

California Court of Appeal, First Appellate District, Division 3

MONA FIELD, RICHARD
WINGER, STEPHEN A.
CHESSIN, JENNIFER
WOZNIAK, JEFF
MACKLER, and RODNEY
MARTIN,

Appellants,

vs.

DEBRA BOWEN, et al.,

Respondents;

ABEL MALDONADO, et al.;

Intervenors-Respondents;

CASE NO. A129946

**NOTICE OF NEWLY AMENDED
BILL TO AMEND THE TOP
TWO PRIMARY'S
IMPLEMENTING STATUTE**

[Arising from the denial of
Petitioner's Motion for Preliminary
Injunction on Oct. 5, 2010 by Hon.
Charlotte Walter Woolard, Dept. 302,
Superior Court for the County of San
Francisco (Civic Center), 400
McAllister St., San Francisco, CA
94102; 415.551.3723; Case No. CGC-
10-502018]

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Attorney for Appellants

TO THE COURT AND ALL PARTIES OF RECORD:

Please take notice that, on September 2, 2011, Assembly Bill 1413 (Fong) was gutted and amended on the floor of the State Senate.¹

If enacted, the newly amended version of AB 1413 (“AB 1413”) would amend the Top Two Primary’s implementing statute (Senate Bill 6) in at least two important ways.

First, unlike Senate Bill 6, AB 1413 bans write-in votes from being cast in every general election. Toward that end, AB 1413 amends Elections Code §15340 (which currently gives every voter the right to cast a write-in vote in “any” election), Elections Code §13207(a)(2) (which currently requires that voters be allowed to cast write-in votes in every election), and SB 6-amended Elections Code §8606 (which currently *bans write-in votes that have been cast from being counted* in every general election).

Like SB 6, AB 1413 also bans minor-party candidates (e.g., candidates from the Tea Party or Reform Party) for state and federal² office from using the ballot label of “Independent”. However, AB 1413 amends SB 6 in one aspect. Instead of forcing minor-party candidates to falsely state on the ballot that they have “No Party Preference”, AB 1413 forces them to falsely state that they have the

¹ The newly amended version of AB 1413 (Fong) has been attached as Exhibit 1, and may be accessed online at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1401-1450/ab_1413_bill_20110902_amended_sen_v97.pdf (*last visited* Sept. 6, 2011).

² This ban against using the “Independent” ballot label does not apply to candidates for President or Vice President. SB 6-amended Elections Code §13105(c); AB 1413 Pt. 13105(c).

following party preference: “Preference: None Selected”. Toward that end, AB 1413 repeals SB 6-amended Elections Code §325, and amends SB 6-amended Elections Code §13105(a).

Two recently published authorities may also be relevant to this case: *Dudum v. Arntz*, 640 F.3d 1098, 1108, 1114 (9th Cir. 2011); Joseph Fishkin, *Voting as a Positive Right: A Reply to Flanders*, 28 ALASKA L.R. 29, 31.

Respectfully submitted,

Sept. 6, 2011

GAUTAM DUTTA

By: _____

Gautam Dutta

Attorney for Appellants

PROOF OF SERVICE

I, Gautam Dutta, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action.

On Sept. 6, 2011, I served the following document(s):

(1) Notice of Newly Amended Bill to Amend the Top Two Primary's
Implementing Statute

on the following persons at the locations specified:

A. Mark Beckington, Esq., Office of the Attorney General, 300 South Spring St., Suite 1702, Los Angeles, CA 90013; 213.879.1096 (attorney for Respondent Bowen).

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

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

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

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

G. Brandi Moore, Esq., Office of Los Angeles County Counsel, 500 W. Temple St., Rm. 648, Los Angeles, CA 90012-2713; 213.974.1895 (attorney for Respondent Logan).

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

I. The Honorable Loretta Giorgi, Department 302, San Francisco County Superior Court, 400 McAllister St., San Francisco, CA 94102.

Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelopes and placed them, postage prepaid, for collection and mailing with the U.S. Postal Service; and also served those copies electronically to the individuals listed above. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed Sept. 6, 2011, in Fremont, California.

Gautam Dutta