

LETTER REGARDING CONTEST OF 36TH
CONGRESSIONAL DISTRICT OF CALIFORNIA

COMMUNICATION

FROM

THE CLERK OF THE
HOUSE OF REPRESENTATIVES

TRANSMITTING

A LETTER REGARDING THE ELECTION FOR THE 36TH
CONGRESSIONAL DISTRICT OF CALIFORNIA



JULY 19, 2011.—Referred to the Committee on House Administration and
ordered to be printed

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OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 19, 2011.

Hon. JOHN BOEHNER,
The Speaker, House of Representatives
Washington, DC.

DEAR MR. SPEAKER: I have received the following correspondence regarding the election of Janice Hahn to fill the vacancy of the 36th congressional district for the state of California. The correspondent was not a candidate for office and affirms that he is not eligible to contest the election under the law. As such, I forward the correspondence to the House for its disposal.

With best wishes, I am
Sincerely,

KAREN L. HAAS,
Clerk.

Enclosure.

JULY 18, 2011.

Hon. KAREN L. HAAS,
Clerk of the U.S. House of Representatives,
Office of the Clerk, U.S. Capitol, Washington, DC.

DEAR MS. HAAS, I am protesting the election of Janice Hahn in the July 12, 2011 Special Election to fill the vacancy for the Thirty-Sixth Congressional District of California.

As I was not a candidate for this election, I am not eligible to challenge the election under the preferred method specified by the Federal Contested Elections Act. I am, however, eligible to protest the election according to Chapter 9 of Volume 2 of *Deschler's Precedents of the United States House of Representatives* which provides for a protest filed by "any other person" to be referred to the Committee on House Administration for investigation.

The House of Representatives has the constitutional authority to determine if a Member-elect is "duly elected." See *Powell v. McCormack* (1969). Further, the U.S. Supreme Court made it clear that the House of Representatives is the final authority to make "an unconditional and final judgment" in determining questions regarding the elections of Members of that body, and that the courts have no role in reviewing any such determination. See *Roudebush v. Hartke* (1972).

The election referenced above was not a valid election because it violated Article 1, Section 4, clause 1 of the Constitution:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Manner of holding this special election was not prescribed by the California State Legislature, but rather through a ballot process which amended the State Constitution. Senate Bill 6 approved a ballot measure to be placed for consideration before the people of the State of California. This action did not prescribe the manner of elections. The people of the California, and not the legislature thereof; then prescribed the manner of holding elections by voting in favor of Proposition 14, which institutes a "top two primary system" within the California State Constitution. The merits and shortcomings of this particular system are irrelevant to the constitutional question being raised. The process by which this system was prescribed is a direct violation of both the letter and the spirit of the U.S. Constitution.

Further, since Proposition 14 instituted the election process within the state constitution, the state legislature is not able to specify a different process, should it so choose. This is also a direct violation of both the letter and the spirit of the U.S. Constitution. Finally, choosing the manner of holding elections is not a duty that

can be delegated directly to the people by the state legislature. Such delegation would violate both the previously mentioned clause as well as Article 4, Section 4 of the Constitution:

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.

As such, any election held under this process, which was not prescribed by the legislature of California, is not valid and the office should remain unfilled until such time as a constitutional election can take place.

Respectfully,

TONY DETORA.

