

GAUTAM DUTTA, Attorney-at-Law

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April 7, 2011

## Via Hand Delivery

The Honorable William R. McGuiness  
California Court of Appeal, First Appellate District, Division 3  
350 McAllister Street  
San Francisco, CA 94102-4712

Re: Request to File Amicus Letter in Support of Appellants  
(*Field v. Bowen*, Case No. A129946)

Dear Presiding Justice McGuiness and Associate Justices:

We respectfully ask the Court's permission to file this amicus letter on behalf of our client Linda Hall, a registered voter in Assembly District 4. In a nutshell, Ms. Hall seeks to defend her right to cast a write-in vote that will be counted in the May 3, 2011 special general election for Assembly District 4 (the "AD 4 Election").

We ask the Court to rule in favor of all Appellants, because this case will have a major impact on the rights of write-in candidates and the voters who seek to support them. Because this right is a matter of great "public concern", the Court may exercise "great liberality" in admitting this amicus letter.<sup>1</sup>

We wish to underscore one critical point on which both the Secretary of State and Appellants agree. Namely, Senate Bill 6 ("SB 6") allows voters to cast write-in votes, but then *bans those votes from being counted*.<sup>2</sup>

This subject is no abstract issue to Ms. Hall: in a matter of days, she and similarly situated voters in Assembly District 4 could be disenfranchised. Voters began casting vote-by-mail ballots in the AD 4 Election on April 4, 2011.

Significantly, the sample ballot (attached as Exhibit 1) allows voters to vote for a write-in candidate, *but does not warn them of the consequences of voting for a write-in candidate*. Namely, if they vote for a write-in candidate, their vote will not be counted.

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<sup>1</sup> 3B C.J.S. Amicus Curiae §3; *see also State v. Medicine Bird Black Bear White Eagle* (Tenn.Ct.App. 2001) 63 S.W.3d 734; 4 Am.Jur.2d Amicus Curiae §3.

<sup>2</sup> As the Chief of the Secretary of State's Elections Division (the "Elections Chief") recently made clear, SB 6-amended Elections Code §§13207(a) and 13212 mandate that all general-election ballots provide "blank space below the names of qualified candidates" so that voters may write in the names of write-in candidates. Declaration of Linda Hall, Exh. 2.

Furthermore, the Elections Chief has also made it clear that SB 6 bans elections officials from counting all write-in votes that are cast in general elections: "[C]onsistent with [SB-6 amended Elections Code] 8606, any name that is written on the ballot as a *write-in candidate* at the general election ... *shall not be counted*." *Id.* Exh. 2 (emphases added).

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Simply put, SB 6 has put Ms. Hall in a dilemma. She seeks to cast a vote for a write-in candidate, and have her vote counted.³ But if she does vote for a write-in candidate, her vote will not be counted. Ms. Hall has not yet decided how she will vote in the AD 4 Election.⁴

For these reasons, we respectfully ask the Court for permission to file this amicus letter. Please feel free to contact me at 415.236.2048 if we may be of any further assistance.

Sincerely,

Gautam Dutta, Esq.

Attachments: Declaration of Linda Hall
Sample Ballot for Assembly District 4 General Election (Exhibit 1)
Mar. 17, 2011 Memorandum from Secretary of State's Office to Registrars
(Exhibit 2)
Placer County's Voter Information Pamphlet for the May 3, 2011 Special
General Election in Assembly District 4 (Exhibit 3)

³ Apr. 6, 2011 Declaration of Linda Hall ¶ 2.

⁴ *Id.* ¶ 5.

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## SERVICE LIST

On penalty of perjury under the laws of the State of California, I attest the following:

I am over 18 years of age and am not a party in this matter. On Apr. 7, 2011, I served the following documents: (1) Request to File Amicus Letter in Support of Appellants, and (2) Declaration of Linda Hall in Support of Request to File Amicus Letter.

I sent the aforementioned document(s) via U.S. Mail, in a sealed envelope with the postage fully prepaid, to the following individuals:

A. Mark Beckington, Esq., Office of the Attorney General,  
300 South Spring St., Ste. 1702, Los Angeles, CA 90013; 213.897.1096  
(counsel for Respondent Bowen).

B. Steve Mitra, Esq., Office of Santa Clara County Counsel,  
70 W. Hedding St., 9<sup>th</sup> Floor, East Wing, San Jose, CA 95110;  
408.299.5916 (counsel for Respondent Durazo).

C. Raymond Lara, Esq., Office of Alameda County Counsel,  
1221 Oak St., Ste. 450, Oakland, CA 94612; 510.272.6700 (counsel for  
Respondent Macdonald).

D. Mollie Lee, Esq., Office of the San Francisco City  
Attorney, 1 Dr. Carlton B. Goodlet Place, Ste. 234, San Francisco, CA  
94102; 415.554.4705 (counsel for Respondent Artnz).

E. Wendy J. Phillips, Esq., Office of Orange County Counsel,  
333 W. Santa Ana Blvd., Ste. 407, Santa Ana, CA 92702; 714.834.6298  
(counsel for Respondent Kelley).

F. Kathleen Taylor, Esq., Office of Tulare County Counsel,  
2900 W. Burrell St., Visalia, CA 93291; 559.636.4950 (counsel for  
Respondent Woodard).

G. Brandi Moore, Esq., Office of Los Angeles County  
Counsel, 500 W. Temple St., Rm. 648, Los Angeles, CA 90012;  
213.974.1895 (counsel for Respondent Logan).

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H. Marguerite Mary Leoni, Esq., Nielsen Merksamer, 2350
Kerner Blvd., Ste. 250, San Rafael, CA 94901; 415.389.6800 (counsel for
Intervenors-Respondents).

I. The Honorable Loretta Giorgi, Superior Court for the
County of San Francisco, Dept. 302, 400 McAllister St., San Francisco,
CA 94102; 415.551.3723.

I hereby attest that the foregoing statement is true and accurate to the best of my
knowledge.

By: _____
Gautam Dutta, Esq.