General. The judicially
18 noticed documents also show that Plaintiff is seeking the identical
19 relief sought in these related cases in several pending cases in the
20 Northern District of California. See Raymond v. Arntz, Case No. CV-12-
21 4472 JCS (N.D. Cal.).

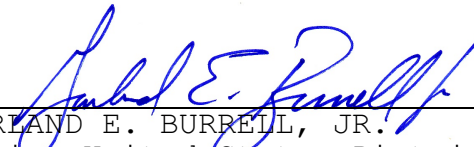
22 Further, the movants have not shown that the factor concerning
23 protection of the absent California officials favors joinder. Those
24 officials are currently litigating the constitutionality of the same
25 California Election laws involved in these related case in Libertarian
26 Party, and the Ninth Circuit recently issued a decision reversing and
27 remanding a matter to the district court in that case. See Libertarian
28 Party of L.A. Cnty. v. Bowen, 709 F.3d 867 (9th Cir. 2013). Since the

1 Secretary, represented by the Attorney General, is defending against the
2 same constitutional claims involved here in Libertarian, the movants
3 have not shown that their absence from these actions would impair or
4 impede their interests.

5 Defendants' contention that absent joinder, they risk the
6 threat of inconsistent obligations weighs in favor of joinder; some
7 Defendants could reach a settlement with Plaintiff that is contrary the
8 position of the Secretary, and the Attorney General could then use her
9 enforcement powers to require Defendants to enforce the subject election
10 laws as the Secretary opines they should be enforced. However, this
11 factor does not cause the balance of all factors to favor joinder at
12 this stage of the proceeding.

13 For the stated reasons, each Defendant's motion for compulsory
14 joinder is DENIED. However, since California is currently litigating the
15 constitutionality of the same election laws that are at issue in these
16 related cases through its Secretary and Attorney General in Libertarian
17 Party, each party shall show cause in a filing due no later than May 20,
18 2013, why all of the above-captioned related cases should not be stayed
19 until a decision is issued in Libertarian Party.

20 Dated: May 3, 2013

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GARLAND E. BURRELL, JR.
Senior United States District Judge