



DEBRA BOWEN | SECRETARY OF STATE | STATE OF CALIFORNIA
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March 2, 2011

By E-Mail

Gautam Dutta
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Dear Mr. Dutta:

I am responding to your letter dated February 27, 2011, concerning your views on the effect of Senate Bill 6, Chapter 1, Statutes of 2009, on write-in candidacy and write-in voting in special general elections to fill vacancies in the State Assembly, State Senate and United States House of Representatives, as well as your request that the Secretary of State ignore selected provisions of the California Elections Code.

First, your assertion that the Secretary Of State website "states that write-in candidates will be banned from qualifying for the general election" is inaccurate. To support your assertion, you selectively quote the following sentence from the website: "Write-in candidates can only run in the primary election." As you are aware, the very next sentence on the website states: "A write-in candidate from the primary election is eligible to run/have his or her name on the ballot in the general election if that candidate is one of the top two vote getters at the primary election. (Elections Code § 8605.)" Thus, there is no ban on write-in candidates qualifying for the general election. Any candidate for office, including your client, Mr. Daniel Frederick, can qualify to appear on the ballot in the general election by being one of the top two vote getters at the primary election.

Second, you assert that Elections Code section 8606, enacted as part of Senate Bill 6, is unconstitutional. To support your claim, you rely upon comments made by a staff member regarding potential cleanup legislation to Senate Bill 6. As you know, neither proposals to amend a statute or comments regarding such proposals are evidence that the statute is unconstitutional.

Finally, you ask Secretary of State Bowen, as California's chief elections officer, to disregard selected statutory requirements contained in Senate Bill 6, which was passed by the Legislature, signed by the Governor, and took effect on January 1, 2011, following voter approval of Proposition 14, the Top Two Candidates Open Primary Act, in June 2010. The Secretary of State has no intention of disregarding the California Constitution's requirement to uphold the provisions of Senate Bill 6 or any other provision of law. Article 3, Section 3.5 of the California Constitution provides:

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An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

- (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
- (b) To declare a statute unconstitutional;
- (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

Thank you for your letter. If you wish to discuss this matter further, please contact me at (916) 653-7244.



Lowell Finley
Chief Counsel
Office of the Secretary of State