

KAUFMAN DOWNING LLP

February 6, 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: Solution for Counting Ballots of Decline to State Voters

Dear Mr. Logan:

I write on behalf of our client, Courage Campaign. In our February 4, 2008 letter, Courage Campaign outlined the flaws in the ballot design used for Decline to State/Nonpartisan (DTS) voters that today, unless the steps outlined below are adopted, will result in casting aside untold numbers of votes.

It is clear that under the state election code that DTS voters who have inadvertently failed to fill in bubble numbers five or six after having received a Democratic or American Independent nonpartisan ballot, took all the required steps necessary to have their ballot counted, and that any additional requirements inherent in the Inka-Vote system or ballot design process are contrary to law.

It is not sufficient merely to estimate the scope of the problem through random samples and investigation. As you have stated in various media statements with regard to this issue, every effort to ascertain voter intent must be made by the Registrar's office. Taking the steps outlined below will help restore voter confidence and send a message to voters that their vote *will* count and that their vote does make a difference. All this can be accomplished within the 28-day statutory period for certification of the vote.

As you know, the American Independent party had three candidate choices which occupied positions 8 through 10 on the ballot and the Democratic Party had eight candidate choices occupying positions 8 through 15 on the ballot. The overlap of candidates on these ballots limits, but by no means prevents, ascertaining voter intent.

The order in which the candidates' names appear on the ballot is determined by a random drawing of the 26 letters of the alphabet and additionally, candidates for federal offices change positions, or rotate to prevent a specific candidate's name from always appearing first, or last, on all ballots. Accordingly, all nonpartisan ballots must be immediately separated by precinct and/or ballot group number.

First, each DTS ballot must then be reviewed to determine whether, within each precinct, votes were cast *only* for candidates in positions 11 through 15. In such cases, voter intent is unambiguous – both as ballots cast within the Democratic Party and more importantly, as votes cast for a particular candidate. In such instances those votes must be counted.

Second, in precincts where votes were cast for American Independent or Democratic candidates in positions 8 through 10, there is no way to conclusively determine voter intent. However, within those same precincts, undoubtedly, many votes will have been cast by DTS voters for Democratic candidates occupying positions 11 through 15 – votes where voter intent is, again, clear and unambiguous. In such cases, it is more equitable and consistent with state law and precedent regarding voter intent to count those votes instead of disregarding and casting aside the votes of every DTS voter within the precinct that did not mark bubbles five or six.

These steps must be taken immediately. Protocols must be developed, with appropriate input from interested parties, to maintain a proper audit trail of all steps taken in this process, including any steps taken to “remake” ballots. The process must be transparent and open to the public and organizations. As you know, within the Democratic party, the allocation of delegates to its national convention depends heavily on an accurate ballot count within each congressional district and it is incumbent upon your office to take all steps necessary to count every single vote cast pursuant to state law.

Furthermore, the Registrar must immediately establish a toll free hotline and website where voters that have their DTS voting stub, can determine if their vote in the Democratic or American Independent party primary actually counted.

Finally, the Registrar must assure the voters of Los Angeles County that these problems will never again recur.

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While we appreciate the efforts your office took to address this issue once identified, we know that a great many voters – including absentee votes and those who cast their ballots at poll sites -- had no opportunity to double check their ballots to ensure that they would be counted. We looking forward to speaking to you and will be in touch with your office to discuss this with you further.

Sincerely,



Steven J. Reyes
Associate Attorney
Kaufman Downing LLP

Attorneys for Courage Campaign

cc:

- Debra Bowen, Secretary of State
- Lowell Finley, Deputy Secretary of State of Voting Systems Technology and Policy
- Los Angeles County Board of Supervisors
- Eric Garcetti, City of Los Angeles, City Council President
- Rockard J. Delgadillo, Los Angeles City Attorney