

KAUFMAN DOWNING LLP

February 4, 2008

VIA FACSIMILE, E-MAIL, & U.S. MAIL

Dean C. Logan
Los Angeles County Registrar/Recorder-County Clerk
P.O. Box 1024
Norwalk, CA 90651

RE: Disenfranchisement of Decline to State Voters

Dear Mr. Logan:

I write on behalf of our client, Courage Campaign. Courage Campaign has recently embarked upon a campaign to educate Decline to State (DTS) voters about their right to request and vote a Democratic ballot in the February 5, 2008 Presidential Primary Election.

As you know, as of January 8, 2008, 19.66% of the nearly 3.9 million registered voters in Los Angeles County -- over 776,774 voters -- have declined to state their party affiliation and are thus eligible to vote for a Democratic presidential candidate. Barriers to voting for DTS voters are already high, since many do not know that they are allowed to vote in the Democratic Primary for president. In addition to those barriers, we are gravely concerned that on February 5, 2008, a great many of the ballots cast by these DTS voters will be invalidated.

We have reviewed sample Democratic and American Independent ballots that DTS voters will receive once they affirmatively request them. (See attached). DTS voters requesting partisan ballots and registered Democratic and American Independent voters will receive the exact same Ink-a-Vote ballot. However, contrary to statutory provisions set forth in the Election Code, Los Angeles County requires DTS voters to complete an additional hurdle by marking either box number 5 (for American Independent ballots) or box number 6 (for Democratic party ballots) or their vote for President of the United States will not be counted. Invalidating a ballot based solely upon the failure to mark a box, (box 5 or 6) even though the voter has cast his/her ballot for a candidate for president, constitutes an improper basis for rejection and a policy that violates the rights of DTS voters. (See Cal. Elec. Code § 15154(c).)

Furthermore, the Precinct Ballot Reader (PBR) equipment in place at every polling place will not notify DTS voters that they have failed to mark box numbers 5 or 6 when they have requested a Democratic or American Independent ballot. The PBRs will only notify

voters if they have overvoted or left the ballot *completely* blank meaning that DTS voters will not know if their choice for President will count.

The statute is clear: voters who have already affirmatively requested a Democratic ballot and cast a vote for a Democratic candidate, but who inadvertently fail to mark line number 6, must have their vote counted. To do otherwise is contrary to the statute. We can find no statutory basis for requiring voters to mark additional boxes to indicate that they are DTS voters requesting a partisan ballot.

Section 13102(b) of the Elections Code, which authorizes persons who have declined to state their party affiliation to vote in the partisan primaries of those parties which have made the required authorization, does not indicate that the voter need do anything more than request a partisan primary ballot to do so. Section 13102(b) states in part:

At partisan primary elections, each voter not registered as intending to affiliate with any one of the political parties participating in the election *shall be furnished only a nonpartisan ballot, unless he or she requests a ballot of a political party and that political party*, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to state a party affiliation to vote the ballot of that political party.

(Emphasis added.)¹ Indeed this is consistent with the Secretary of State's posted instructions for DTS voters on its website and the information provided from virtually every other California county elections official. (See California Secretary of State website, available at http://voterguide.sos.ca.gov/voter_info/decline.html.)

Under Section 13102(d), county elections officials must maintain records of which political party's ballot was requested pursuant to subdivision (b) or whether a nonpartisan ballot was requested, by each person who declined to state a party affiliation. These record-keeping requirements, as specified in Section 13102(d), do not require a DTS voter to mark any additional spaces to have their vote counted. Accordingly, record keeping obligations should not intrude upon the rights of DTS voters and we believe there are many other ways that the Registrar can properly maintain its records and still satisfy its statutory responsibilities. If the additional requirement is a function of the limitations of the Inka-Vote system, solutions must be immediately implemented to eliminate these extra hurdles.

When DTS voters affirmatively request a Democratic ballot and mark a choice for president they have satisfied their obligations under the Elections Code. Their ballot should accordingly be counted. We therefore urgently request that you immediately amend your policies in a manner consistent with state law so that the votes of DTS voters requesting partisan ballots will count. Anything less threatens to disenfranchise a

¹ Compare with Election Code Section 15342(a) which requires completion of the space or marked slot next to the write-in name for the vote for the write-in candidate to count.

Dean C. Logan
February 4, 2008
Page 3

significant segment of the electorate in LA County. We seek to resolve this issue as soon as possible before tomorrow's election and before the canvass commences and so that we may, if necessary, pursue any legal options.

In this historic Democratic primary election, all voters who have answered the call to exercise their right to vote should be confident that the ballot they cast will be counted.

Please contact me to discuss this issue further.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Reyes". The signature is fluid and cursive, with a prominent initial "S" and "R".

Steven J. Reyes
Associate Attorney
Kaufman Downing LLP

DEMOCRATIC PARTY

**VOTERS REGISTERED WITH DEMOCRATIC PARTY
SKIP TO PRESIDENTIAL PREFERENCE'S CONTEST BELOW**

**TO VOTE FOR DEMOCRATIC CANDIDATES, NONPARTISAN VOTERS
MUST FIRST SELECT PARTY IN THE BOX BELOW.**

THIS BOX FOR NONPARTISAN VOTERS ONLY Vote for One	AMERICAN INDEPENDENT	
	DEMOCRATIC	6 → ○

PRESIDENT OF THE UNITED STATES

PRESIDENTIAL PREFERENCE Vote for One	MIKE GRAVEL	Democratic	8 → ○
	JOHN EDWARDS	Democratic	9 → ○
	CHRIS DODD	Democratic	10 → ○
	HILLARY CLINTON	Democratic	11 → ○
	JOE BIDEN	Democratic	12 → ○
	BARACK OBAMA	Democratic	13 → ○
	BILL RICHARDSON	Democratic	14 → ○
	DENNIS KUCINICH	Democratic	15 → ○

PLEASE NOTE: The order in which candidates' names appear on the ballot is determined by a random drawing of the 26 letters of the alphabet. Additionally, candidates for federal, most state and some local offices change positions, or "rotate." This prevents a specific candidate's name from always appearing first, or last, on all ballots.

CONTINUE VOTING ON NEXT PAGE



AMERICAN INDEPENDENT PARTY

**VOTERS REGISTERED WITH AMERICAN INDEPENDENT PARTY
SKIP TO PRESIDENTIAL PREFERENCE'S CONTEST BELOW**

**TO VOTE FOR AMERICAN INDEPENDENT CANDIDATES, NONPARTISAN VOTERS
MUST FIRST SELECT PARTY IN THE BOX BELOW.**

THIS BOX FOR NONPARTISAN VOTERS ONLY Vote for One	AMERICAN INDEPENDENT	5 → ○
	DEMOCRATIC	

PRESIDENT OF THE UNITED STATES

PRESIDENTIAL PREFERENCE Vote for One	DON J. GRUNDMANN	American Independent	8 → ○
	MAD MAX RIEKSE	American Independent	9 → ○
	DIANE BEALL TEMPLIN	American Independent	10 → ○

PLEASE NOTE: The order in which candidates' names appear on the ballot is determined by a random drawing of the 26 letters of the alphabet. Additionally, candidates for federal, most state and some local offices change positions, or "rotate." This prevents a specific candidate's name from always appearing first, or last, on all ballots.

CONTINUE VOTING ON NEXT PAGE

