

GAUTAM DUTTA, Attorney-at-Law

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February 27, 2011

Via U.S. Mail & Electronic Mail

The Honorable Debra Bowen  
California Secretary of State  
Attn: Lowell Finley, Esq., Chief Counsel  
1500 Eleventh Street, Sixth Floor  
Sacramento, CA 95814

Re: Threat to the Fundamental Right to Have All Votes Counted

Dear Secretary of State Bowen:

Our firm represents registered voters who live in Assembly District 4, in which a special primary election will be held on March 8, 2011. Should the race for Assembly District 4 require a special general (runoff) election, our clients' fundamental rights will be threatened with irreparable harm for two reasons: (1) write-in candidates will be banned from qualifying for the general election, and (2) all votes cast for write-in candidates in the general election will *be thrown away*.

As you know, Section 8601 of the Elections Code currently allows write-in candidates to run for state and federal office, as long as they file nomination papers within 14 days of the date of the election. However, your website now states that write-in candidates will be banned from qualifying for the general election: "Write-in candidates can only run in the primary election."<sup>1</sup>

One of our clients, Daniel Frederick, seeks to run as a write-in candidate if a special general election is held for Assembly District 4. Another client, Rich Wilson, seeks to vote for Mr. Frederick if that election is held. However, according to your website, Mr. Frederick *will be banned from qualifying as a write-in candidate* in the general election.

Equally troubling, Senate Bill 6 (a state law that took effect on January 1, 2011) has imposed an unconstitutional Vote Counting Ban. Specifically, Part 8606 of Senate Bill 6 *bans write-in votes from being counted* in the general election:

A person whose name has been written on the ballot as a *write-in candidate* at the general election ... *shall not be counted*.<sup>2</sup>

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<sup>1</sup> <http://www.sos.ca.gov/elections/Special/ad04/qualifications-requirements.pdf>, p.5 n.3 (last visited Feb. 27, 2011).

<sup>2</sup> Part 8606 of Senate Bill 6, which has been codified as Elections Code Section 8606 (emphases added).

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In other words, if a voter casts a ballot for a write-in candidate in any general election for state or federal office, *his or her vote will be thrown away*. As your own staff conceded last year, SB 6's Vote Counting Ban (1) gives "candidates the illusion that they can run as a write-in" and (2) gives "voters the illusion that they can write in a candidate's name and have [their votes] counted." Needless to say, the Vote Counting Ban brazenly violates our constitutionally protected rights.

Because you are the State's Chief Elections Officer, we ask you to (1) declare that Mr. Frederick and all other write-in candidates will be allowed to run in every general election for state and federal office, and (2) stop SB 6's Vote Counting Ban from being enforced in all future state and federal elections, including the likely special general election in Assembly District 4.

Should the race for Assembly District 4 require a special general election, our clients will take all necessary steps to defend and vindicate their fundamental rights.

We would welcome the opportunity to discuss this important matter with you. Please do not hesitate to call me at 415.236.2048 at your earliest convenience. Thank you for your time and attention. We look forward to hearing from you.

Sincerely,

Gautam Dutta

Gautam Dutta, Esq.