

KAUFMAN DOWNING LLP

February 11, 2008

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

Los Angeles County Board of Supervisors
856 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

RE: Preliminary Findings: Review and Analysis of Sample Set of Non-Partisan
Ballots Cast in the February 5, 2008 Presidential Primary Election

Dear Supervisors:

I write on behalf of our client, Courage Campaign, regarding Los Angeles County Registrar-Recorder/County Clerk Dean Logan's "Preliminary Findings: Review and Analysis of Sample Set of Non-Partisan Ballots Cast in the February 5, 2008 Presidential Primary Election."

We appreciate the efforts that Acting Registrar Logan has undertaken, thus far, to ascertain the extent of the problems created by the ballot design flaws with respect to Decline to State/Nonpartisan (DTS) voters who participated in the February 5, 2008 Presidential Primary Election. The results of the Registrar's preliminary findings, however, have confirmed our fears that tens of thousands of voters who chose to exercise their right to cast a crossover ballot for either the Democratic or American Independent Party presidential candidates will be disenfranchised if their votes are not counted.

While the recommended future actions proposed by the Registrar with respect to the upcoming June 3, 2008 State Primary Election are a step in the right direction, the Courage Campaign cannot agree with many of the Registrar's conclusions regarding DTS ballots cast at the February 5th election.

First, the "universe of ballots impacted by the cross-over issue" while smaller than some media reports, is nonetheless staggering: 49,500 voters will, unless additional action is immediately taken, have their votes discarded. Twenty-six percent of all DTS voters in Los Angeles County are estimated to have cast ballots that will not count. In some districts, that rate climbs to 41% (in the 46th Congressional District); 45% (in the 27th Congressional District); and 56% (in the 37th Congressional District). We remind the

Board that requiring DTS voters to take additional steps to cast their ballots – such as filling in a party selection bubble -- is neither required, nor permitted, by law.

Second, we strongly disagree that the “limitations of our voting system and the ballot design impede an ability to determine voter intent on those ballots that were impacted” The report states that “there is no way to definitively rule out the distinct possibility that a non-partisan voter used, for example, a Republican Party or minor party vote recorder and marked their ballot for one of those party candidates.”

If this were true, *all* ballots cast at the polls would be suspect unless poll workers personally escorted each voter to the correct voting booth and ensured that a correct ballot was cast. Thus, for example, if a registered Green Party voter inadvertently cast a ballot in the Republican Party voting booth, the Inka-Vote system would record that voter’s ballot for the corresponding Green Party candidate. The mere possibility that such a voter might cast a Republican ballot should not cause those ballots to be thrown out. Moreover, we find the likelihood of this “distinct possibility” extremely remote. Ultimately, when a DTS voter cast his or her ballot for a candidate in positions 11-15 – ballot positions for which DTS voters were only authorized to vote for Democratic candidates – it is contrary to the State Constitution and to the state Elections Code to disregard that vote.

In response to the Florida electoral fiasco in 2000, California voters overwhelmingly passed Proposition 43 on March 5, 2002. Proposition 43 inserted one simple line into Article II of the California Constitution: **A voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted.** (Emphasis added.) Further, state law clearly states that when reviewing votes and voting systems, Election Code requirements “shall be liberally construed so that the real will of the electors will not be defeated by any informality or failure to comply with all of the provisions of the law.” (See Cal. Elec. Code Sec. 19001.)

We believe that Los Angeles County can set a shining example to the rest of the country so our nation’s largest election jurisdiction will escape comparisons with the 2000 Florida election. The Registrar and the Los Angeles County Board of Supervisors have the legal means available to them to identify the affected ballots, ascertain voter intent, and count the votes. We applaud the Board’s action last Tuesday as it took the first steps to “ensure to the greatest extent possible that non-partisan votes are counted,” and we appreciate the initial steps taken by the Registrar to identify the scope of the problem.

As such, the Courage Campaign demands that the following actions be taken:

- 1) The Registrar must take all necessary steps to identify the precise number of DTS voters that were adversely affected by the ballot design flaw and identify the candidates for whom these DTS voters cast a ballot or, alternatively, the range of candidates for whom these voters may have cast a ballot.

- 2) The Registrar must ascertain voter intent, in a manner consistent with the Elections Code and the State Constitution.
- 3) The Registrar must count the votes of all DTS voters who cast a ballot for a presidential candidate, but did not mark the party selection, where voter intent is clear.
- 4) The Registrar must, as identified in his preliminary report, take all necessary steps to ensure that the DTS ballot design flaw is remedied for the June 3, 2008 State Primary Election.

Under the laws of the State of California, DTS voters who cast ballots in the Democratic or American Independent presidential primaries must have their votes counted. No other county in California requires DTS voters to mark any additional boxes so that their votes in a partisan primary will be counted. Los Angeles County should not treat DTS voters any differently.

We hope that the preliminary report is a starting point and by no means an end to this process. We appreciate your efforts to protect the rights of DTS voters.

Sincerely,



Steven J. Reyes
Attorneys for Courage Campaign

cc:

- Debra Bowen, Secretary of State
- Dean Logan, Acting Registrar-Recorder, Los Angeles County