

1 GAUTAM DUTTA, ESQ. (State Bar No. 199326)
2 39270 Paseo Padre Parkway # 206
3 Fremont, CA 94538
4 Telephone: 415.236.2048
5 Email: Dutta@BusinessandElectionLaw.com
6 Fax: 213.405.2416

7 Attorney for Plaintiffs

8 MICHAEL CHAMNESS, DANIEL FREDERICK,
9 and RICH WILSON

10
11 IN THE UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 MICHAEL CHAMNESS, DANIEL
14 FREDERICK, and RICH WILSON,

15 *Plaintiffs,*

16 vs.

17 DEBRA BOWEN, in only her
18 official capacity as California
19 Secretary of State; DEAN LOGAN,
20 in only his official capacity as
21 Registrar-Recorder / County Clerk of
22 the County of Los Angeles; and
23 DOES 1-10;

24 *Defendants.*

CASE NO. 2:11-CV-01479 ODW
(FFMx)

DECLARATION OF RICH WILSON
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

HEARING DATE: June 6, 2011
HEARING TIME: 1:30 pm
JUDGE: Hon. Otis D. Wright

II
COURTROOM: II_

25 I, Rich Wilson, declare as follows:

26 1. I live and pay taxes in Placer County. I am registered to vote in
27 Assembly District 4.

28 2. I am a Plaintiff in this case.

3. Today, Plaintiff Michael Chamness, Plaintiff Daniel Frederick, and I
filed a Motion for Summary Judgment.

4. I cast a write-in vote for Daniel Frederick on the ballot for the May 3,
2011 special general (runoff) election in Assembly 4 (the "AD 4 Runoff"). I

1 deposited my vote-by-mail ballot with the U.S. Postal Service on or about April 8,
2 2011. I have attached, as Exhibit 1, a true and accurate copy of my completed
3 vote-by-mail ballot.

4 5. I have also attached, as Exhibit 2, a true and accurate copy of the
5 envelope in which I mailed the ballot. That envelope, which lists my address and
6 voter registration number and has been redacted pursuant to the Court's local rules,
7 had been provided to me by the Placer County Elections Office.

8 5. The AD 4 Runoff was held on May 3, 2011.

9 6. On March 17, 2011, the Chief of Secretary Bowen's Elections
10 Division, Jana M. Lean, released a memorandum (the "Vote Counting Ban
11 Memorandum") to all county voter registrars. In the Vote Counting Ban
12 Memorandum, Ms. Lean stated that SB 6-amended Elections Code §8606 banned
13 all write-in votes from being counted in every general election: "[C]onsistent with
14 EC section 8606, any name that is written on the ballot as a write-in candidate at the
15 general election ... shall not be counted." (emphases added). I have attached, as
16 Exhibit 3, a true and accurate copy of the Vote Counting Ban Memorandum, which
17 I obtained from Secretary Bowen's official website.

18 7. Pursuant to SB 6-amended Elections Code §8606 and the Vote
19 Counting Ban Memorandum, my write-in vote for Plaintiff Frederick was not
20 counted in the AD 4 Runoff. Consequently, my fundamental right to cast a ballot
21 and have it counted was violated.

22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury and the laws of the United States that the foregoing is true and correct and are based on my personal knowledge, except for matters stated on information and belief; and, as to those matters, I believe them to be true. If called as a witness, I could competently testify thereto.

Executed on May 6, 2011, in Rocklin, California.

DATED: May 6, 2011

By: 
RICH WILSON

OFFICIAL SPECIAL GENERAL ELECTION BALLOT

VOTE-BY-MAIL BALLOT

MAY 3, 2011

240529

PLACER COUNTY, CALIFORNIA

INSTRUCTIONS TO VOTERS: To vote for the candidate of your choice, use a pen with blue or black ink and completely darken in the OVAL to the LEFT of the candidate's name. To vote for a qualified WRITE-IN candidate, write the person's name in the blank space provided after the names of the other candidates and in addition, completely darken in the OVAL to the LEFT of the candidate's name on the WRITE-IN line. All distinguishing marks or erasures are forbidden and make the ballot void. If you tear or wrongly mark this ballot, return it and get another.

VOTE LIKE THIS: ● PLEASE FILL IN THE OVAL COMPLETELY

MEMBER OF THE STATE ASSEMBLY

**MEMBER OF STATE ASSEMBLY
4TH DISTRICT
Vote For One**

- DENNIS CAMPANALE
My party preference is the Democratic Party
Retired Fire Chief
- BETH B. GAINES
My party preference is the Republican Party
Small Business Woman

DANIEL FREDERICK
WRITE-IN

END OF BALLOT

Ex. 1

4

VOTED BALLOTS MUST BE RECEIVED NO LATER THAN 8:00 P.M. ON ELECTION DAY

SECURITY FLAP

The voter must sign the declaration underneath the flap of this envelope in his or her own handwriting in order for the ballot to be counted.

TO BE REMOVED BY THE OFFICE OF ELECTIONS.

WARNING

Voting twice in the same election is a crime. If you have spoiled your ballot and wish another to be sent to you, call 530-896-5650 or toll-free in California 1-800-824-9683.

For Election Office Use Only



YOU MAY RETURN YOUR VOTED BALLOT...

- BY MAIL - BEFORE ELECTION DAY (Postmarks are not acceptable)
- IN PERSON - ON OR BEFORE ELECTION DAY

You may return your ballot to any polling place in Placer County on Election Day or to the Placer County Office of Elections at 2956 Richardson Drive in Auburn.

Complete this box if ballot is returned by an authorized person.

I declare under penalty of perjury, that due to illness or other physical disability, I designate the following person to return my ballot for me:

PRINT NAME OF PERSON RETURNING BALLOT _____ X _____ SIGNATURE OF PERSON RETURNING BALLOT _____

Authorized person(s) (circle one): spouse, child, parent, grandparent, grandchild, brother, sister or a person residing in voter's household.

LAFPA-CRIM-2810



036-0019-0524-1

31ZB994960 05/03/2011

RICHARD WILLIAM WILSON

001021
240529

Rocklin, CA

Rocklin, CA

Ex. 2



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

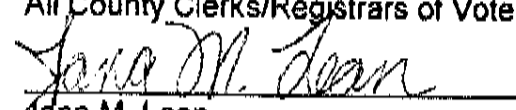
1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

March 17, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 11019

TO: All County Clerks/Registrars of Voters

FROM:


Jana M. Lean
Chief, Elections Division

RE: Special Elections: General Election Ballot

As you are aware, many aspects of the new Top Two Candidates Open Primary Act are unclear or do not operate in complete harmony with one another or with previously enacted sections of the California Elections Code (EC). This office provided some guidance on January 26, 2011, in CC/ROV #11005, and it has come to our attention that additional guidance is needed to assist with the first special general election to fill a vacancy under the Top Two Candidates Open Primary Act to be held on May 3, 2011, to fill the vacancy in Assembly District 4.

EC section 13212 provides: "Under the designation of each office shall be printed as many blank spaces, defined by light lines or rules at least three-eighths of an inch apart but no more than one-half inch apart, as there are candidates to be nominated or elected to the office."

EC section 13207(a), which was amended by the statutory measure adopted by the Legislature to implement the Top Two Candidates Open Primary Act provides, in part: "(a) There shall be printed on the ballot in parallel columns all of the following:

- (1) The respective offices.
- (2) The names of candidates with sufficient blank spaces to allow the voters to write in names not printed on the ballot..."

EC section 8606, which also was amended by the statutory measure adopted by the Legislature to implement the Top Two Candidates Open Primary Act, states that "A person whose name has been written on the ballot as a write-in candidate at the general election for a voter-nominated office shall not be counted."

Given these sections, we advise that consistent with EC sections 13207(a) and 13212, ballots must contain a blank space below the names of the qualified candidates. However, consistent with EC section 8606, any name that is written on the ballot as a write-in candidate at the general election for a voter-nominated office shall not be counted.

If you have any questions, please feel free to contact our office at (916) 657-2166.

Ex. 3

6