

JAN-22-2004 11:26

ATT Gen Office-16th Flr

003/004

STATE

P.02



SECRETARY OF STATE
KEVIN SHELLEY
 STATE OF CALIFORNIA

January 20, 2004

Honorable Herb Wesson
 Speaker of the Assembly
 State Capitol
 Sacramento, CA 95814

Re: Legislation to address issue of Internet vote swapping

Dear Speaker Wesson:

As you may know, in October 2000 former Secretary of State Bill Jones sent a letter to the owners of "voteswap2000.com," a website that was facilitating "internet vote swapping" in connection with the November 2000 presidential election. Using the website, a supporter of Ralph Nader who resided in what appeared to be a "swing" state in the presidential race between George Bush and Al Gore could be matched up with a Gore supporter in a state that was not deemed competitive. These voters could agree that the Gore supporter would vote for Nader, and the Nader supporter would vote for Gore. This would increase the likelihood that Nader would receive 5 percent of the popular vote (important for federal funding), while not harming Gore's chances to win the presidential election. It does not appear that an individual participating in this activity had any way of enforcing the agreement with the voter located in the other state.

In his letter to voteswap2000.com, former Secretary Jones informed the website operators that their activities constituted "a corruption of the voting process in violation of Elections Code sections 18521 and 18522 as well as Penal Code section 182, criminal conspiracy," and demanded that they cease operating their website. (I have enclosed with this letter the text of sections 18521 and 18522.)

The owners of voteswap2000.com, as well as other websites that were not the direct target of former Secretary Jones' letter, terminated their operations. The owners of one of the non-targeted websites - votexchange2000.com - then sued

EXECUTIVE 1500 11TH STREET • SACRAMENTO, CA 95814 • 916 653 7244 • WWW.SS.CA.GOV

PROGRAMS STATE ARCHIVES, BUSINESS PROGRAMS, ELECTIONS, INFORMATION TECHNOLOGY, GOLDEN STATE MUSEUM,
 MANAGEMENT SERVICES, SAFE AT HOME, DOMESTIC PARTNERS REGISTRY, NOTARY PUBLIC, POLITICAL REFORM

JAN-22-2004 11:26

ALL GEN OFFICE-16TH FLD

OF STATE

004/004

P.03

the Secretary of State in federal court alleging civil rights violations. That action is still pending.

After reviewing this matter with legal counsel, I am writing to request legislative clarification regarding whether Elections Code sections 18521 and 18522 - which in essence prohibit vote buying or bribery - are intended to extend to the type of internet activity that was the target of former Secretary Jones' letter. Given the general nature of the language of these sections, and the constitutional issues implicated here, I think it is essential that these provisions be clarified as soon as possible. Until such legislative clarifications are made, I will not seek to prevent the operation of websites such as voteswap2000.com and votexchange2000.com. Thank you for your attention to this matter.

Sincerely,

KEVIN SHELLEY
Secretary of State

- cc: Assembly Minority Leader, Kevin McCarthy
- Assembly Elections, Redistricting and Constitutional Amendments Chair,
- Assembly Member John Longville
- Assembly Elections, Redistricting and Constitutional Amendments Vice Chair,
- Assembly Member Steve Samuelian
- American Civil Liberties Union