

Frank Yung-Fong TANG

EWRT 1A

Research Paper (Unrevised)

October 23, 2023

Temporary Appointees of US Senators should be Limited to the State Residents

On October 1, 2023, California Governor Gavin Newsom chose Laphonza Butler to fill the U.S. Senate seat left vacant by the death of Dianne Feinstein to represent California (Marzorati). Before this appointment, Butler was a Maryland resident, not a California resident although she lived and worked in the state of California between 2009 and 2021, and she still owns a house in California (Smith et al). The US Constitution states that each state of the United States elect two senators to represent the state (“The Constitution of the United States,” art. 1, sec. 3). The elected senators are representing the citizens of their state and should represent for the best interest of who they represented. The office of Governor Newsom states that Butler would re-register as California resident before she takes office. In a regular election for US Senator, a candidate will be the resident of that statute to be listed on the ballot based on the restriction in the US Constitution. Since Butler is not elected through a regular US Senator general election but by the state governor’s temporary seat appointment, Governor Newsom believes he can make such an appointment as long as Butler re-register as a California resident before she takes office. However, such interpretation violates the frame’s intent that requires the appointee to only those “when elected, be an Inhabitant of that State for which he shall be chosen” to serve as the senator of that state (“The Constitution of the United States,” art. 1, sec. 4). Therefore, it should be unconstitutional to allow a state governor to appoint a resident of another state to serve as the temporary senator for their local citizens.

The core of the issue is California Gov. Newsome listed a non-qualified candidate on his decision making list. According to reporter Ryan King stated in the New York Post on October 2, 2023, “A Federal Election Commission filing from the end of August for the abortion rights advocacy group listed Silver Spring, Md., as Butler’s place of residence” (R. King). We can clearly see from that evidence that Ms. Butler is a Maryland resident. While the Gov. Newsome has the power to appoint the US Senate to take such a vacancy, he should follow the constraints given to him by our constitution and it is not right for him to consider anyone who does not qualify the “inhabitant” clause in the beginning. Gov. Newsom should know Ms. Butler lived in Maryland when he needed to decide the appointment and at that moment he should immediately eliminate Ms. Butler from his consideration. In an article written by Dan Walters on CalMatters, Gov. Newsom’s appointment is considered by Lee, a Black woman, as “insulting” toward any Black female politician, “The idea that a Black woman should be appointed only as a caretaker to simply check a box is insulting to countless Black women across this country who have carried the Democratic Party to victory election after election” (Walters). Therefore, we can see even some Black females against such appointments because they see Gov. Newsome simply appoint Ms. Butler to avoid being accused of endorsing one peer than the other for the 2024 election. In their eyes, such an appointment is a decision for the best of California voters, but rather to reduce potential personal political risk for Gov. Newsom later decided to run for the US presidential election.

Some people argued that because the US Constitution only requires that senators be "inhabitants" of the state that they represent and Butler would re-register to vote in California before she swore-in to take office, so it is constitutional for Governor Newsom appoint her since by the time she swear-in to take office as a senator she will be a California resident again. I

found this stand very strange. For example, in De Anza College, any other California Community Colleges, California State University, or any campus of University of California, any nonresident students need to pay an additional charge for the nonresident tuition rate. The document states “The nonresident category includes U.S. citizens who are not legal California residents. This category also includes students holding qualifying visas ... who have been in the country and held an eligible visa for one year and one day before the term begins, but have NOT lived in the state of California for one year and one day before the term begins” (*Student Fees*). Could out-of-state students who are US citizens also follow Butler and simply re-register themselves as California residents to avoid paying a nonresident tuition rate? If not, then why could Butler change overnight to serve as US Senate for California? This is not a fair stand to regular normal citizens and it is an act to grant special privilege for high profile politicians only. Why out-of-state students just switch overnight to become a California resident and start enjoying in-state student rate but Butler could switch overnight to take her new job? If we believe the family of our student needs to pay the due as a California resident for more than a year then we should also expect our politician to pay the exact same due before taking office for their new job, especially for an office that she did not even spend campaign money to run for. How could we believe she would faithfully serve our community for a position she spent zero effort and made no promise to the voters of our state to get?

Many years ago, Dr. M.L. King, Jr. attested, “An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is *difference* made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is *sameness* made legal” (M.L. King, Jr. 563). If the appointed US Senate would not need to follow the one year residency

requirement all the public college students need to follow to waive the nonresident student fee, then such law is just a loophole in our laws but not a just law.

In the “Letter from Birmingham Jail”, Dr. King argued “Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds” (M.L. King, Jr. 559). Dr. King argued he should not be considered as an outsider since he lives inside the United States. Some may argue that for the very same logic, even though Butler moved to Maryland, we should not consider her as an outsider and therefore she should be considered as a rightful appointee for this role. However, this situation is very different. An appointed US Senate is a public servant job, paid by the state taxpayers and accountable to serve the residents of the state. Such roles require deep understanding and long term communication with the local communities in order to fulfill their job. Butler already moved away from California in 2021 and departed from the long term interest of the state. She was passively appointed by Governor Newsom and did not actively campaign to serve for this role. Actually, according to New York Time reporter Shawn Hubler on October 19, 2023, “Ms. Butler, who was appointed by Gov. Gavin Newsom just weeks ago to fill Dianne Feinstein’s seat, said she had realized that ‘this is not the greatest use of my voice’” (Hubler). Such an appointment is made to appoint a person who already decided to move out of the state and seeking a different life in Maryland. Even Butler knows she is in the wrong role just two weeks after her new job. The same report suggests that the real reason for such an appointment is because “a promise by Gov. Newsom to name a Black woman to complete the senator’s term” (Hubler). I also found this reason highly illogical because there are many great California black female politicians in the Democratic party who also qualified and are still residents of the golden state. Therefore, it is really a very weak reason that Gov.

Newsom appointed Butler just because she is a Black female. Remember, we are not short of public black female servants in the state of California!

Some others argued Butler lived in and served as public servant for California between 2009 and 2021, and she still owns a house in California even after she moved to Maryland in 2021. They state she contributed a lot to the state of California while she served as the public servant and has made a long term contribution to our community even though she moved out to Maryland two years ago. Therefore, it should be constitutional for a state governor to appoint any resident of another state to serve as the temporary senator to represent their state as long as they had previously lived in that state for a long time and still own a house in that state because that fulfill the “an Inhabitant of that State” requirement. I have no objection to the claim that Butler made great contributions to our state in the past. However, it is very clear that Ms. Butler already made the decision two years ago to move away from our state and regardless of how much wealth or estate she still holds in California, she had decided to register herself as a Maryland voter two years ago. While we welcome her to come back and re-registered as California voters, we cannot ignore the fact that she is not doing so without Gov. Newsome’s appointment. In other words, what we argue is not what she did or what she would do, but rather when Gov. Newsome “chooses” her as the appointee, did he follow the US Constitution. The legal issue should be considered about what the active decision maker, Gov. Newsome, did, not what Ms. Butler did. Therefore, I believe Gov. Newsome simply does not have the legal authority to appoint a Maryland resident to this job due to the fact that while he made such a decision, Butler was simply still not a qualified candidate. This is best described by Law professor Stephen Sachs, “the Constitution said senators were ‘elected’ when chosen by a state legislature, indicating that the term has a capacious meaning that stretches beyond the ‘general

citizenry' casting their ballots. In this context, he asserts, the word 'elected' must mean the 'whole process of official choice,' whether made by a governor, a legislature, or the people at large" (Stern). It is therefore totally irrelevant how much contribution Butler made to California before she moved out of the state in 2021.

Because of these reasons above, I believe our legal system should restrict the state governor to appoint residents of other states as the temporary assignment for the vacancy of the US Senator. Such restriction will ensure our governor to appoint only public servants who are consistently serving our state and best represent the residents of our state with the most current knowledge of the affairs and problems of our state. I think we should fix our legal system now to address this issue for good. As Dr. King suggested, "Now is the time to make real the promise of democracy and transform our pending national elegy into a creative psalm of brotherhood. Now is the time to lift our national policy from the quicksand of racial injustice to the solid rock of human dignity" (M.L. King, Jr. 565). What our state needs is not a Maryland voter, regardless if she is a black person, a woman, a LGTB activist, or not, to represent us, but rather a local Californian! It is now the right time to make a law change to prevent the same kind of appointment from happening again.

Works Cited

The Constitution of the United States: A Transcription. National Archives, U.S. National Archives and Records Administration, 4 May 2020,
www.archives.gov/founding-docs/constitution-transcript.

Hubler, Shawn. "Laphonza Butler Will Not Run for Feinstein's Senate Seat in 2024" *New York Times*, New York Times, 19 Oct. 2023,
www.nytimes.com/2023/10/19/us/laphonza-butler-senate-california.html.

King, Martin Luther, Jr., "Letter from Birmingham Jail." *Patterns for College Writing*, 14th ed., edited by Laurie G. Kirszner and Stephen R. Mandell, Bedford/ St. Martin's, 2018, 558—570.

King, Ryan. "Gavin Newsom's Pick for California Senator, Laphonza Butler... Lives in Maryland." *New York Post*, New York Post, 4 Oct. 2023,
nypost.com/2023/10/02/maryland-resident-laphonza-butler-to-be-california-senator/.

Marzorati, Guy. "Feinstein's Successor Laphonza Butler Takes Office as California's New Senator." *NPR*, NPR, 3 Oct. 2023,
www.npr.org/2023/10/03/1203162488/butler-pick-draws-praise-mounting-speculation-over-2024-plans.

Smith, Jack, et al. "Laphonza Butler Appointed to Vacant California Senate Seat." *Annenberg Media*,
www.uscannenbergmedia.com/2023/10/02/laphonza-butler-appointed-to-vacant-california-senate-seat. Accessed 5 Oct. 2023.

Stern, Mark Joseph. "The Strange Constitutional Loophole Exposed by Dianne Feinstein's Replacement." *Slate Magazine*, Slate, 2 Oct. 2023,
slate.com/news-and-politics/2023/10/california-new-senator-laphonza-butler-maryland-residency.html.

Student Fees, De Anza College, www.deanza.edu/cashier/fees.html. Accessed 21 Oct. 2023.

Walters, Dan. “Did Newsom dig a new hole by appointing Laphonza Butler to the Senate?”.

CalMatters, CalMatters, 3 Oct. 2023,

calmatters.org/commentary/2023/10/newsom-senate-hole-laphonza-butler.