

GAUTAM DUTTA, Attorney-at-Law

39270 Paseo Padre Pkwy. # 206 • Fremont, CA 94538 • 415.236.2048 • 213.405.2416 fax

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August 19, 2011

## Via U.S. Mail

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

Re: Field v. Bowen (Case No. A129946)  
*Notice of Newly Decided Authority*

Dear Presiding Justice McGuiness and Associate Justices:

We represent Appellants in the case captioned above. We wish to provide a brief update on the status of *Chamness v. Bowen*,<sup>1</sup> the federal case that challenges the as-applied constitutionality of Senate Bill 6's Party Preference Ban and Vote Counting Ban.

Yesterday afternoon, the Ninth Circuit issued an order<sup>2</sup> in which it took judicial notice of the following documents:

1. A document containing official correspondence, dated August 3, 2010 and August 11, 2010, between the offices of Secretary of State Debra Bowen and then-Lieutenant Governor and now-Intervenor Abel Maldonado.<sup>3</sup> Earlier, the U.S. District Court had expressly declined to take judicial notice of this correspondence.<sup>4</sup>

In that correspondence (which has been extensively briefed by Appellants Mona Field et al.),<sup>5</sup> Secretary Bowen's office told the then-Lieutenant Governor Abel Maldonado's office that SB 6 would (a) *trick candidates* into believing they could run as write-in candidates, (b) *trick voters* into believing they could cast a write-in vote, and (c) *harm minor-party candidates* by impermissibly banning them from stating on the ballot that they are "Independent":

Since ... SB 6 precludes [write-in] votes from being counted, it *makes no sense* to give candidates the illusion that they can run as

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<sup>1</sup> *Michael Chamness et al. v. Debra Bowen et al.*, No. 11-CV-01479 (C.D. Cal., filed Feb. 17, 2011); *Michael Chamness et al. v. Abel Maldonado et al.*, No. 11-56303 (9<sup>th</sup> Cir., filed Aug. 1, 2011).

<sup>2</sup> A copy of the Ninth Circuit's Aug. 18, 2011 order has been attached as Exhibit 1 to this letter.

<sup>3</sup> Exhibit 72 to Julius Galacki's Aug. 5, 2011 Request for Judicial Notice, *attached as* Exhibit 2 to this letter.

<sup>4</sup> U.S. District Court's Mar. 30, 2011 order denying Michael Chamness' Motion for Preliminary Injunction, *Chamness, supra*, No. 11-CV-01479, at 8-9, filed with this Court on Apr. 1, 2011.

<sup>5</sup> *See, e.g.*, Appellants' Jan. 10, 2011 Opening Brief, at 60-61 & 30-31.

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a write-in or give voters the illusion that they can write in a candidate's name and have it counted. Making these conforming changes is only controversial because *there is a lawsuit on this issue* that essentially states "SB 6 says don't count the votes, so it's *misleading to let people think they can write in a candidate's name and have it counted.*"⁶

2. Aug. 15, 2011 letter sent by the California Citizens Redistricting Commission to Secretary of State Debra Bowen.⁷
3. Linda Hall's Request to File an Amicus Letter, which was filed with this Court on April 7, 2011.⁸
4. This Court's April 18, 2011 denial of Linda Hall's Request to File an Amicus Letter.⁹

We will keep you apprised of future developments in *Chamness v. Bowen*. Thank you for your time and attention.

Sincerely,

Gautam Dutta, Esq.

Enclosures

⁶ Emphases added; *see also supra* note 5.

⁷ Exhibit 1 to Appellant Julius Galacki's Aug. 18, 2011 Request for Judicial Notice, *attached as* Exhibit 3 to this letter.

⁸ Exhibit 71 to Julius Galacki's Aug. 5, 2011 Request for Judicial Notice, *attached as* Exhibit 2 to this letter.

⁹ Exhibit 69 to Julius Galacki's Aug. 5, 2011 Request for Judicial Notice, *attached as* Exhibit 2 to this letter.

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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 Aug. 22, 2011, I served the following documents: Appellants' Letter to the Court of Appeal. 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 Artzn).

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).

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