

COMMISSION ON STATE MANDATES

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October 31, 2006

Mr. Allan P. Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

And Affected State Agencies and Interested Parties (see attached mailing list)

RE: **Adopted Statement of Decision**
Fifteen Day Close of Voter Registration, (01-TC-15)
County of Orange, Claimant
Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303,
and 13306
Statutes 2000, Chapter 899 (AB 1094)

Dear Mr. Burdick

The Commission on State Mandates adopted the attached Statement of Decision on October 4, 2006. State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and the Commission during the parameters and guidelines phase.

- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq., the claimant is responsible for submitting proposed parameters and guidelines by **November 30, 2006**. See Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq. for guidance in preparing and filing a timely submission. Also, the claimant may propose a "reasonable reimbursement methodology," a formula for reimbursing local agency costs mandated by the state. (See Gov. Code, § 17518.5 and Cal. Code Regs., tit.2, 1183.13.)
- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, the Commission will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. Any recipient may propose a "reasonable reimbursement methodology" pursuant to Government Code section 17518.5. All recipients will be given an opportunity to provide written comments or

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recommendations to the Commission within 15 days of service. The claimant and other interested parties may submit written rebuttals. (See Cal. Code Regs., tit. 2, § 1183.11.)

- **Adoption of Parameters and Guidelines.** After review of the proposed parameters and guidelines and all comments, Commission staff will recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's original submission. (See Cal. Code Regs., tit. 2, § 1183.12.)

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,



PAULA HIGASHI
Executive Director

Enclosure: Adopted Statement of Decision

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Elections Code Sections 2035, 2102, 2107,
2119, 2154, 2155, 2187, 9094, 13300, 13303
and 13306;

Statutes 2000, Chapter 899;

Filed on May 17, 2002,

By County of Orange, Claimant.

Case No.: 01-TC-15

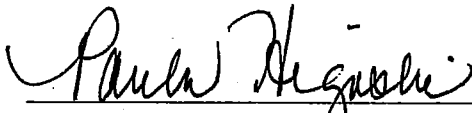
Fifteen Day Close of Voter Registration

STATEMENT OF DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

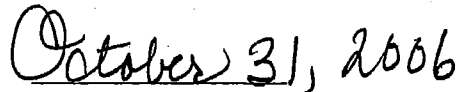
(Adopted on October 4, 2006)

STATEMENT OF DECISION

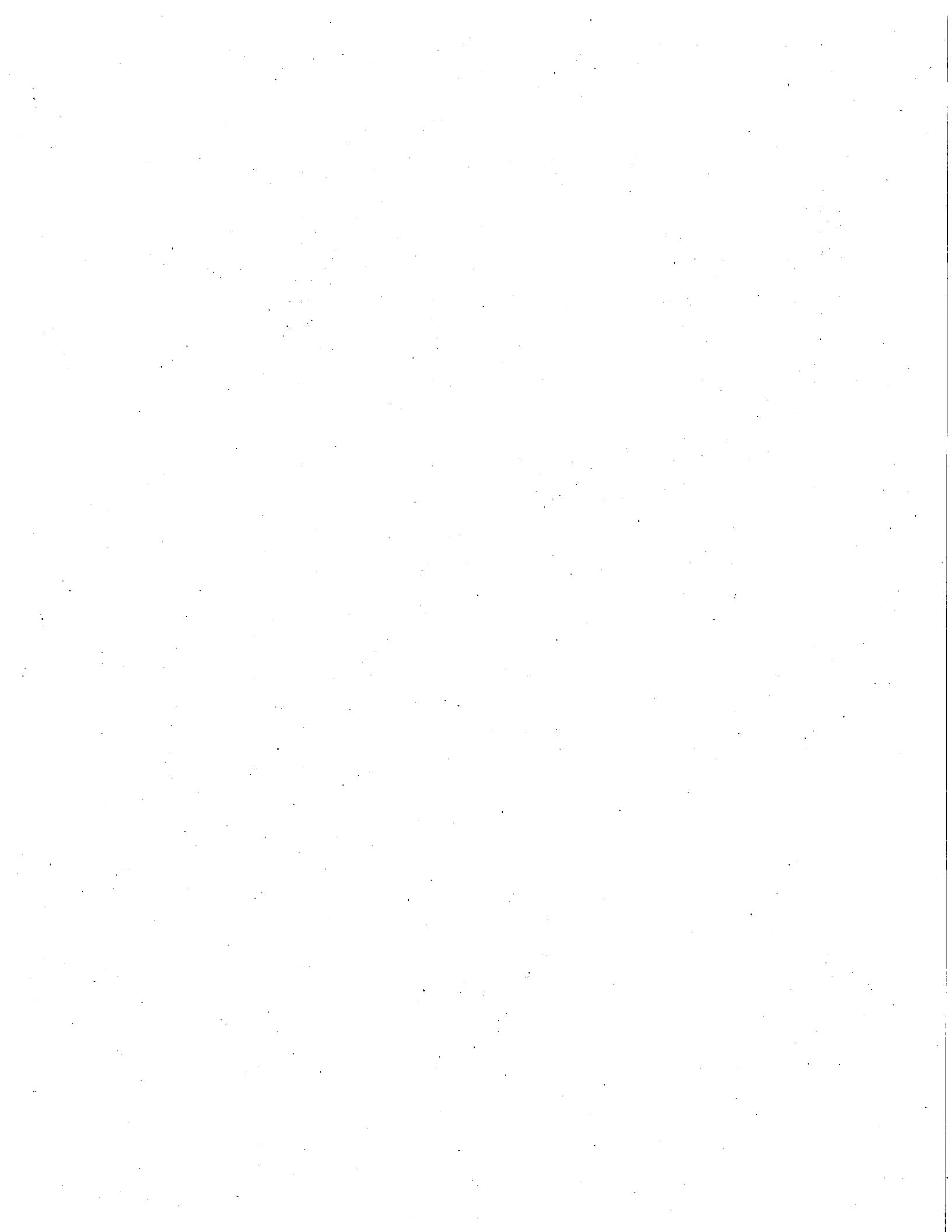
The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.



PAULA HIGASHI, Executive Director



Date



BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303 and 13306;

Statutes 2000, Chapter 899;

Filed on May 17, 2002,

By County of Orange, Claimant.

Case No.: 01-TC-15

Fifteen Day Close of Voter Registration

STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on October 4, 2006)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 4, 2006. Juliana Gmur of Maximus appeared, representing the claimant, County of Orange. Also testifying were Neal Kelly, Orange County Registrar of Voters, Deborah Seiler, Solano County Assistant Registrar of Voters, and Allan Burdick, CSAC SB-90 Service. Carla Castañeda and Susan Geanacou appeared on behalf of the Department of Finance (DOF).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to partially approve this test claim at the hearing by a vote of 5-1.

Summary of Findings

Claimant, County of Orange, filed this test claim on changes to the deadline for voter registration prior to an election. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 amended Elections Code sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13303 and 13306, and repealed and reenacted Elections Code section 13300, allowing new registrations or changes to voter registrations through the 15th day prior to an election. The claimant seeks mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections, such as for: implementation planning meetings; revising training programs; holding an informational media campaign; responding to additional inquiries about the new law; and providing additional personnel to accommodate the increased workload.

Generally, the Commission finds that most of the statutory amendments by Statutes 2000, chapter 899, do not mandate a new program or higher level of service on county elections

officials within the meaning of article XIII B, section 6. Processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code. County elections officials have been required to perform these activities long before the enactment of Statutes 2000, chapter 899. The test claim allegations generally request reimbursement for increased staffing expenses, developing and conducting training, and holding planning meetings; these are not new *activities* directly required by the test claim legislation, but instead are *costs* that the claimant is associating with the changed timeframes. Counties are required to perform the same activities they have long performed – accepting new voter registrations and changes of address. The courts have consistently held that increases in the *cost of an existing program*, are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of article XIII B, section 6.

The Commission concludes that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)

The other amendments by Statutes 2000, chapter 899, are not subject to article XIII B, section 6 of the California Constitution, or do not mandate a new program or higher level of service, and are denied.

BACKGROUND

This test claim deals with changes to the deadline for voter registration prior to an election in California. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 was chaptered on September 29, 2000; it amended Elections Code sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13303 and 13306, and repealed and reenacted Elections Code section 13300. These amendments allow new registrations or changes to voter registrations through the 15th day prior to an election. The claimant is seeking mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections.

Claimant's Position

Claimant, County of Orange, filed this test claim on May 17, 2002.¹ Claimant contends that "The specific sections which contain the mandated activities are Elections Code, Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303 and 13306." Claimant asserts that

¹ Potential reimbursement period for this claim begins no earlier than July 1, 2000, based on the filing date of the test claim. (Gov. Code, § 17557, subd. (e).)

these code sections, as amended by Statutes 2000, chapter 899, constitute a reimbursable state-mandated program. Following are some of the reimbursable activities or costs asserted by the claimant:

- have internal planning meetings, as well as meetings with the Secretary of State, in order to make sure the changes were implemented properly;
- printing, processing and mailing of postcards and additional sample ballot pamphlets for voters registering between the 28th day and up to and including the 15th day prior to the election;
- retrain personnel on new program, including revising training program, videos, and manuals;
- hold a media campaign to inform the public of the additional time to register and vote;
- respond to additional media and public inquiries about the new law;
- redesign and republish the sample ballot and absentee voter materials;
- redesign and implement voter election software;
- provide additional personnel to accommodate the increased workload;
- change the method of delivery rosters to the polls, including express delivery and dispatch;
- notify those who registered too late;
- complete additional steps in order to conduct the election.

In response to DOF's July 2002 comments on the test claim filing, described below, claimant disputes DOF's disagreements with the reimbursable activities identified, with the exception of agreeing that software redesign is a one-time activity, and reasserts that all of activities identified are necessary to implement the test claim legislation, or are the most reasonable method to comply.

Written comments on the draft staff analysis were received on September 15, 2006, and are discussed in the findings below.

Interested Party Positions

On September 18, 2006, a late filing was received from the County of Sacramento, describing the impact that changing the timeframe for registration prior to an election has had on county registrars and argues that this change has mandated an increased level of service resulting in a reimbursable state-mandated program. The County of Sacramento comments, page one, state:

This shortened time frame clearly provides for a higher level of service from that previously required, in that the deadline to register to vote for any election was shortened from E-29 days prior to any election to E-15 days prior to the election. This creates a new window of time in which eligible citizens can qualify to vote for any specific election. And, in order to implement this legislation, county election offices have had to drastically increase the level of service provided to the public in order to provide the legally required voting material to both the voter and the polling place on election day.

In addition, at the Commission hearing on October 4, 2006, testimony was received from the Solano County Assistant Registrar of Voters, supporting the test claim allegations.

Department of Finance's Position

DOF filed comments on July 3, 2002, addressing the allegations stated in the test claim. The comments state: "we do not concur with all of the activities identified by the claimant. ... we note our concern with what appears to be a fundamental assumption asserted by the claimants that there was an increase in the number of voters as a result of the test claim legislation,"

Specifically, claimants cite costs related to an increase in the number of voters needing assistance, and costs for voters who registered between the 28th day and the 15th day prior to the election, necessitating additional staff, printing, processing and mailing costs. We have two objections with this assumption: First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29th day until after the 29th and before the 14th day prior to an election, as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.

In addition, we note that even if there were an increase in the number of registrants subsequent to the test claim legislation, this legislation did not increase the number of persons eligible to register. The Secretary of State's Website indicates that approximately 71 percent of the eligible voters were registered during the 2002 Primary Election. To the extent that the remaining 29 percent chose to register, it would be incumbent upon the local agencies to accommodate those persons, regardless of the test claim legislation. Accordingly, there does not appear to be a correlation between the test claim legislation and an increase in the number of registrants and there should be no reimbursement for those costs.

DOF then describes several claimant-identified activities that should either be designated as "one-time" activities, or denied altogether on the grounds that they are not required by the test claim legislation, if the test claim is approved by the Commission.

In comments on the draft staff analysis, dated August 7, 2006, DOF concurs with staff's identification of a one-time reimbursable activity for amending the polling place notice, but reiterates opposition to any reimbursement for the other test claim activities alleged, "such as training, public education and addressing public complaints."

Secretary of State's Position

The Secretary of State's office filed comments on the test claim filing, received July 15, 2002, agreeing with the claimant that Statutes 2000, chapter 899 "imposed significant new responsibilities on county elections officials and that the costs of these additional responsibilities should be borne by the state."

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution² recognizes the state constitutional restrictions on the powers of local government to tax and spend.³ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁴ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁵ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.⁶

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁷ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.⁸ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”⁹

² Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

³ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁴ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁵ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

⁸ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁰

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹¹ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹²

Issue 1: Is the test claim legislation subject to article XIII B, section 6, of the California Constitution?

Elections Code Sections 2187 and 9094:

As a preliminary matter, the claimant alleges Elections Code section 2187, as amended by Statutes 2000, chapter 899, imposes a reimbursable state-mandated program. This code section addresses long-standing county reporting requirements on the numbers of registered voters to the Secretary of State. The amendment to Elections Code section 2187 by Statutes 2000, chapter 899 was never operative upon the subsequent adoption of Statutes 2000, chapter 1081 in the same session.¹³ The amendments made by Statutes 2000, chapter 1081 are entirely different from the amendments in Statutes 2000, chapter 899, and were not pled as part of this test claim.¹⁴ Thus, Elections Code section 2187, as pled, is not subject to article XIII B, section 6 of the California Constitution.

Elections Code section 9094, as amended by Statutes 2000, chapter 899, addresses the duties of the Secretary of State to provide ballot pamphlets. The amendment to this code section is in subdivision (a), which is specific to the Secretary of State and does not mandate any requirements on local government. Thus, Elections Code section 9094, as amended by the test claim statute, is not subject to article XIII B, section 6 of the California Constitution.

Therefore, any future references to “test claim legislation” do not include Elections Code sections 2187 or 9094.

Remaining Test Claim Legislation:

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” In *County of Los Angeles v.*

¹⁰ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹² *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹³ Affected by two or more acts at the same session of the Legislature. (See Gov. Code, § 9605.)

¹⁴ The changes made by Statutes 2000, chapter 1081 included the deletion of two commas, and the deletion of one of seven regular reporting dates to the Secretary of State.

State of California, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹⁵ The court has held that only one of these findings is necessary.¹⁶

The Commission finds that registering voters imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. County elections officials provide a service to the members of the public who register to vote. The test claim legislation also requires local elections officials to engage in administrative activities solely applicable to local government, thereby imposing unique requirements upon counties that do not apply generally to all residents and entities of the state.

Accordingly, the Commission finds that the test claim legislation constitutes a “program” and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution *if* the legislation also mandates a new program or higher level of service, and costs mandated by the state.

Issue 2: Does the test claim legislation mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution?

Test claim legislation mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.¹⁷ The courts have defined a “higher level of service” in conjunction with the phrase “new program” to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, “it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs.”¹⁸ A statute or executive order mandates a reimbursable “higher level of service” when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service to the public provided in the existing program.¹⁹

Elections Code Sections 2035, 2102, 2107, 2119, and 2154:

Elections Code section 2035 formerly provided that a voter registered in California who moves during the last 28 days before an election shall be entitled to vote in the precinct where they were last properly registered. The amendment by Statutes 2000, chapter 899 changed that period to the last 14 days before an election.

¹⁵ *County of Los Angeles, supra*, 43 Cal.3d at page 56.

¹⁶ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

¹⁷ *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 836.

¹⁸ *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *San Diego Unified School District, supra*, 33 Cal.4th 859, 874.

¹⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

Elections Code sections 2102 and 2107 describe what constitutes an effective new voter registration affidavit. The amendment by Statutes 2000, chapter 899, changed the received date, postmarked date, or alternative delivery deadlines from on or before the 29th day prior to an election, to on or before the 15th day prior to an election. The amendment to Elections Code section 2119 made similar changes to the deadlines for accepting notices of change of address for voters who have moved.

Elections Code section 2154 states a number of presumptions that county elections officials shall apply if there is missing information on a voter registration affidavit, in order to hold the registration valid. If the affidavit is not dated, the amendment by Statutes 2000, chapter 899 requires the elections official to presume the registration affidavit was signed on or before the 15th day prior to the election, instead of on or before the 29th day, if the document is received or postmarked by the 15th day prior to the election.

The amendments to numbers of days before an election are the only changes made to these Elections Code sections by the test claim statute. As an example, the complete text of Elections Code section 2107, as amended by Statutes 2000, chapter 899 follows, with changes indicated in underline and strikethrough:

(a) Except as provided in subdivision (b), the county elections official shall accept affidavits of registration at all times except during the ~~28~~14 days immediately preceding any election, when registration shall cease for that election as to electors residing in the territory within which the election is to be held. Transfers of registration for an election may be made from one precinct to another precinct in the same county at any time when registration is in progress in the precinct to which the elector seeks to transfer.

(b) The county elections official shall accept an affidavit of registration executed as part of a voter registration card in the forthcoming election if the affidavit is executed on or before the ~~29~~15th day prior to the election, and if any of the following apply:

(1) The affidavit is postmarked on or before the ~~29~~15th day prior to the election and received by mail by the county elections official.

(2) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.

(3) The affidavit is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the ~~29~~15th day prior to the election.

At page two of the test claim filing, claimant alleges that these statutory amendments, lengthening the period prior to an election that voter registrations must be processed, "has substantial repercussions on the management and operation of the county elections office. Staffed during elections season with temporary employees, the increased workload and shortened time line to perform the work results in an increase in the number of employees needed to staff the election."

In response to the test claim allegations, DOF argues:

[C]laimants cite ... costs for voters who registered between the 28th day and the 15th day prior to the election, necessitating additional staff, printing, processing and mailing costs. We have two objections with this assumption: First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29th day until after the 29th and before the 14th day prior to an election, as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.

The Commission finds that the code sections as amended do not mandate a new program or higher level of service on county elections officials within the meaning of article XIII B, section 6 as determined by the courts. Processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code. County elections officials have been required to perform these activities long before the enactment of Statutes 2000, chapter 899.²⁰ The test claim allegations generally request reimbursement for increased staffing expenses, developing and conducting training, and holding planning meetings; these are not new *activities* directly required by the test claim legislation, but instead are *costs* that the claimant is associating with the changed timeframes. The Commission does not dispute the claimant's allegations that the changed timeframes impose a burden on the way business is conducted by elections officials during the weeks before an election, and that there are likely associated costs; but the test claim legislation itself did not require the activities alleged in the manner required for reimbursement under mandates law.

The courts have consistently held that increases in the *cost* of an existing program, are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of article XIII B, section 6.

In 1987, the California Supreme Court decided *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, and, for the first time, defined a "new program or higher level of service" within the meaning of article XIII B, section 6. Counties were seeking the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits to their employees as private individuals or organizations. The Supreme Court recognized that workers' compensation is not a new program and, thus, determined whether the legislation imposed a higher level of service on local agencies. Although the court defined a "program" to include "laws which, to implement a state policy, impose unique requirements on local governments," the court emphasized that a new program or higher level of

²⁰ The voter registration timelines were last substantively amended following the decision in *Young v. Gness* (1972) 7 Cal.3d 18, in which the California Supreme Court found the 54-day residency requirement and corresponding voter registration deadlines unconstitutional and declared 30 days to be the maximum voter registration restriction permissible under a reasonableness standard.

service requires “state mandated increases in the services provided by local agencies in existing programs.”²¹

Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing “programs.”²²

Applying these principles, the court held that reimbursement for the increased costs of providing workers’ compensation benefits to employees was not required by the California Constitution. The court stated the following:

Therefore, although the state requires that employers provide workers’ compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.²³

In 1998, the Third District Court of Appeal decided *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1196 and found:

Increasing the cost of providing services cannot be equated with requiring an increased level of service under a[n] [article XIII B,] section 6 analysis.

Seventeen years later, the Supreme Court summarized and maintained its earlier holding in *County of Los Angeles* and stated that although “[t]he law increased the cost of employing public servants, ... it did not in any tangible manner increase the level of service provided by those employees to the public.”²⁴ Thus, the courts have found that a new program or higher level of service requires something more than increased costs experienced uniquely by local government.

Claimant alleges the following new activities were required by the test claim statute, and seeks reimbursement for “[holding] planning meetings with both its own staff, as well as other elections officials and the Secretary of State, to make sure that the new changes were implemented properly. These meetings resulted in the implementation of the following new procedures, as well as redesign and publication of forms and other voting materials[::]”

1. To accommodate the change in dates, the elections software had to be redesigned.
2. Staffing needs to address the increased workload as a result of this legislation were evaluated, and additional staff had to be hired.
3. For voters who registered between the 28th day and up to and including the 15th day prior to the election, the legislation necessitated the printing,

²¹ *County of Los Angeles, supra*, 43 Cal.3d 46, 56-57.

²² *Ibid.*

²³ *Id.* at 57-58.

²⁴ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 875.

processing and mailing of postcards; and/or printing, processing and mailing of additional sample ballot pamphlets.²⁵

4. An increase number of voters needed assistance either in person or on the telephone.
5. A methodology was developed for addressing voter complaints concerning registration.
6. It was necessary to change the method by which rosters are delivered to the polls, including express delivery and dispatch.
7. Because of the substantial changes, regular, temporary permanent employees, and poll workers had to be retrained. This resulted in the coordination and planning for the training, training instruction for the trainers, conducting the training classes, revising training videos, producing training aids, and revising the training manual.
8. In order that voters not be confused about the changes, press releases were prepared, development of educational material for the sample ballot pamphlet and audio visual instructions to both voters and staff.

At the October 4, 2006 Commission hearing, testimony was heard from the claimant's representatives, as well as a representative from an interested party, the Solano County Assistant Registrar of Voters, Deborah Seiler. Ms. Seiler testified that pre-election activities must be performed in a different manner due to the test claim statute:

First of all, one of the things that we're doing at the time that we would ordinarily be finished with voter registration, when it was formerly at 29 days before the election, after that time period, what we were doing is we were putting together the rosters of voters that go out to the polling places. Those rosters we were putting together in time to give to our precinct inspectors to go out to the polling places.

Now, because of the late registrations, we're not able to compile the rosters at the time that we need to get them out to the precinct inspectors. So we've had to come up with alternate methods of delivering those rosters rather than just when the inspectors come in for the training class. So we now have either personal delivery or other mechanisms where staff is delivering it or we have roving inspectors that we have to hire to send out those rosters.

The other issue with the rosters is that particularly in very busy elections -- and a number of counties experienced this in the November of 2004 election, very hotly contested election -- the registration levels were off the charts for all of us. And we had tremendous difficulty getting -- due to the later close of registration, we had tremendous difficulty even getting those names entered into our files and getting those names on the rosters.

²⁵ This activity appears to be connected to Elections Code sections 2155, 13303, and 13306, which are discussed separately below.

In some cases, we did not. In some cases, the counties failed to get the names on the rosters.

The consequence of that was that voters came into the polling place and had to vote provisional ballots, which is the requirement under the law for a person whose name is not on the roster.

So that provisional voting process then actually contributed to the amount of time that it took us to perform the canvass and the amount of staff that we had to have.²⁶

One of the big effects of this later close of registration, too, is on the absentee ballot processing.²⁷

Ordinarily, our supervisors and lead people in the absentee processing area -- in the voter registration area, excuse me -- would sort of morph into the absentee processing area. So the curtain would fall at 29 days before the election, and then that 29 days before the election is also the commencement of the absentee voting period. And so then that staff would finish up with the voter registration and then go in and start processing, getting the absentees out in the mail and processing those that had returned.

No longer can the same staff be used for the absentee voting process. We have to have a whole new set of people, managers, supervisors, and expertise now to come in and do the absentee processing because our voter registration people who had done it in the past are busy.

They're still engaged in voter registration activities. So that's had a huge influence on our whole staffing process.

One of the biggest impacts also with respect to the absentee process is that now we have a setup -- as a result of this new law, we have a situation where the absentee voting period starts before the close of registration.

What does that mean for voter registration? It means that a person who is, for example, a permanent absentee voter -- and we have many more permanent absentee voters now than we used to. In Solano County, it's up to almost 40 percent of our electorate who votes absentee. So you've got all of these people to whom we send at 29 days, because that's the beginning of the absentee period, we send them their permanent absentee ballot.

At E-minus-15, between 29 days and 15 days, those same people can move and reregister to vote; and they do.

²⁶ Counting provisional ballots is the subject of another test claim, *Voter Identification Procedures* (03-TC-23), approved at the October 4, 2006 Commission hearing.

²⁷ Absentee ballots are the subject of several other approved test claims, including *Absentee Ballots* (3713), *Permanent Absent Voters I* (CSM-4358), and *Permanent Absent Voters II* (03-TC-11).

So, now, we send them their first ballot. Then they reregister to vote at the fifteen-day close. Any we have to send them a second ballot -- a second absentee ballot. So we have to go back -- and, obviously, we can't let them vote twice.

So now we're going into this huge retrieval, storage, tracking process, to make sure that these absentee voters who are being able to register at a later point in time are not duplicate voters.

So this is a major impact on our whole process. And in addition, this is just one more thing that carries over into our canvass process, because these are all things that we have to account for in the canvass process.²⁸

The plain language²⁹ of Statutes 2000, chapter 899, as it amended Elections Code sections 2035, 2102, 2107, 2119, and 2154, does not require counties to carry out any of the new activities as alleged.³⁰ Instead, counties are required to perform the same activities they have long performed -- accepting new voter registrations and changes of address. If the test claim legislation explicitly required any *new* activities to be performed on the part of county elections officials, alleged activities such as training, preparing press releases, and hiring additional employees could be examined at the parameters and guidelines phase of the test claim process to determine whether they are a reasonable method of complying with the mandate.³¹ However, there must *first* be a finding of a reimbursable state-mandated activity based on the statutory language of the test claim legislation in order to reach the other issues in the parameters and guidelines. The Commission finds that the amendments by Statutes 2000, chapter 899 to Elections Code sections 2035, 2102, 2107, 2119, and 2154 do not mandate a new program or higher level of service on counties.

Elections Code Section 2155:

Elections Code section 2155 requires county elections officials to send voter notification forms to the voter “[u]pon receipt of a properly executed affidavit of registration or address correction notice.” One sentence on this form was changed by Statutes 2000, chapter 899 to read “you may vote in any election held 15 or more days after the date shown on the reverse side of this card.” If county elections officials had to change these cards in response to the test claim legislation, this would have met the legal standards for finding a new program or higher level of service, at least for a one-time activity of amending and reprinting the cards. However, the very next section in the code, Elections Code section 2156, requires that:

The Secretary of State shall print, or cause to be printed, the blank forms of the voter notification prescribed by Section 2155. The Secretary of State shall supply the forms to the county elections official in quantities and at times requested by the county elections official.

²⁸ October 4, 2006 Commission Hearing Transcript, pages 24-28.

²⁹ “If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs.” (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.)

³⁰ *County of Los Angeles, supra*, 110 Cal.App.4th 1176, 1189.

³¹ California Code of regulations, title 2, section 1183.1, subdivision (a)(4).

Therefore the Commission finds that Elections Code section 2155, as amended by the test claim statute, does not mandate a new program or higher of service, because the only activity required of the county is the same as required by prior law – sending a newly registered or re-registered voter a notification form.

Elections Code Section 13300:

Elections Code section 13300, subdivision (a), as repealed and reenacted³² by Statutes 2000, chapter 899, requires that “at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot.” This is unchanged from prior law following the United States Supreme Court decision in *California Democratic Party v. Jones* (2000) 530 U.S. 567, which found the 1996 amendments to the code section by Proposition 198, the “Open Primary Act,” unconstitutional, and therefore void.³³ Subdivision (b), also unchanged from prior law, provides that “The sample ballot shall be identical to the official ballots, except ... [that they] shall be printed on paper of a different texture”

The amendments to subdivision (c) are indicated in underline and strikethrough, as follows:

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election not more than 40 nor less than 10 days before the election. A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary election, provided that on election day any such person may, upon request, vote the ballot of a political party if authorized by the party's rules, duly noticed to the Secretary of State.

Modified Primary Election (01-TC-13) is a test claim on Statutes 2000, chapter 898 (SB 28) that was heard and decided at the July 28, 2006 Commission hearing. The Legislature largely amended the Elections Code back to the state of the law before Proposition 198 through the adoption of Statutes 2000, chapter 898. Elections Code section 13300 was also amended by Statutes 2000, chapter 898, but that amendment did not take effect when Statutes 2000, chapter

³² The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meet the criteria for finding a reimbursable state mandate. This is consistent with long-standing case law: “Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time.” (*In re Martin's Estate* (1908) 153 Cal. 225, 229. See also 15 Ops.Cal.Atty.Gen. 49 (1950).)

³³ Before the amendments by Statutes 2000, chapters 898 and 899, the changes to the Elections Code made by Proposition 198 reverted to prior law because of the legal principles of *Cummings v. Morez* (1974) 42 Cal.App.3d 66, 73: “A statute which violates either [US or California] Constitution is to that extent void and, ‘[i]n legal contemplation, a void act is as inoperative as though it had never been passed. ...’” For legal purposes, there was no gap in the law because the law treats Proposition 198 as though it never existed; meaning prior law was continuous in effect.

899 (AB 1094) passed in the same session. The legislation specified that in the event that both statutes were chaptered, *and* Assembly Bill 1094 was the one enacted last, section 11.5 of Statutes 2000, chapter 899 prevailed.

In *Modified Primary Election*, the Commission found that Elections Code section 13102, subdivision (b), as amended by Statutes 2000, chapter 898, requires county elections officials to engage in a new activity to “Allow voters who declined to state a party affiliation to vote a party ballot if the political party, by party rule duly noticed to the Secretary of State, authorizes such a person to do so.” Any activity required by Elections Code section 13300, subdivision (c), for allowing decline-to-state voters to request partisan primary ballots at the polls, is already part of the test claim on the earlier-enacted Statutes 2000, chapter 898, and is therefore not *new*. Activities can be attributed to Elections Code section 13102, subdivision (b), and reimbursement can be sought under the *Modified Primary Election* parameters and guidelines, when adopted. Therefore, the Commission finds that the amendment to Elections Code section 13300 by Statutes 2000, chapter 899, does not mandate a new program or higher level of service.

Elections Code Section 13303:

Elections Code section 13303 follows, as amended by Statutes 2000, chapter 899 -- indicated in underline and strikethrough below:

(a) For each election, each appropriate elections official shall cause to be printed, on plain white paper or tinted paper, without watermark, at least as many copies of the form of ballot provided for use in each voting precinct as there are voters in the precinct. These copies shall be designated “sample ballot” upon their face and shall be identical to the official ballots used in the election, except as otherwise provided by law. A sample ballot shall be mailed, postage prepaid, ~~to each voter~~ not more than 40 nor less than 21 days before the election to each voter who is registered at least 29 days prior to the election.

(b) The elections official shall send notice of the polling place to each voter with the sample ballot. Only official matter shall be sent out with the sample ballot as provided by law.

(c) The elections official shall send notice of the polling place to each voter who registered after the 29th day prior to the election and is eligible to participate in the election. The notice shall also include information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

At page 4 of the test claim filing, claimant alleges that “Those who registered late were entitled to notification, and an additional mailing was required.” DOF did not dispute this allegation in its comments on the test claim filing.

The prior law of Elections Code section 13303, subdivision (b), already required that an “elections official shall send notice of the polling place to each voter with the sample ballot.” In addition, Elections Code section 13306, discussed further below, has long provided that “*Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but*

all of these voters shall receive polling place notices . . .” [Emphasis added.] Therefore under prior law, elections official were required to send polling place notices to voters who registered after the 54th day prior to an election. Elections Code section 13303, subdivision (c), as added by Statutes 2000, chapter 899, added information to the polling place notice, which provides a higher level of service to the public within an existing program.

The Commission finds that Elections Code section 13303, subdivision (c) mandates a new program or higher level of service for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election; a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

In a late filing received September 15, 2006, County of Orange asserts that this activity should be approved as an ongoing activity:

First of all this particular provision is not applicable just to one election: it is applicable to all elections held. Any voter can register to vote, or change their address for voting purposes up until the 15th day before any election. Thus, to provide this as an activity on a one time basis ignores the fact that elections are continually held, and this legislation was not just applicable to one election. Thus, this is an ongoing activity which is conducted before each election.

Elections are held throughout the state semi-annually to biennially, but the act of amending a pre-existing polling place notice is not one that reoccurs at every election. The Commission finds that once the text of the notice is amended to include the material required by Statutes 2000, chapter 899, there are no additional activities required that were not already required under prior law.

Elections Code Section 13306:

Elections Code section 13306 follows, as amended by Statutes 2000, chapter 899 -- indicated in underline and strikethrough below:

Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but all of these voters shall receive polling place notices and state ballot pamphlets. A state ballot pamphlet is not required to be mailed to a voter who registered after the 29th day prior to an election. Each of these voters shall receive a notice in bold print that states: “Because you are a late registrant, you are not receiving a sample ballot or candidates' statements.”

The addition of a sentence clarifying that state ballot pamphlets are not required to be mailed out to voters who register after the 29th day prior to an election in fact makes the code section identical to prior law, and does not require any activities on the part of county elections officials.

In “Response to Department of Finance,” received July 29, 2002, claimant alleges that they “were unable to mail sample ballot pamphlets to those voters who registered between the 29th and 15th days prior to the election. This resulted in an increase in telephone calls from voters

inquiring as to why they did not receive a sample ballot pamphlet. This required additional staff time to explain to the voters why they did not receive the sample ballot pamphlet.”

First, the Commission notes that the test claim legislation does not *prohibit* counties from sending the ballot pamphlets to these registrants; it just does not require it. Receiving phone calls from the public is not “mandated” by the test claim legislation; it is part of the business of being a public agency. If the test claim legislation explicitly required any new activities to be performed on the part of county elections officials, responding to public inquiries could be examined at the parameters and guidelines phase to determine whether the requested activities are a reasonable method of complying with the mandate. (Cal. Code of Regs., tit. 2, § 1183.1, subd. (a)(4).) However, there must first be a finding of a reimbursable state-mandated activity in order to reach the issue in parameters and guidelines. The Commission finds that the plain language of the amendment to Elections Code section 13306 does not mandate a new program or higher level of service on county elections officials.

Issue 3: Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose “costs mandated by the state.” Government Code section 17514 defines “costs mandated by the state” as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant estimated costs of \$200 or more for the test claim allegations, which was the statutory threshold at the time the test claim was filed. The claimant also stated that none of the Government Code section 17556 exceptions apply. For the one-time activity listed in the conclusion below, the Commission agrees and finds accordingly that it imposes costs mandated by the state upon counties within the meaning of Government Code section 17514.

CONCLUSION

The Commission concludes that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)³⁴

The other amendments by Statutes 2000, chapter 899, are not subject to article XIII B, section 6 of the California Constitution, or do not mandate a new program or higher level of service, and are denied.

³⁴ As amended by Statutes 2000, chapter 899, operative January 1, 2001.

THE TOWER
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PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 1:30 p.m.

DATE: Wednesday, October 4, 2006

PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

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A P P E A R A N C E S

COMMISSIONERS PRESENT

VINCENT P. BROWN
(Commission Chair)
Representative for MICHAEL GENEST Director
Department of Finance

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SEAN WALSH
Director
State Office of Planning and Research

AMY HAIR
Representative for STEVE WESTLY
State Controller

J. STEVEN WORTHLEY
Supervisor and Chairman of the Board
County of Tulare

--oOo--

A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

CAMILLE SHELTON
Chief Legal Counsel

DEBORAH BORZELLERI
Senior Commission Counsel
(Item 4)

ERIC FELLER
Commission Counsel
(Items 9 and 10)

NANCY PATTON
Deputy Executive Director

KATHERINE TOKARSKI
Commission Counsel
(Items 5, 6, 7, and 8)

--oOo--

PUBLIC TESTIMONY

Appearing Re Item 4:

For Claimant, Palos Verdes Estates:

JULIANA F. GMUR, Esq.
Manager, Cost Services
MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

JAMES B. HENDRICKSON
City Manager
City of Palos Verdes Estates
340 Palos Verdes Drive, West
Palos Verdes Estates, California

A P P E A R A N C E S

PUBLIC TESTIMONY

continued

Appearing Re Item 4: Continued

For California State Association of Counties SB 90:

ALLAN BURDICK
Director
California State Association of Counties SB 90 Service
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

For Department of Finance:

SUSAN S. GEANACOU, Esq.
Senior Staff Attorney
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Items 5 and 6:

For Claimant, County of Orange:

JULIANA F. GMUR, Esq.
Manager, Cost Services
MAXIMUS

NEAL KELLEY
Orange County Registrar of Voters
County of Orange
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For County of Solano:

DEBORAH SEILER
Assistant Registrar of Voters
County of Solano
675 Texas Street, Suite 2600
Fairfield, California 94533

A P P E A R A N C E S

PUBLIC TESTIMONY

continued

Appearing Re Items 5 and 6: *Continued*

For Department of Finance:

SUSAN S. GEANACOU, Esq.
Senior Staff Attorney
Department of Finance

CARLA P. CASTAÑEDA
Finance Budget Analyst
Department of Finance
Education Systems Unit
915 L Street, Seventh Floor
Sacramento, California 95814

Appearing Re Items 7 and 8:

For Claimant, County of San Bernardino:

BONNIE TER KEURST
Manager, Reimbursable Projects
County of San Diego
Auditor/Controller-Recorder
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San Bernardino, California 92415-0018

For Department of Finance:

SUSAN S. GEANACOU, Esq.
Senior Staff Attorney
Department of Finance

CARLA P. CASTAÑEDA
Finance Budget Analyst
Department of Finance
Education Systems Unit

A P P E A R A N C E S

PUBLIC TESTIMONY

continued

Appearing re Items 9 and 10:

For Claimant, City of Newport Beach:

JULIANA F. GMUR, Esq.
Manager, Cost Services
MAXIMUS

GLEN EVERROAD
Revenue Manager
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92658

For Department of Finance:

SUSAN S. GEANACOU, Esq.
Senior Staff Attorney
Department of Finance

CARLA P. CASTAÑEDA
Finance Budget Analyst
Department of Finance

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Commission on State Mandates – October 4, 2006

1 in the court decision which would determine that it is
2 constitutional, and since the statute allows for people
3 to file within one year after incurring costs, that if
4 somebody did incur costs, they may be returning to the
5 Commission for that particular point. But at this time,
6 there were no agencies that we know of that incurred any
7 costs that were awarded by an arbitrator.

8 Thank you.

9 CHAIR BROWN: No comments?

10 MR. HENDRICKSON: No. They have said everything
11 that needs to be said on our behalf.

12 Thank you.

13 CHAIR BROWN: The Department of Finance?

14 MS. GEANACOU: Yes. Susan Geanacou, Department
15 of Finance.

16 The Department supports the request for
17 reconsideration so that the issues raised in the request
18 can be fully addressed by the staff.

19 CHAIR BROWN: Are there any questions of any
20 members?

21 (No audible response)

22 CHAIR BROWN: If not, I'd certainly entertain a
23 motion.

24 MEMBER WALSH: Move to reconsider.

25 CHAIR BROWN: Second?

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1 MEMBER WORTHLEY: Second.

2 CHAIR BROWN: All those in favor, say "aye."

3 (A chorus of "ayes" was heard.)

4 CHAIR BROWN: Opposed?

5 (No audible response)

6 CHAIR BROWN: No?

7 Abstentions?

8 (No audible response)

9 CHAIR BROWN: The motion passes.

10 MR. BURDICK: Thank you very much.

11 MS. GMUR: Thank you.

12 MS. HIGASHI: This brings us to the first test
13 claim on today's agenda, Item 5. This item will be
14 presented by Commission Counsel Katherine Tokarski.

15 MS. TOKARSKI: Good afternoon. This item is
16 *Fifteen-Day Close of Voter Registration.*

17 Prior law allowed voters to newly register to
18 vote, reregister, or change their address with county
19 elections officials until the twenty-ninth day before
20 an election. After that date, voter registration closed
21 until the conclusion of the upcoming election.
22 Statutes 2000, Chapter 899, amended the Elections Code,
23 allowing new registrations or changes to voter
24 registrations through the fifteenth day prior to
25 an election.

1 The claimant seeks mandate reimbursement for
2 costs incurred to register voters from the twenty-eighth
3 through the fifteenth day before elections such as for
4 implementation planning meetings, revising training
5 programs, holding an informational media campaign,
6 responding to additional inquiries about the new law, and
7 providing additional personnel to accommodate the
8 increased workload.

9 Staff finds that most of the statutory
10 amendments by Statutes 2000, Chapter 899, do not mandate
11 a new program or higher level of service on elections
12 officials within the meaning of Article XIII B,
13 Section 6. Processing and accepting voter registration
14 affidavits and changes of address are not newly required
15 under the elections code. Elections officials have been
16 required to perform these activities long before the
17 enactment of Statutes of 2000, Chapter 899.

18 Staff finds that the amendment to Elections Code
19 section 13303, subdivision (c), added information to a
20 preexisting polling place notice, which does provide a
21 higher level of service to the public within an existing
22 program.

23 Following the release of the final staff
24 analysis, staff received late filings from the claimant
25 and from the County of Sacramento. Those documents,

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1 along with the supplemental staff analysis, are in your
2 binders.

3 Staff recommends that the Commission adopt this
4 analysis and partially approve the test claim as
5 described in the conclusion at page 16 of the final staff
6 analysis.

7 Will the parties and representatives please
8 state your names for the record?

9 MS. GMUR: Juliana Gmur on behalf of the County
10 of Orange.

11 MS. SEILER: Deborah Seiler on behalf of Solano
12 County.

13 MR. KELLEY: Neal Kelley, Registrar of Voters
14 for Orange County.

15 MS. GEANACOU: Susan Geanacou, Department of
16 Finance.

17 MS. CASTAÑEDA: Carla Castañeda, Department of
18 Finance.

19 MS. GMUR: Commissioners --

20 CHAIR BROWN: Okay, proceed.

21 MS. GMUR: Thank you so much.

22 All right, generally, when we come before you,
23 there are always two things we're looking for: Either
24 a new program or a higher level of service under an
25 existing program.

1 In this case, staff is saying that it's not a
2 higher level of service; it's higher costs. It's the
3 same program, the same services, higher costs. And they
4 cite case law. And the case law talks about the fact
5 that higher costs by themselves are not reimbursable.
6 But those higher costs in those two cases were regarding
7 general workers' compensation benefits and death
8 benefits.

9 Now, the registrars of voters, they're not in
10 the business of handing out benefits. They are in the
11 business of handling elections. And so the staff points
12 to that and says, "There's nothing new here. Registrar
13 of voters, this is what you do. You're just doing more
14 of what you normally do. Nothing new."

15 But if you extend that, you could say that peace
16 officers, they do nothing new. They investigate, they
17 take reports. Mental health clinicians, mental health
18 departments, they do nothing new. They provide mental
19 health services. School districts, education services,
20 administer records, tests. Cities, counties, they
21 provide services. So there's nothing new under the sun.

22 But I feel for the staff on this because this
23 one is really hard to conceptualize. A test claimant
24 comes before you. It's usually pretty clear: They're
25 looking for the "who" -- Who gets the service? Who is

1 providing the service? -- or the "what" -- What form are
2 we filling out? What form or process must we follow? In
3 this case, it's neither the "who" nor the "what," it's
4 the "when."

5 Now, it's kind of like somebody running to catch
6 an airplane. If they came up with a new rule that said
7 you don't have to board at the gate; you can wait until
8 the plane has been taxied out. They're on the runway.
9 We'll wheel some stairs out there, and you can jump on
10 board.

11 Now, in that case, the Department of Finance
12 would say, "Where are the new passengers? It's the same
13 list of passengers. It's just spread over a longer
14 period of time." Because that's kind of what they've
15 said in this case: Where are the new voters?
16 But that's concentrating on the "who" again and not the
17 "when."

18 For those people on board that airplane, that
19 crew, they've got certain things they have to do before
20 takeoff. And for them, the big issue is not that there
21 are passengers on board, but when the passengers come on
22 board.

23 And so, too, for our election folks here, they
24 are providing a higher level of service based on, yes, a
25 very small change in the law. But if you work in an area

1 that is as calendar-driven and timeline-dependent as
2 their world is, then that small change is definitely a
3 higher level of service.

4 I'm going to introduce to you some folks now who
5 can actually speak on that more than I can.

6 Mr. Neal Kelley, he is our test claimant from
7 the county; but we're going to lead off with Deborah
8 Seiler. She is here and she is from the County of
9 Solano, and she will tell you about that higher level of
10 service that she has had to provide.

11 MS. SEILER: Thank you, Mr. Chairman, Members of
12 the Commission. I'm Deborah Seiler. I'm the assistant
13 registrar of voters in the County of Solano; and I also
14 serve as co-chair of our California Association of Clerks
15 and Election Officials legislative committee.

16 Actually, my background, I have a substantial
17 background with the State. I was the assistant to the
18 Secretary of State for elections and political reform
19 for -- I was in the Secretary of State's office for
20 eleven years and served as the chief elections person in
21 that office.

22 I was also the chief consultant to the Assembly
23 Elections and Reapportionment Committee, and served as
24 one of the commissioners to the State's Fair Political
25 Practices Commission. I was appointed by former

1 Secretary of State, March Fong Eu.

2 I've also been the editor and publisher of a
3 monthly newsletter on election issues for about ten
4 years. I no longer do the newsletter.

5 So I do have a substantial background and, in
6 addition, have served on many international election
7 observation missions throughout the world.

8 So I have been with Solano County now for two
9 years. And I'd like to speak to this issue of the higher
10 level of service.

11 I guess I would liken it to a stream running
12 into the ocean. If you all of a sudden put a dam in the
13 stream, the stream is still going to the ocean, but it's
14 going to the ocean in a significantly different fashion.

15 And the effect of this close of registration being set
16 to what we call "E-minus" -- we work in "E-minus"
17 states -- being set at E-minus-15, or 15 days before the
18 election, has a profound effect on our offices in a
19 number of very specific areas.

20 First of all, one of the things that we're doing
21 at the time that we would ordinarily be finished with
22 voter registration, when it was formerly at 29 days
23 before the election, after that time period, what we were
24 doing is we were putting together the rosters of voters
25 that go out to the polling places. Those rosters we were

1 putting together in time to give to our precinct
2 inspectors to go out to the polling places.

3 Now, because of the late registrations, we're
4 not able to compile the rosters at the time that we need
5 to get them out to the precinct inspectors. So we've had
6 to come up with alternate methods of delivering those
7 rosters rather than just when the inspectors come in for
8 the training class. So we now have either personal
9 delivery or other mechanisms where staff is delivering it
10 or we have roving inspectors that we have to hire to send
11 out those rosters.

12 The other issue with the rosters is that
13 particularly in very busy elections -- and a number of
14 counties experienced this in the November of 2004
15 election, very hotly contested election -- the
16 registration levels were off the charts for all of us.
17 And we had tremendous difficulty getting -- due to the
18 later close of registration, we had tremendous difficulty
19 even getting those names entered into our files and
20 getting those names on the rosters.

21 In some cases, we did not. In some cases, the
22 counties failed to get the names on the rosters.
23 The consequence of that was that voters came into the
24 polling place and had to vote provisional ballots, which
25 is the requirement under the law for a person whose name

1 is not on the roster.

2 So that provisional voting process then actually
3 contributed to the amount of time that it took us to
4 perform the canvass and the amount of staff that we had
5 to have.

6 One of the big effects of this later close of
7 registration, too, is on the absentee ballot processing.

8 Ordinarily, our supervisors and lead people in
9 the absentee processing area -- in the voter registration
10 area, excuse me -- would sort of morph into the absentee
11 processing area. So the curtain would fall at 29 days
12 before the election, and then that 29 days before the
13 election is also the commencement of the absentee voting
14 period. And so then that staff would finish up with the
15 voter registration and then go in and start processing,
16 getting the absentees out in the mail and processing
17 those that had returned.

18 No longer can the same staff be used for the
19 absentee voting process. We have to have a whole new set
20 of people, managers, supervisors, and expertise now to
21 come in and do the absentee processing because our voter
22 registration people who had done it in the past are busy.
23 They're still engaged in voter registration activities.
24 So that's had a huge influence on our whole staffing
25 process.

1 One of the biggest impacts also with respect to
2 the absentee process is that now we have a setup -- as a
3 result of this new law, we have a situation where the
4 absentee voting period starts before the close of
5 registration.

6 What does that mean for voter registration? It
7 means that a person who is, for example, a permanent
8 absentee voter -- and we have many more permanent
9 absentee voters now than we used to. In Solano County,
10 it's up to almost 40 percent of our electorate who votes
11 absentee. So you've got all of these people to whom we
12 send at 29 days, because that's the beginning of the
13 absentee period, we send them their permanent absentee
14 ballot.

15 At E-minus-15, between 29 days and 15 days,
16 those same people can move and reregister to vote; and
17 they do.

18 So, now, we send them their first ballot. Then
19 they reregister to vote at the fifteen-day close. Any we
20 have to send them a second ballot -- a second absentee
21 ballot. So we have to go back -- and, obviously, we
22 can't let them vote twice.

23 So now we're going into this huge retrieval,
24 storage, tracking process, to make sure that these
25 absentee voters who are being able to register at a later

1 point in time are not duplicate voters.

2 So this is a major impact on our whole process.

3 And in addition, this is just one more thing that
4 carries over into our canvass process, because these are
5 all things that we have to account for in the canvass
6 process.

7 So those are a few examples of the profound
8 impact that this change has really had on our operation.

9 MR. KELLEY: Good afternoon, Mr. Chair and
10 fellow Commission Members. Thank you for the opportunity
11 to speak today.

12 Ms. Seiler and counsel have made some persuasive
13 arguments. I'm afraid I don't have any of the great
14 analogies that they had for you, but it's kind of a
15 little bit dry for you.

16 I wanted to go over just a few things that we
17 have done since the implementation of this fifteen-day
18 change.

19 We notify every voter who registers, as Deborah
20 pointed out, from E-28 to E-15, via a postcard, where
21 they can obtain a sample ballot, and that their
22 registration was completed.

23 We also have hired additional staff to process
24 those registration forms. And Deborah touched on that
25 just a little bit.

1 In the presidential vote for Orange County, we
2 processed 46,000 registration forms from E-28 to E-15.
3 And that was significant because we had to bring on a
4 tremendous amount of extra help and additional staff to
5 cover that increase in registration.

6 Now, you could probably make the argument that
7 perhaps those individuals would have registered before
8 E-28, but I think a lot of them now wait until that time
9 period just before E-15 to register. So that's been a
10 significant impact.

11 Also, the printing of sample ballots. Because
12 we must provide sample ballots for all of those who
13 register late, we have to essentially make a guess as to
14 how many individuals are going to register so that we can
15 print the sample ballot. So that's an increased cost to
16 provide enough sample ballots for those individuals we
17 think will register during that time period.

18 In addition to all of that, we've incurred a
19 substantial amount of overtime for all the reasons
20 Ms. Seiler pointed out, not just inputting that data in
21 those registration forms, but making sure during the
22 canvass period that we're covering all the issues she
23 brought up. In addition to those individuals who change
24 their registration and want a different type of ballot,
25 that's significant, and that happens quite a bit in

1 Orange County.

2 So with that, I want to thank you for the time.

3 CHAIR BROWN: Okay, thank you very much.

4 The Department of Finance?

5 MS. CASTAÑEDA: Carla Castañeda, the Department
6 of Finance.

7 We concur with the staff analysis. We
8 understand that the crunch timeline of changing the
9 deadline from the 29th to the 15th; but we do believe
10 that all the activities are still the same with the
11 exception of amending that notice to let voters know
12 where they're going and where they can get sample
13 ballots.

14 MS. GEANACOU: If I may, Chair?

15 Susan Geanacou, Department of Finance.

16 Just one comment I wish to add, is that the
17 manner of the county's adjustment to performing their
18 preexisting preelection duties are not mandated by the
19 test claim statutes. That's, I think, something that
20 needs to be emphasized for the Commission members today.
21 They did point out some examples of adjustments they'd
22 made, but those adjustments are not mandated by the test
23 claim statutes.

24 CHAIR BROWN: Thank you.

25 Questions of the Members?

1 MEMBER WORTHLEY: I checked with our registrar,
2 and she had a similar story from what we've heard here
3 this morning about the need for overtime help.

4 To me, this is a very simple issue. If I hired
5 somebody whose one and only job was to take in voter
6 registration applications, and I hired them the day after
7 an election, and their job ran from then until the 28th
8 day prior to the election, I would pay that person a
9 certain sum of money for providing those services.

10 The State comes along and mandates that they
11 have to work two additional weeks. Therefore, my costs
12 go up. Why? Because of the enhanced service which is
13 provided: I'm giving two more weeks of service. Two
14 weeks I didn't have to give before, I now have to give
15 because it was mandated by the state.

16 The argument was made that this additional cost
17 is only a cost. But this is a cost that comes about
18 because of one reason: Enhanced service. That's the
19 reason why banks increase their hours. That's the reason
20 why grocery stores increase their hours. The more hours
21 they're open, the more business they have. And that's
22 considered enhanced service.

23 To me, this is very simply an enhanced service
24 that's been mandated by the state. I don't see how you
25 can call it anything else but enhanced service.

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1 It's not a new program. Agreed. We've always
2 been in this responsibility; we will continue to be in
3 this responsibility. But when the State mandates that
4 we have to do it in a fashion that causes us to increase
5 our costs to provide this enhanced service, the State
6 should be responsible for paying. It's very simple, in
7 my mind.

8 CHAIR BROWN: Questions from other Members?

9 (No audible response)

10 CHAIR BROWN: I just have one question. And it
11 goes to the points that the Department of Finance raise.

12 During the change in time period from 30 to
13 15 days, is there any documentation that the number of
14 registrations has increased on a trend-line basis due to
15 the change in the time frames?

16 MR. KELLEY: I don't have any data to provide
17 you from Orange County at this point; but I can tell
18 you that during the presidential, that period of
19 registration during that two-week period was
20 significantly higher than the previous presidential.
21 But in terms of increased registration, our registration
22 numbers are actually decreasing slightly in Orange
23 County.

24 CHAIR BROWN: And that goes to a point. It
25 could be an anomaly based on whatever the election cycle

1 might be.

2 From my standpoint, if there's not adequate
3 documentation that the actual registrations have
4 increased, I find it very difficult, notwithstanding the
5 shift in time periods, that the workload is the same and
6 has not increased.

7 MS. SEILER: I think it's the method of the
8 workload that we're trying to point out to you. That is,
9 that due to the method of having to put this at a
10 completely different cycle, with different staff, with
11 additional staff, that it has been an increased cost for
12 us.

13 MS. SHELTON: If I can, just to add a couple
14 of things from case law. There aren't too many
15 higher-level-of-service cases that have been decided by
16 the courts. One of them, though, is Long Beach Unified
17 School District v. The State of California. And that
18 case was a higher level of service regarding racial
19 desegregation, where you had existing federal law, and
20 the state came and required additional requirements
21 imposed. And the court said that was a higher level of
22 service.

23 In the process, to find a higher level of
24 service is requiring a finding that the State is
25 mandating new requirements on the local agencies and

1 school districts.

2 Here, if you just take a look at the
3 legislation, I think there is an example on page 8, all
4 the Legislature did was change the number "29" to the
5 number "15." The Legislature did not change any of the
6 mandated activities.

7 The activities that are performed by the
8 counties, are activities they've decided to perform or
9 felt necessary to perform in order to comply with the
10 legislation.

11 And, yes, I'm sure there are increased costs.
12 But those activities have not been expressly mandated by
13 the state which is required for a reimbursement finding.

14 MEMBER WORTHLEY: Well, time is money. I mean,
15 that's a very -- that's axiomatic. We're requiring
16 additional time. It requires additional money.
17 Even if there was a representation made by the increase
18 in Orange County today. Even if you only had a few
19 people come in, it still affects the sequencing of
20 events. You still have to have people available to
21 receive and process these applications, if it was only
22 ten.

23 The point is, before, you had a point in time
24 where you could say, "This is when it ends." And as was
25 stated before -- and I've seen this happen in our own

1 elections office -- if you were to graph the activity
2 level in an elections office, as you get closer to the
3 election, it goes like this (indicating).

4 We are now taking a responsibility, just at the
5 time when it's getting extremely busy in elections
6 offices, and adding additional responsibilities to the
7 elections office. Now, it's that much more difficult to
8 try to deal with these additional responsibilities. It
9 does result in the need for additional people, as was
10 pointed out. People who morphed into other
11 responsibilities in the elections office have to be,
12 again, left to this particular role and responsibility
13 of accepting these applications; whereas before, they
14 would move on to a different responsibility level.

15 It's an additional cost -- it's an enhanced
16 service. And if it's not an enhanced service, you might
17 ask yourself, then why did the Legislature change the
18 law? What was the purpose of changing the law if it
19 wasn't considered an enhanced service? There certainly
20 would be no reason for it.

21 CHAIR BROWN: Mr. Burdick?

22 MR. BURDICK: Chairman Brown and Members, again,
23 Allan Burdick representing CSAC SB 90 service. It seems
24 like there's a couple of points here that maybe have been
25 missed or maybe you haven't discussed. One of the things

1 that we've got into defining was what is a reimbursable
2 state mandate, and does it implement a public policy.
3 And, boy, it sure seems to me that that providing people
4 more time to register is a public policy. What they're
5 doing is they're implementing a public policy that is
6 mandated on.

7 The second thing is this discussion about what
8 are they required to do? Were these things that have
9 been explained by these two professionals in this
10 business? You know, are these things which essentially
11 are optional?

12 Now, let me tell you, first of all, election
13 departments are not the highest-funded department in a
14 county government. They're General Fund departments; and
15 very often, you know, they're lucky to get every dime
16 they can to maintain whatever level of service they can
17 do to meet their requirements.

18 And the way the law is intended to be is, is it
19 reasonably necessary for these people to do that in order
20 to be able to carry it out? And they've made the
21 decision that it's reasonably necessary to do it.

22 I think they will tell you they didn't do this
23 because, you know, they thought it would be fun -- a
24 nice, extra frill or something. They looked at it, they
25 looked at the law, they're professionals; and they said,

1 you know, put together a plan to implement that
2 legislation.

3 And I think finally is the fact that this is the
4 first time we've had this really kind of serious
5 discussion about what is being done and the implications
6 and so forth. And, obviously, there's nobody here from
7 the Secretary of State's office who could participate in
8 the discussion to provide state advice to you. But as
9 you know, the next step in the process is parameters and
10 guidelines, in which you then sit down and try to work
11 out what is eligible and what is not eligible. That
12 does then come back to the Commission for its
13 consideration.

14 So it seems to me I would hope the Commission
15 would look at this and say, "This is a perfect example
16 of something we should send to the
17 parameters-and-guidelines stage. We should not limit
18 them by the decision we made today," because I think
19 there's agreement that there is some level of mandate
20 there. The question is the scope of it. To send it back
21 to parameters and guidelines, have it come back to you,
22 after you've had the Secretary of State participate,
23 after you've had the Department of Finance have the
24 benefit of that discussion and make its decision, I think
25 that you'd have a much more sound decision than trying to

1 grapple with this today when you're getting this -- a lot
2 of this stuff is relatively new information for you.

3 Thank you very much.

4 CHAIR BROWN: Thank you, Mr. Burdick.

5 MS. SHELTON: I'd like to clarify that a test
6 claim finding is a question of law. The standard is not
7 whether or not it's reasonably necessary for counties to
8 perform those activities. We wouldn't dispute those
9 factual determinations made by each county.

10 The standard is whether or not the state has
11 mandated the counties to perform those activities. And
12 here, there is no evidence in the law at all that the
13 State has mandated any additional activities, other than
14 changing the dates in the statutes.

15 The activities that they're discussing here
16 cannot necessarily be discussed during the
17 parameters-and-guidelines phase because we're making a
18 finding. And this proposed decision makes a finding that
19 they are not mandated by the State.

20 During parameters and guidelines, the Commission
21 does have discretion to determine activities that are
22 reasonably necessary to comply with the mandated
23 activity.

24 But the only mandated activity in the proposed
25 decision is the activity to amend the polling place

1 notice.

2 So any additional activities that the Commission
3 includes in parameters and guidelines has to relate to
4 amending the polling place notice. And that would be
5 listed to that activity.

6 CHAIR BROWN: Thank you, Counsel.

7 Mr. Walsh?

8 MEMBER WALSH: Are there any other people who
9 want to testify in this dispute or --

10 MS. GMUR: Yes, as a matter of fact. No
11 surprise there. There is mandated activity. Again, I
12 said, it's really hard to conceptualize. I had to go
13 around this several times before I could see it myself.
14 It's not what you're doing; it's when you're doing it.
15 Just like Mr. Worthley stated, he said it's like a
16 business. If you're going to stay open on Saturday, your
17 employer is requiring you to do the same thing you do
18 every other day of the week, you just have to do it now
19 on Saturday. The same, too, for our election folks. The
20 service itself is the same, but the change of the date is
21 mandated as to when it is to be done.

22 CHAIR BROWN: Any further follow-ups or
23 questions?

24 Do we have a motion for the staff
25 recommendation?

1 MEMBER WALSH: Move to approve the staff
2 recommendation.

3 CHAIR BROWN: Do we have a second?

4 MEMBER HAIR: I'll second.

5 All those in favor, say "aye."

6 (A chorus of "ayes" was heard.)

7 CHAIR BROWN: Opposed?

8 MEMBER WORTHLEY: Nay.

9 Any abstentions?

10 (No audible response)

11 CHAIR BROWN: The ayes have it.

12 The staff recommendation is approved.

13 MS. HIGASHI: Item 6 will be presented by
14 Ms. Tokarski.

15 MS. TOKARSKI: Item 6 is the proposed Statement
16 of Decision for the item you just heard. The sole issue
17 is whether the proposed Statement of Decision accurately
18 reflects the Commission's decision on the *Fifteen-Day*
19 *Close of Voter Registration* test claim.

20 Staff recommends that the Commission adopt the
21 proposed Statement of Decision beginning on page 3, which
22 accurately reflects the staff analysis and recommendation
23 on this test claim. Minor changes, including those that
24 reflect the late filings, hearing testimony, and vote
25 count will be included when issuing the final Statement

1 of Decision.

2 CHAIR BROWN: Do we have a motion on that
3 recommendation?

4 MEMBER WALSH: So moved.

5 MEMBER GLAAB: Second.

6 CHAIR BROWN: All those in favor, say "aye."

7 (A chorus of "ayes" was heard.)

8 CHAIR BROWN: Opposed?

9 MEMBER WORTHLEY: No.

10 CHAIR BROWN: Abstentions?

11 (No audible response)

12 CHAIR BROWN: The ayes have it. The staff
13 recommendation approved.

14 MR. BURDICK: Thank you very much.

15 MS. GMUR: Thank you.

16 MS. HIGASHI: Item 7 is the claim on *Voter*
17 *Identification Procedures*. This item will also be
18 presented by Commission Counsel Katherine Tokarski.

19 MS. TOKARSKI: This test claim addresses an
20 amendment to Elections Code section 14310 regarding
21 counting provisional ballots. A provisional ballot is a
22 regular ballot that has been sealed in a special
23 envelope, signed by the voter, and then deposited in the
24 ballot box. Provisional ballots can be required for
25 several reasons to prevent fraud. For example, when poll

1 workers cannot immediately verify an individual's name on
2 the official roster or if a voter requested an absentee
3 ballot but instead comes to the polling place without
4 bringing the absentee ballot.

5 Statutes of 6000, Chapter 260, amended Elections
6 Code section 14310, subdivision (c)(1), to add a
7 requirement that elections officials compare the
8 signature on each provisional ballot envelope with the
9 signature on the voter's affidavit of registration.

10 Staff finds that performing signature comparison for all
11 provisional ballots cast is a reimbursable state-mandated
12 program.

13 However, in a situation where a local government
14 calls a special election that could otherwise have been
15 legally consolidated with the next local or statewide
16 election, the downstream costs for checking signatures on
17 provisional ballots for that voluntarily-held election
18 would not be reimbursable.

19 Staff recommends that the Commission adopt this
20 analysis and partially approve the test claim as
21 described in the conclusion at page 12 of the final staff
22 analysis.

23 Will the parties please state their names?

24 MS. TER KEURST: Hi, I'm Bonnie Ter Keurst. I'm
25 representing the County of San Bernardino.

REPORTER'S CERTIFICATE

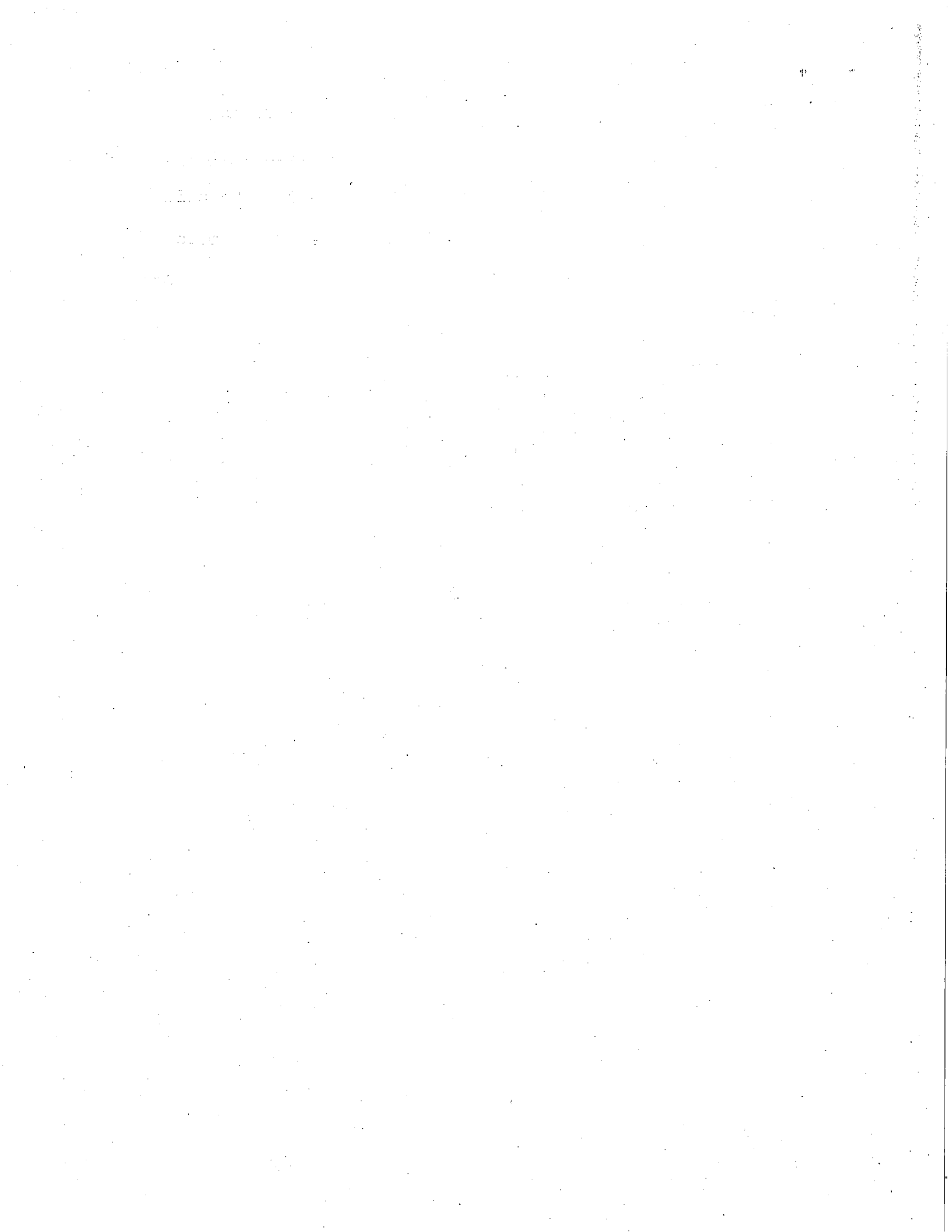
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That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on October 23, 2006.

Daniel P. Feldhaus
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Commission on State Mandates

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Issue: Fifteen Day Close of Voter Registration

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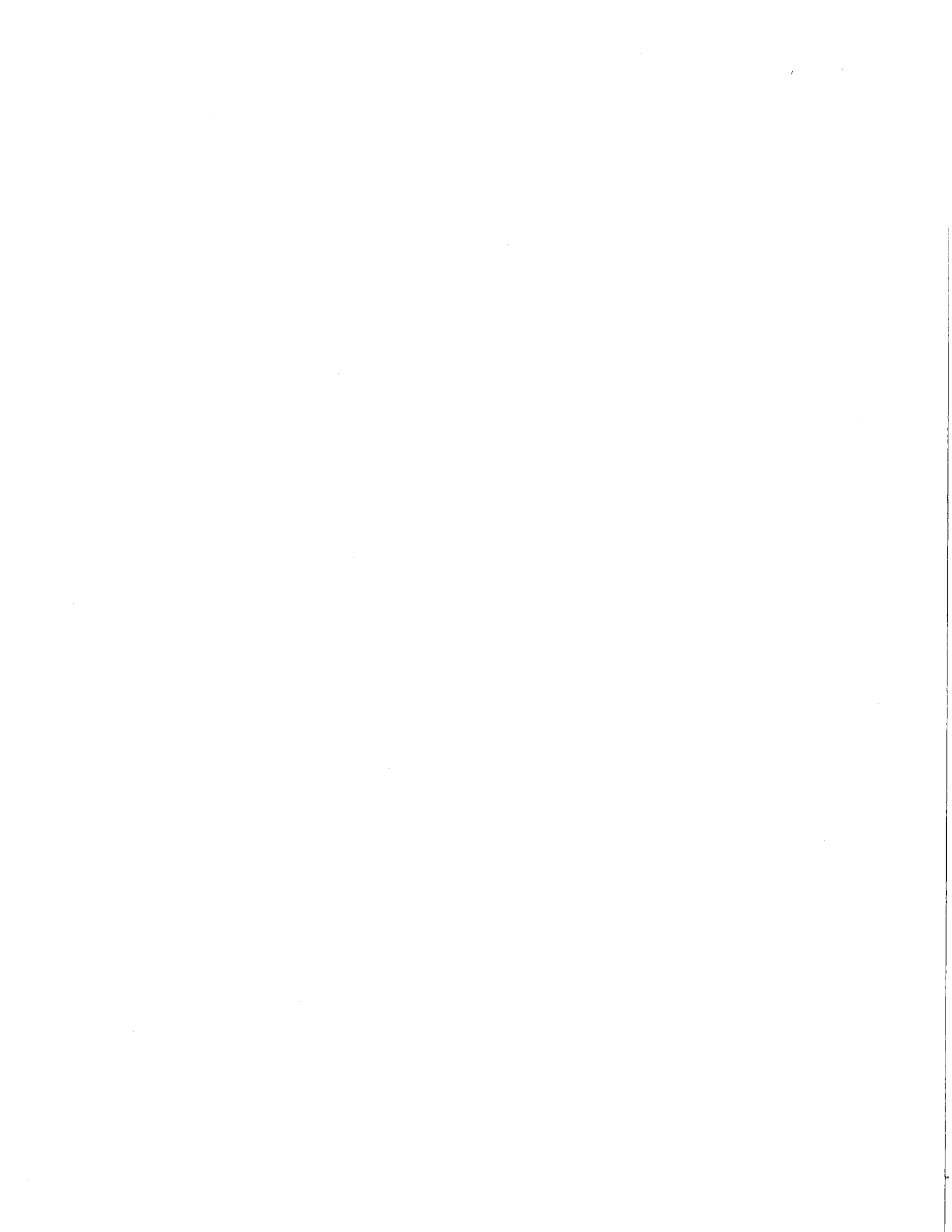
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