



November 1, 2010

FACSIMILE & ELECTRONIC MAIL

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**Complaint Against California Democratic Party;
John Burton, Chairman, California Democratic Party;
and Debra Bowen, Secretary of State -- Penal Code Section 115.2**

Dear Attorney General Brown and District Attorney Cooley:

The undersigned California Republican Party complains against the above-referenced persons, and demand that you commence an immediate investigation related to the mailing of a campaign advertisement that clearly violates Penal Code Section 115.2.

The complaint relates to the mailing, Exhibit A attached hereto, which was mailed to residents and voters of State Senate District 28, relating to the death of Democratic incumbent and candidate for re-election, Senator Jenny Oropeza. The deceased Senator remains on the November 2, 2010 ballot.

The mailing is disclaimed as paid for by the California Democratic Party. On its envelope face page below the Mailgram reference the mailer states “Important Information from the Secretary of State.” The letter contains a single page entitled “Election Information” and contains the printed name and official title of “Debra Bowen, Secretary of State.” The letter states that recipients “have a right to know” how Ms. Oropeza’s death “impacts your Election Day choice.” The letter states that Ms. Oropeza’s “name is on the ballot” and “You have a right to vote for her.” The letter further states “If you do [vote for Ms. Oropeza, and she wins, there will be a Special Election called.” The Bowen letter is similar to a separate letter, Exhibit B, which is not the subject of this complaint but provided to show the letter complained of was part of a deliberate electioneering effort. This is a letter on letterhead “General Counsel/California Democratic Party/Martha Escutia,” urging “fellow Californians” to vote for Jenny Oropeza to ensure a special election for the seat so that the recipients “may thoughtfully elect your Senator for a four-year term.” The Escutia letter urges “fellow Californians” to vote for Jenny Oropeza to ensure a special election for the seat so that the recipients “may thoughtfully elect your Senator for a four-year term.” The Bowen letter states “you will be able to thoughtfully consider who will represent you in the State Senate for the next four years.”

The communication violates Penal Code Section 115.2, which makes it unlawful for “any person” to publish a “campaign advertisement” that contains a false or fraudulent depiction of official public documents or purported public documents. Exhibit A on its cover appears to be an “official public document” or “purported public document,” a communication from the Secretary of State. The letter is entitled “Election Information” and is signed by “Debra Bowen, Secretary of State.” The letter appears to be an “official public document” or “purported public document.” Exhibit A appears to involve an intent to deceive the public to believe that it is an official communication from Debra Bowen, the Secretary of State. Debra Bowen is responsible for the conduct of California elections. Thus, the communication from her of campaign advocacy information is not in fact official information but is instead partisan campaign information cloaked as an official communication.

We believe the circumstances surrounding the dissemination of this communication lead directly to the inference that the communication was made with actual knowledge and intent to deceive the public in violation of the criminal statute, and demand an immediate investigation and prosecution of the responsible parties.

The California Democratic Party is named as the sender of the communication, as identified on its face. John Burton, the Chairman of the California Democratic Party and its responsible officer, is also named as a person who published or caused to be published the communication or who aided and abetted its publication. Secretary of State Debra Bowen is named as a person who published or caused to be published her letter, and

authorized the references to “Important Information From the Secretary of State,” “Election Information,” and the use of her name and official title in the communication.

Penal Code Section 115.2, copied below, provides for misdemeanor conviction and penalties of up to \$50,000 for such unlawful communications.¹ The law should be enforced to the full extent of the law, as the communication constitutes a blatant attempt to deceive the public to engage in partisan political campaigning to ensure that a Democrat is elected at a special election in the unfortunate and untimely circumstances of Senator Oropeza’s unexpected passing.

Very truly yours,



Ron Nehring,
CHAIRMAN, California Republican Party

¹ Penal Code Section 115.2:

115.2. (a) No person shall publish or cause to be published, with actual knowledge, and intent to deceive, any campaign advertisement containing false or fraudulent depictions, or false or fraudulent representations, of official public documents or purported official public documents.

(b) For purposes of this section, "campaign advertisement" means any communication directed to voters by means of a mass mailing as defined in Section 82041.5 of the Government **Code**, a paid newspaper advertisement, an outdoor advertisement, or any other printed matter, if the expenditures for that communication are required to be reported by Chapter 4 (commencing with Section 84100) of Title 9 of the Government **Code**.

(c) Any violation of this section is a misdemeanor punishable by imprisonment in the county jail, or by a fine not to exceed fifty thousand dollars (\$50,000), or both.

Attachments:

EXHIBIT A

Election Information



You have a right to know how the tragedy of Senator Jenny Oropeza's illness impacts your Election Day choice.

Jenny Oropeza's name is on the ballot. You have the right to vote for her.

If you do, and she wins, there will be a Special Election called. You will then be able to thoughtfully consider who will represent you in the Senate for the next four years.

Debra Bowen
Secretary of State

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Paid for by the California Democratic Party, 1401 21st St, Suite 200, Sacramento, CA 95811.
Not authorized by a candidate or a committee controlled by a candidate.



**IMPORTANT INFORMATION
FROM THE SECRETARY OF STATE**

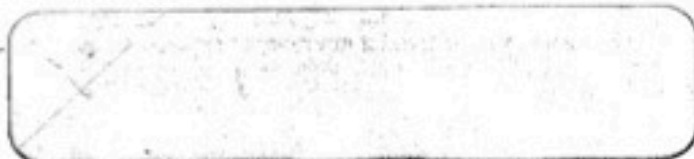


EXHIBIT B

GENERAL COUNSEL
CALIFORNIA DEMOCRATIC PARTY
MARTHA ESCUTIA

Dear Fellow Californians,

Senator Jenny Oropeza's illness has been a tragedy. Her strength through her struggle inspired us all.

The Republicans are trying to take unfair advantage of Jenny's tragedy. They suggest that voting for Jenny will only result in a costly Special Election.

I am asking you to vote for Jenny Oropeza.

If a Special Election is called in a few months, you'll have the chance to thoughtfully elect your Senator for a new four-year term.

Sincerely,



Martha Escutia
General Counsel
California Democratic Party