



March 15, 2021

Mr. Kris Cook
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

Mr. Fernando Lemus
County of Los Angeles
Auditor-Controller's Office
500 West Temple Street
Los Angeles, CA 90012

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
County of Los Angeles Citizens Redistricting Commission, 19-TC-04
Elections Code Sections 21530, 21531, 21532, 21533, 21534, and 21535 as added by
Statutes 2016, Chapter 781 (SB 958)
County of Los Angeles, Claimant

Dear Mr. Cook and Mr. Lemus:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision no later than **5:00 pm on April 5, 2021**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Mr. Cook and Mr. Lemus
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Hearing

This matter is set for hearing on **Friday, May 28, 2021** at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about May 14, 2021.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

Elections Code Sections 21530, 21531, 21532, 21533, 21534, and 21535 as added by
Statutes 2016, Chapter 781 (SB 958)

County of Los Angeles Citizens Redistricting Commission

19-TC-04

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This Test Claim, filed by the County of Los Angeles (claimant), addresses Statutes 2016, Chapter 781, which added Elections Code sections 21530 through 21535 to require the claimant to create the County of Los Angeles Citizens Redistricting Committee (CRC) to adjust the boundary lines of the supervisorial districts in the County of Los Angeles in the year following the year of the decennial federal census.

For the reasons below, staff finds that the Elections Code sections 21532 and 21534 as added by the test claim statute impose a reimbursable state-mandated program on the claimant within the meaning of article XIII B, section 6. Staff recommends that all other code sections added by the test claim statute and activities identified and requested for reimbursement in the Test Claim be denied.

Procedural History

Statutes 2016, chapter 781, was enacted on September 28, 2016, and became effective on January 1, 2017. The claimant filed the Test Claim on June 26, 2020.¹ On November 25, 2020, Commission staff issued the Notice of Complete Test Claim, Schedule for Comments, and Notice of Hearing. The Department of Finance (Finance) filed comments on the Test Claim on December 28, 2020.² The claimant filed late rebuttal comments on February 26, 2021.³ Commission staff issued the Draft Proposed Decision on March 15, 2021.⁴

¹ Exhibit A, Test Claim, filed June 26, 2020, page 1.

² Exhibit B, Finance's Comments on the Test Claim, filed December 28, 2020, page 1.

³ Exhibit C, Claimant's Late Rebuttal Comments, filed February 26, 2021.

⁴ Exhibit D, Draft Proposed Decision, issued March 15, 2021.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁵

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Was the Test Claim timely filed?	<p>Government Code section 17551(c) states: “test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring costs as a result of a statute or executive order, whichever is later.”</p> <p>Section 1183.1(c) of the Commission’s regulations, effective April 1, 2020, clarifies that a test claim “must be filed not later than 12 months (365 days) following the effective date of a statute or executive order, or within 12</p>	<p><i>Timely filed</i> – The test claim statute became effective on January 1, 2017.⁷ The claimant filed a declaration under penalty of perjury from the Finance Manager of the County Clerk’s Office stating that the county first incurred costs to comply with the test claim statute on July 1, 2019.⁸ The claimant filed this Test Claim on June 26, 2020, within 12 months of first incurring costs to comply with the test claim statute.⁹</p>

⁵ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281 citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁷ Statutes 2016, chapter 781.

⁸ Exhibit A, Test Claim, filed June 26, 2020, page 28 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

⁹ Exhibit A, Test Claim, filed June 26, 2020, page 1.

Issue	Description	Staff Recommendation
	months (365 days) of first incurring increased costs. ⁶	
Does the test claim statute impose a reimbursable state-mandated program on local agencies under article XIII B, section 6 of the California Constitution?	<p>The test claim statute added Elections Code sections 21530 through 21535 to require the claimant to create the CRC to adjust the boundary lines of the supervisorial districts in the county every ten years.¹⁰ The test claim statute requires, among other things, public outreach, public access to a redistricting database, holding at least nine public hearings before the adoption of a final redistricting map and plan, and the issuance of a final report.¹¹ The statute also requires the claimant to staff and fund the CRC.¹²</p> <p>Under prior law, the county board of supervisors was required to adjust its supervisorial boundaries.¹³ The board was required to hold at least one public hearing on the proposed district lines prior to the public hearing at which the board votes to approve or deny the proposal.¹⁴</p>	<p><i>Approve</i> – Elections Code sections 21532 and 21534 as added by the test claim statute impose a state-mandated program and mandate a new program or higher level of service on the claimant for the creation, staffing, and operation of the CRC, as specified in the Proposed Decision.</p> <p>However, Elections Code sections 21530, 21533, and 21535 do not impose any state-mandated requirements on the claimant, but generally define terms and limit the hiring of consultants by the CRC to help with the adjustment of district boundaries. And, although the claimant is required by Elections Code section 21534(c)(8) to provide reasonable funding to the CRC, which may include paying for a consultant hired by the CRC, the courts have made it clear that “[n]othing in article XIII B prohibits the shifting of costs between local governmental</p>

⁶ California Code of Regulations, title 2, section 1183.1(c), Register 2020, No. 4 (eff. April 1, 2020).

¹⁰ Elections Code section 21532(a), (c).

¹¹ Elections Code section 21534(c), (d)(4).

¹² Elections Code section 21534(c)(8).

¹³ Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36.

¹⁴ Elections Code section 21507 as added by Statutes 2014, chapter 873.

Issue	Description	Staff Recommendation
	Finance contends that the test claim statute increases costs, but does not impose a new program or higher level of service. Finance also contends that the activity and costs incurred to retain consultants is not mandated by the state. ¹⁵	<p>entities,” so this requested activity is denied.¹⁶</p> <p>Additionally, the requirements to adjust supervisorial boundary lines, adopt a redistricting plan every ten years, and to comply with the Public Records Act are not new and do not impose a new program or higher level of service on the claimant.¹⁷</p> <p>Staff also finds that all of the new state-mandated activities impose costs mandated by the state pursuant to Government Code section 17514, <i>except</i> for the activities required to comply with the Ralph M. Brown Act, which do not impose costs mandated by the state as compliance with the Act is expressly excluded from the subvention requirement by article XIII B, section 6(a)(4) of the California Constitution.</p>

Staff Analysis

A. The Test Claim Was Timely Filed Pursuant to Government Code Section 17551 and Section 1183.1(c) of the Commission’s Regulations Because the Filing Date Is Within Twelve Months of the Claimant First Incurring Increased Costs.

This Test Claim was timely filed pursuant to Government Code section 17551 and section 1183.1(c) of the Commission’s regulations. Government Code section 17551(c) states: “test claims shall be filed not later than 12 months following the effective date of a statute or

¹⁵ Exhibit B, Finance’s Comments on the Test Claim, filed December 28, 2020, pages 1-3.

¹⁶ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1815.

¹⁷ California Constitution, article I, sections 3(b) and 7; California Constitution, article II, section 2.5; California Constitution, article XIII B, section 6(a); Elections Code sections 14025-14032 as added by Statutes 2002, chapter 129; Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36; Elections Code section 21507 as added by Statutes 2014, chapter 873; Government Code section 6252 as last amended by Statutes 2015, chapter 537; and *Reynolds v. Sims* (1964) 377 U.S. 533, 566.

executive order, or within 12 months of incurring costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations, effective April 1, 2020, clarifies:

any test claim or amendment filed with the Commission must be filed not later than 12 months (365 days) following the effective date of a statute or executive order, or within 12 months (365 days) of first incurring increased costs as a result of a statute or executive order, whichever is later.¹⁸

The test claim statute became effective on January 1, 2017.¹⁹ The claimant filed a declaration under penalty of perjury from the Finance Manager of the County Clerk’s Office stating that the county first incurred costs to comply with the test claim statute on July 1, 2019.²⁰ The claimant filed this Test Claim on June 26, 2020, within 12 months of first incurring costs to comply with the test claim statute.²¹

B. Staff Finds That Elections Code Sections 21532 and 21534 as Added by the Test Claim Statute Impose a Reimbursable State-Mandated Program on the County of Los Angeles, as Specified in the Analysis and That All Other Code Sections Pled and Activities Alleged to Be Mandated Should Be Denied.

The test claim statute added Elections Code sections 21530 through 21535 to require the claimant to create, staff, and fund the CRC to adjust the boundary lines of the supervisorial districts in the County of Los Angeles in the year following the decennial federal census.

Under prior law, the claimant’s board of supervisors performed this redistricting.²² Before adjusting the boundaries, the board was required to hold at least one public hearing on the proposed district lines prior to the public hearing at which the board votes to approve or deny the proposal.²³

Staff finds that the following activities required by Elections Code sections 21532 and 21534, as added by the test claim statute, mandate a new program or higher level of service on the claimant:

- The county shall create a CRC in each year ending in the number zero.²⁴

¹⁸ California Code of Regulations, title 2, section 1183.1(c), Register 2020, No. 4 (eff. April 1, 2020).

¹⁹ Statutes 2016, chapter 781.

²⁰ Exhibit A, Test Claim, filed June 26, 2020, page 28 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

²¹ Exhibit A, Test Claim, filed June 26, 2020, page 1.

²² Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36; Elections Code sections 21501-21506 as added by Statutes 1994, chapter 920; and Elections Code section 21507 as added by Statutes 2014, chapter 873.

²³ Elections Code section 21507 as added by Statutes 2014, chapter 873.

²⁴ Elections Code section 21532(a).

- The elections official shall review the applications, select 60 applicants, publish the list of the 60 applicants, and create a subpool for each supervisorial district.²⁵
- The Auditor-Controller randomly draws eight commissioners.²⁶
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting and to provide access to the public.²⁷

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities required by Elections Code sections 21532 and 21534 to be performed by the CRC mandate a new program or higher level of service on the claimant:

- The eight commissioners shall appoint six applicants to the CRC.²⁸
- Conduct at least seven public hearings before drafting a map.²⁹
- Post the draft map for public comment on the County website and conduct one public hearing on the draft map.³⁰
- Comply with the Ralph M. Brown Act.³¹
- Make available to the public a calendar of all public hearings.³²
- Arrange for the live translation of a hearing in an applicable language upon timely request.³³
- Encourage county residents to participate in the redistricting.³⁴
- Issue a report that explains the basis on which the CRC made its decisions.³⁵

However, Elections Code sections 21530, 21533, and 21535 do not impose any state-mandated requirements on the claimant, but generally define terms and limit the hiring of consultants by the CRC to help with the adjustment of district boundaries. And, although the claimant is required by Elections Code section 21534(c)(8) to provide reasonable funding to the CRC, which

²⁵ Elections Code section 21532(e)-(g).

²⁶ Elections Code section 21532(g).

²⁷ Elections Code section 21534(c)(7).

²⁸ Elections Code section 21532(h).

²⁹ Elections Code section 21534(c)(2).

³⁰ Elections Code section 21534(c)(3)(A)-(B).

³¹ Elections Code sections 21534(c)(1); 21534(c)(4)(B).

³² Elections Code section 21534(c)(4)(A).

³³ Elections Code section 21534(c)(5).

³⁴ Elections Code section 21534(c)(6).

³⁵ Elections Code section 21534(d)(4).

may include paying for a consultant hired by the CRC, the courts have made it clear that “[n]othing in article XIII B prohibits the shifting of costs between local governmental entities.”³⁶

Moreover, the requirements and costs imposed by Elections Code sections 21531 and 21534(a), (c)(9), and (d)(1)-(3) to adjust supervisorial boundary lines, adopt a redistricting plan every ten years, and to comply with the Public Records Act are not new and do not impose a new program or higher level of service on the claimant.³⁷

The test claim statute carries out the government function of providing a service to the public. Redistricting supervisorial district lines by an independent redistricting commission serves the county residents by ensuring fair representation and that their vote is not diluted to favor any particular group or political party.³⁸ Further, the test claim statute only applies to the County of Los Angeles, a political subdivision of the State of California. Thus, the test claim statute satisfies the requirement of being a new program or higher level of service.³⁹

Staff also finds that all of the new state-mandated activities impose costs mandated by the state pursuant to Government Code section 17514, *except* for the activities required by Elections Code section 21534(c)(1) and (c)(4)(B) to comply with the Ralph M. Brown Act. Article XIII B, section 6(a)(4) states that “the Legislature may, but need not, provide a subvention of funds for the following mandates: Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.” Article I, section 3(b) of the California Constitution requires local agencies to comply with the Ralph M. Brown Act, beginning with Government Code section 54950. The Brown Act applies to all local agencies and “any other local body created by state statute,” and therefore applies to the CRC.⁴⁰ Accordingly, the activities required by Elections Code section 21534(c)(1) and (c)(4)(B) to comply with the Ralph M. Brown Act do not impose costs mandated by the state pursuant to article XIII B, section 6(a)(4) of the California Constitution.

Conclusion

Based on the foregoing analysis, staff recommends that the Commission partially approve this Test Claim and find that Elections Code sections 21532 and 21534 as added by the test claim

³⁶ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1815.

³⁷ California Constitution, article I, sections 3(b) and 7; California Constitution, article II, section 2.5; California Constitution, article XIII B, section 6(a); Elections Code sections 14025-14032 as added by Statutes 2002, chapter 129; Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36; Elections Code section 21507 as added by Statutes 2014, chapter 873; Government Code section 6252 as last amended by Statutes 2015, chapter 537; and *Reynolds v. Sims* (1964) 377 U.S. 533, 566.

³⁸ Exhibit X, Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading of Senate Bill 958 (2015-2016 Reg. Sess.), August 30, 2016, page 5.

³⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set forth in *County of Los Angeles* (1987) 43 Cal.3d 46, 56); *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

⁴⁰ Government Code section 54952(a).

statute impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following activities:

- The county shall create a CRC no later than December 31, 2020, and in each year ending in the number zero thereafter.⁴¹
- The elections official shall review the applications and eliminate applicants who do not meet the specified qualifications, select 60 of the most qualified applicants, publish the list of qualified applicants for 30 days, and create a subpool for each of the five existing supervisorial districts of the board.⁴²
- At a regularly scheduled meeting of the board, the Auditor-Controller conducts a random drawing to select one commissioner from each of the five subpools, then another random drawing from all of the remaining applicants to select three additional commissioners.⁴³
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC.⁴⁴

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities mandated by Elections Code sections 21532 and 21534 impose increased costs mandated by the state on the claimant:

- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.⁴⁵
- Conduct at least seven public hearings before drafting a map, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.⁴⁶
- Post the draft map for public comment on the website of the County of Los Angeles and conduct one public hearing on the draft map (in addition to the one hearing required under prior law, which is not reimbursable).⁴⁷
- Establish and make available to the public a calendar of all public hearings.⁴⁸

⁴¹ Elections Code section 21532(a).

⁴² Elections Code section 21532(e)-(g).

⁴³ Elections Code section 21532(g).

⁴⁴ Elections Code section 21534(c)(7).

⁴⁵ Elections Code section 21532(h).

⁴⁶ Elections Code section 21534(c)(2).

⁴⁷ Elections Code section 21534(c)(3)(A)-(B).

⁴⁸ Elections Code section 21534(c)(4)(A).

- Arrange for the live translation of a hearing in an applicable language (defined as “a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county”) if a request for translation is made at least 24 hours before the hearing.⁴⁹
- Take steps to encourage county residents to participate in the redistricting public review process.⁵⁰
- Issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.⁵¹

Staff finds that all other code sections added by the test claim statute and activities alleged to impose a mandate in the Test Claim should be denied.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to partially approve the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

⁴⁹ Elections Code section 21534(c)(5).

⁵⁰ Elections Code section 21534(c)(6).

⁵¹ Elections Code section 21534(d)(4).

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

<p>IN RE TEST CLAIM</p> <p>Elections Code sections 21530, 21531, 21532, 21533, 21534, and 21535</p> <p>Statutes 2016, Chapter 781 (SB 958)</p> <p>Filed on June 26, 2020</p> <p>County of Los Angeles, Claimant</p>	<p>Case No.: 19-TC-04</p> <p><i>County of Los Angeles Citizens Redistricting Commission</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted May 28, 2021)</i></p>
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DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 28, 2021. [Witness list will be included in the adopted Decision.]

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 sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Spencer Walker, Representative of the State Treasurer	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice-Chairperson	

Summary of the Findings

This Test Claim, which was timely filed by the County of Los Angeles (claimant), addresses Statutes 2016, Chapter 781, which added Elections Code sections 21530 through 21535 to require the claimant to create, staff, and fund the independent County of Los Angeles Citizens Redistricting Committee (CRC) to adjust the boundary lines of the supervisorial districts in the County of Los Angeles in the year following the year of the decennial federal census.

Under prior law, the claimant's board of supervisors were required to perform the supervisorial redistricting.⁵² Before adjusting the boundaries, the board was required to hold at least one public hearing on the proposed district lines prior to the public hearing at which the board votes to approve or deny the proposal.⁵³

The Commission finds that the following activities required by Elections Code sections 21532 and 21534, as added by the test claim statute, mandate a new program or higher level of service on the claimant:

- The county shall create a CRC in each year ending in the number zero.⁵⁴
- The elections official shall review the applications, select 60 applicants, publish the list of the 60 applicants, and create a subpool for each supervisorial district.⁵⁵
- The Auditor-Controller randomly draws eight commissioners.⁵⁶
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting and to provide access to the public.⁵⁷

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities required by Elections Code sections 21532 and 21534 to be performed by the CRC mandate a new program or higher level of service on the claimant:

- The eight commissioners shall appoint six applicants to the CRC.⁵⁸
- Conduct at least seven public hearings before drafting a map.⁵⁹

⁵² Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36; Elections Code sections 21501-21506 as added by Statutes 1994, chapter 920; and Elections Code section 21507 as added by Statutes 2014, chapter 873.

⁵³ Elections Code section 21507 as added by Statutes 2014, chapter 873.

⁵⁴ Elections Code section 21532(a).

⁵⁵ Elections Code section 21532(e)-(g).

⁵⁶ Elections Code section 21532(g).

⁵⁷ Elections Code section 21534(c)(7).

⁵⁸ Elections Code section 21532(h).

⁵⁹ Elections Code section 21534(c)(2).

- Post the draft map for public comment on the County website and conduct one public hearing on the draft map.⁶⁰
- Comply with the Ralph M. Brown Act.⁶¹
- Make available to the public a calendar of all public hearings.⁶²
- Arrange for the live translation of a hearing in an applicable language upon timely request.⁶³
- Encourage county residents to participate in the redistricting.⁶⁴
- Issue a report that explains the basis on which the CRC made its decisions.⁶⁵

However, Elections Code sections 21530, 21533, and 21535 do not impose any state-mandated requirements on the claimant, but rather generally define terms and limit the hiring of consultants by the CRC to help with the adjustment of district boundaries. Although the claimant is required by Elections Code section 21534(c)(8) to provide reasonable funding to the CRC, which may include paying for a consultant hired by the CRC, the courts have made it clear that “[n]othing in article XIII B prohibits the shifting of costs between local governmental entities.”⁶⁶

Moreover, the requirements imposed by Elections Code sections 21531 and 21534(a), (c)(9), and (d)(1)-(3) to adjust supervisorial boundary lines, adopt a redistricting plan every ten years; and to comply with the Public Records Act are not new and do not impose a new program or higher level of service on the claimant.⁶⁷

The Commission also finds that all of the new state-mandated activities impose costs mandated by the state pursuant to Government Code section 17514, *except* for the activities required by Elections Code section 21534(c)(1) and (c)(4)(B) to comply with the Ralph M. Brown Act for the public hearings conducted by the CRC. These activities are expressly exempted from the reimbursement requirement by article XIII B, section 6(a)(4). Article XIII B, section 6(a)(4) states that “the Legislature may, but need not, provide a subvention of funds for the following

⁶⁰ Elections Code section 21534(c)(3)(A)-(B).

⁶¹ Elections Code sections 21534(c)(1); 21534(c)(4)(B).

⁶² Elections Code section 21534(c)(4)(A).

⁶³ Elections Code section 21534(c)(5).

⁶⁴ Elections Code section 21534(c)(6).

⁶⁵ Elections Code section 21534(d)(4).

⁶⁶ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1815.

⁶⁷ California Constitution, article I, sections 3(b) and 7; California Constitution, article II, section 2.5; California Constitution, article XIII B, section 6(a); Elections Code sections 14025-14032 as added by Statutes 2002, chapter 129; Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36; Elections Code section 21507 as added by Statutes 2014, chapter 873; Government Code section 6252 as last amended by Statutes 2015, chapter 537; and *Reynolds v. Sims* (1964) 377 U.S. 533, 566.

mandates: . . . Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.” Article I, section 3(b) of the California Constitution requires local agencies to comply with the Ralph M. Brown Act, beginning with Government Code section 54950. The Brown Act applies to all local agencies and “any other local body created by state statute,” and therefore applies to the CRC.⁶⁸ Accordingly, the activities required by Elections Code section 21534(c)(1) and (c)(4)(B) to comply with the Ralph M. Brown Act do not impose costs mandated by the state pursuant to article XIII B, section 6(a)(4) of the California Constitution.

In conclusion, the Commission partially approves this Test Claim and finds that Elections Code sections 21532 and 21534 as added by the test claim statute impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following activities:

- The county shall create a CRC no later than December 31, 2020, and in each year ending in the number zero thereafter.⁶⁹
- The elections official shall review the applications and eliminate applicants who do not meet the specified qualifications, select 60 of the most qualified applicants, publish the list of qualified applicants for 30 days, and create a subpool for each of the five existing supervisorial districts of the board.⁷⁰
- At a regularly scheduled meeting of the board, the Auditor-Controller conducts a random drawing to select one commissioner from each of the five subpools, then another random drawing from all of the remaining applicants to select three additional commissioners.⁷¹
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC.⁷²

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities mandated by Elections Code sections 21532 and 21534 impose a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution on the claimant:

- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.⁷³

⁶⁸ Government Code section 54952(a).

⁶⁹ Elections Code section 21532(a).

⁷⁰ Elections Code section 21532(e)-(g).

⁷¹ Elections Code section 21532(g).

⁷² Elections Code section 21534(c)(7).

⁷³ Elections Code section 21532(h).

- Conduct at least seven public hearings before drafting a map, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.⁷⁴
- Post the draft map for public comment on the website of the County of Los Angeles and conduct one public hearing on the draft map (in addition to the one hearing required under prior law, which is not reimbursable).⁷⁵
- Establish and make available to the public a calendar of all public hearings.⁷⁶
- Arrange for the live translation of a hearing in an applicable language (defined as “a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county”) if a request for translation is made at least 24 hours before the hearing.⁷⁷
- Take steps to encourage county residents to participate in the redistricting public review process.⁷⁸
- Issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.⁷⁹

All other code sections added by the test claim statute and activities alleged to be mandated in the Test Claim are denied.

COMMISSION FINDINGS

I. Chronology

01/01/2017 The effective date of the test claim statute.⁸⁰

06/26/2020 The claimant filed the Test Claim.⁸¹

12/28/2020 The Department of Finance (Finance) filed comments on the Test Claim.⁸²

⁷⁴ Elections Code section 21534(c)(2).

⁷⁵ Elections Code section 21534(c)(3)(A)-(B).

⁷⁶ Elections Code section 21534(c)(4)(A).

⁷⁷ Elections Code section 21534(c)(5).

⁷⁸ Elections Code section 21534(c)(6).

⁷⁹ Elections Code section 21534(d)(4).

⁸⁰ Statutes 2016, chapter 781.

⁸¹ Exhibit A, Test Claim, filed June 26, 2020, page 1.

⁸² Exhibit B, Finance’s Comments on the Test Claim, filed December 28, 2020, page 1.

02/26/2021 The claimant filed late rebuttal comments.⁸³

03/15/2021 Commission staff issued the Draft Proposed Decision.⁸⁴

II. Background

A. A History of Redistricting in California

1. The Creation of the California Citizens Redistricting Commission to Adjust District Lines for the State Assembly, Senate, and Board of Equalization, and for Congress.

Redistricting is the apportionment of legislative representation based on population.⁸⁵ The right to vote, guaranteed by the Fourteenth and Fifteenth Amendments of the United States Constitution, requires equal legislative representation through periodic redistricting.⁸⁶ Each state has the discretion to choose a specific methodology to use for redistricting,⁸⁷ however, the Fourteenth Amendment restricts the use of race as the predominant criterion in drawing district lines.⁸⁸

The Voting Rights Act of 1965 was enacted by Congress to further protect the right to vote.⁸⁹ The Act prohibits states and their political subdivisions from using voting qualifications, prerequisites to voting, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or membership in a "language minority group."⁹⁰ After the Supreme Court held that this provision prohibited only intentional discrimination,⁹¹ Congress amended the Act to forbid any act having a disparate impact on minority voting strength. "Thus, after the 1982 amendment, the Voting Rights Act can be violated by both intentional discrimination in the drawing of district lines and facially neutral apportionment schemes that have the effect of diluting minority votes."⁹²

⁸³ Exhibit C, Claimant's Late Rebuttal Comments, filed February 26, 2021.

⁸⁴ Exhibit D, Draft Proposed Decision, issued March 15, 2021.

⁸⁵ United States Constitution, article I, sections 2 and 4.

⁸⁶ *Reynolds v. Sims* (1964) 377 U.S. 533 [state legislative districts]; *Kirkpatrick v. Preisler* (1969) 394 U.S. 526 [congressional districts].

⁸⁷ *Reynolds v. Sims* (1964) 377 U.S. 533, 583.

⁸⁸ *Shaw v. Reno* (1993) 509 U.S. 630.

⁸⁹ 52 U.S. Codes section 10101 et seq. formerly 42 U.S. Codes section 1971.

⁹⁰ 52 U.S. Codes sections 10101(a), 10103(f)(2).

⁹¹ *City of Mobile v. Bolden* (1980) 446 U.S. 55.

⁹² *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 766.

California enacted its own Voting Rights Act⁹³ in 2002 which implements the equal protection⁹⁴ and the right to vote⁹⁵ guarantees in the California Constitution by proscribing “the dilution or the abridgment of the rights of voters who are members of a protected class.”⁹⁶

California requires the Legislature to adjust district lines for the Assembly, Senate, and Board of Equalization in the year following the federal census.⁹⁷ This process was fraught with partisan issues and gerrymandering for decades, however, solutions were slow in coming.⁹⁸ In the 1980s alone, California voters defeated four redistricting reform initiatives.⁹⁹ Finally, on November 4, 2008, California voters approved Proposition 11, the Voters FIRST Act, which amended Article XXI of the California Constitution taking the authority for the creation of district lines away from the Legislature and instead created the California Citizens Redistricting Commission to establish district lines for the Assembly, Senate, and Board of Equalization.¹⁰⁰ The 14 Commission members, chosen randomly by the State Auditor, are made up of five Democrats, five Republicans, and four members who are registered with neither of those political parties.¹⁰¹ This entirely independent commission redistricting system was the first in the nation.¹⁰² In 2010, the voters approved Proposition 20, the Voters FIRST Act for Congress, which further amended Article XXI giving the California Citizens Redistricting Commission the authority to establish district lines for U.S. congressional districts.¹⁰³

⁹³ Statutes 2002, chapter 129 codified at Elections Code sections 14025-14032.

⁹⁴ California Constitution, article I, section 7.

⁹⁵ California Constitution, article II, section 2.5.

⁹⁶ Elections Code sections 14027 and 14031.

⁹⁷ California Constitution, article XXI.

⁹⁸ Exhibit X, Quinn, *Carving Up California: A History of Redistricting, 1951-1984* (Ph.D. diss.), Rose Institute of State and Local Government, Claremont McKenna College, <https://s10294.pcdn.co/wp-content/uploads/2014/02/Carving-Up-California.pdf> (accessed on December 22, 2020).

⁹⁹ Exhibit X, Heslop, *Governing California in the 21st Century - Redistricting Reform in California*, pages 1-5, <http://roseinstitute.org/wp-content/uploads/2014/02/Redistricting-Reform-in-CA.pdf> (accessed on December 24, 2020).

¹⁰⁰ Government Code sections 8251-8253.6.

¹⁰¹ *Vandermost v. Bowen* (2012) 53 Cal.4th 421, 442-448.

¹⁰² Exhibit X, Rose Institute of State and Local Government, *Redistricting in America, A State-by-State Analysis*, pages 44-46, <https://s10294.pcdn.co/wp-content/uploads/2016/05/Redistricting-in-America-for-Print.pdf> (accessed on December 24, 2020).

¹⁰³ Government Code sections 8251-8253.6.

2. Supervisorial Redistricting for the County of Los Angeles Under Prior Law.

Under the California Constitution, charter counties are not free to establish their own redistricting process.¹⁰⁴ As the County of Los Angeles is a charter county, it was obligated to follow the existing statutes regarding redistricting. Similar to the initial state system, supervisorial redistricting is performed by the legislative body of each county, the board of supervisors.¹⁰⁵

In 2016, at the time that the test claim legislation was being considered, the process began after each decennial federal census. A county board of supervisors was required to adjust its supervisorial boundaries in compliance with the Voting Rights Act of 1965 so that the districts were nearly equal in population. The board was required to use the census data as a basis for the adjustment. The board had the option to consider the factors of topography; geography; cohesiveness, contiguity, integrity, and compactness of territory; and communities of interest.¹⁰⁶ The board also had the option to appoint an advisory committee of residents to study changing the boundaries. This committee would report its findings on the need for change of boundaries and the recommended changes to the board. These recommendations were advisory only.¹⁰⁷ Before adjusting the boundaries, the board was required to hold at least one public hearing on the proposed district lines prior to the public hearing at which the board votes to approve or deny the proposal.¹⁰⁸ If the board failed to complete the redistricting before the first day of November, a supervisorial redistricting commission, consisting of the county district attorney, the county assessor, and an elected county elections official, an elected county superintendent of schools, or the sheriff, was assembled to complete the redistricting.¹⁰⁹ Once established, the new district boundaries would take effect at the next election.¹¹⁰ Between federal censuses, the board could redistrict based on a county census or use population estimates by the State Department of Finance, the county planning department, or county planning commission.¹¹¹ However, any person could bring suit claiming that the estimates did not reflect the current population more accurately than the most recent census data and seek declaratory relief from a court.¹¹²

¹⁰⁴ California Constitution, article XI, section 4(a).

¹⁰⁵ Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36; Elections Code sections 21501-21506 as added by Statutes 1994, chapter 920; and Elections Code section 21507 as added by Statutes 2014, chapter 873.

¹⁰⁶ Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36.

¹⁰⁷ Elections Code section 21505 as added by Statutes 1994, chapter 920.

¹⁰⁸ Elections Code section 21507 as added by Statutes 2014, chapter 873.

¹⁰⁹ Elections Code sections 21501 and 21502 as added by Statutes 1994, chapter 920.

¹¹⁰ Elections Code section 21506 as added by Statutes 1994, chapter 920.

¹¹¹ Elections Code section 21503 as added by Statutes 1994, chapter 920.

¹¹² Elections Code section 21504 as added by Statutes 1994, chapter 920.

The claimant has had a history of racial discrimination in its supervisorial redistricting process.¹¹³ In 1988, Hispanic groups in Los Angeles County, joined by the United States of America, filed a voting rights action seeking a redrawing of the districts for the Los Angeles County Board of Supervisors.¹¹⁴ They alleged that the existing boundaries, which had been drawn after the 1980 census, were intentionally gerrymandered boundaries that diluted Hispanic voting strength. They sought redistricting in order to create a district with a Hispanic majority for the 1990 Board of Supervisors election.¹¹⁵ The federal district court found “that the Board [of Supervisors] had engaged in intentional discrimination in redistrictings that it undertook in 1959, 1965 and 1971” and “the 1981 redistricting was calculated at least in part to keep the effects of those prior discriminatory reapportionments in place, as well as to prevent Hispanics from attaining a majority in any district in the future.”¹¹⁶ The district court determined that the county’s district boundaries violated the federal Voting Rights Act of 1965.¹¹⁷ The Ninth Circuit Court of Appeal affirmed the lower court’s decision and further found that the county had violated both the Voting Rights Act of 1965 and the equal protection guarantee of the 14th Amendment when drawing supervisorial districts.¹¹⁸ The U.S. Supreme Court did not take up the county’s appeal.¹¹⁹ The parties settled the matter by entering into a stipulation requiring the county to submit future redistricting plans to the U.S. Department of Justice for review. The stipulation terminated on December 31, 2002.¹²⁰ As a result of the court’s decision, a special election for supervisor was held in 1991 for the newly redrawn First Supervisorial District.¹²¹ The 2010 redistricting plan, the first not to require review under the stipulation, was not challenged in court.¹²²

¹¹³ *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 765-766.

¹¹⁴ *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 765.

¹¹⁵ *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 765-766.

¹¹⁶ *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 767.

¹¹⁷ *Garza v. County of Los Angeles* (Cal. 1990) 756 F.Supp. 1298, 1303-1304.

¹¹⁸ *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 771.

¹¹⁹ *County of Los Angeles v. Garza* (1991) 498 U.S. 1028.

¹²⁰ *County of Los Angeles v. State of California* (Jan. 14, 2020, B290091) [nonpub. opn.], page 6.

¹²¹ Exhibit X, Farrell, Vote Marks New Era for 1st District: County Board: For the Plaintiffs Who Sued Over Bias Against Latinos, the Balloting is the Real Victory, L.A. Times (Feb. 20, 1991), <https://www.latimes.com/archives/la-xpm-1991-02-20-me-1513-story.html> (accessed on March 9, 2021).

¹²² *County of Los Angeles v. State of California* (Jan. 14, 2020, B290091) [nonpub. opn.], pages 6-10.

B. The Test Claim Statute, Statute 2016, Chapter 781, Added Sections 21530 through 21535 to the Elections Code to Establish an Independent Citizens Redistricting Commission for the County of Los Angeles.

The test claim statute was characterized by the author as “a good government proposal for the citizens of Los Angeles County” which would “align the Los Angeles County Board of Supervisors’ redistricting policy with the statewide movement toward independent redistricting.”¹²³ Legislative history of the statute noted that the state of California has a redistricting commission as does the County of San Diego through legislation requested by the county.¹²⁴ Without such statutory authority, counties are powerless to create commissions on their own.¹²⁵ The legislative history concluded that the successful establishment of an independent redistricting commission in San Diego County, the second most populous county in California, boded well for the success of an independent commission in Los Angeles County, the state’s most populous county and “one of the most geographically and ethnically diverse counties in the state.”¹²⁶

The test claim statute provides that the CRC will adjust the boundary lines of the supervisorial districts in the County of Los Angeles in the year following the year of the decennial federal census.¹²⁷ The 14-member CRC must be created no later than December 31, 2020, and in each year ending in the number zero thereafter.¹²⁸ The process for the selection of members is designed to produce a CRC that is independent from the influence of the board and is reasonably representative of the county’s diversity.¹²⁹ The members’ political party preferences must be as proportional as possible to the total number of voters who are registered with each political party in the county. At least one member must reside in each of the five existing supervisorial districts.¹³⁰ Members are required to meet all of the following qualifications:

- Be a resident of the county,
- Be a voter who has been continuously registered in the county who has not changed their political party affiliation for five or more years,
- Have voted in at least one of the last three statewide elections,

¹²³ Exhibit X, Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading of Senate Bill 958 (2015-2016 Reg. Sess.), August 30, 2016, page 5.

¹²⁴ Exhibit X, Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading of Senate Bill 958 (2015-2016 Reg. Sess.), August 30, 2016, page 5.

¹²⁵ California Constitution, article XI, section 4.

¹²⁶ Exhibit X, Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading of Senate Bill 958 (2015-2016 Reg. Sess.) August 30, 2016, pages 5 and 8.

¹²⁷ Elections Code section 21531.

¹²⁸ Elections Code section 21532(a) and (c).

¹²⁹ Elections Code section 21532(b).

¹³⁰ Elections Code section 21532(c).

- Within the last 10 years, neither the applicant nor an immediate family member, has been appointed to, elected to, or have been a candidate for office; served as an employee of, or paid consultant for, an elected representative, candidate, or political party; or been a registered state or local lobbyist,
- Possess experience that demonstrates relevant analytical skills and an ability to comprehend and apply legal requirements,
- Possess experience that demonstrates an ability to be impartial, and
- Possess experience that demonstrates an appreciation for the diverse demographics and geography of the county.¹³¹

Those individuals who meet the qualifications may submit an application to the county elections official who is required to review the applications and eliminate applicants who do not meet the qualifications.¹³² During the selection process, the official is barred from communicating with a member of the board, or an agent for a member of the board, about any matter related to the nomination process or applicants. The official selects 60 of the most qualified applicants and makes public a list of their names for at least 30 days.¹³³ During this time, the official may eliminate any of the previously selected applicants if the official becomes aware that the applicant does not meet the qualifications.¹³⁴ After the 30 days, the official creates a subpool for each of the five existing supervisorial districts.¹³⁵ At a regularly scheduled meeting of the board, the Auditor-Controller of the county randomly draws to select one commissioner from each of the five subpools and then, randomly draws from all of the remaining applicants, without respect to subpools, to select three additional commissioners.¹³⁶ The eight selected commissioners review the remaining applicants and appoint six commissioners based on relevant experience, analytical skills, ability to be impartial, political party preference, and to ensure that the CRC reflects the county's diversity.¹³⁷

The commissioners' terms expire upon the appointment of the first member of the succeeding CRC.¹³⁸ Nine commissioners are a quorum.¹³⁹ Each commissioner is a designated employee for purposes of conflicts of interest and is required to apply these statutes impartially to reinforce public confidence in the integrity of the process.¹⁴⁰ The CRC cannot retain a consultant — a

¹³¹ Elections Code section 21532(d).

¹³² Elections Code section 21532(e).

¹³³ Elections Code section 21532(f)(1).

¹³⁴ Elections Code section 21532(f)(2).

¹³⁵ Elections Code section 21532(g)(1).

¹³⁶ Elections Code section 21532(g)(2).

¹³⁷ Elections Code section 21532(h).

¹³⁸ Elections Code section 21533(b).

¹³⁹ Elections Code section 21533(c).

¹⁴⁰ Elections Code section 21533(a) and (e).

person retained, paid or unpaid, to advise the CRC or a commissioner regarding any aspect of the redistricting process — who would not be qualified as an applicant.¹⁴¹ After appointment, a commissioner is ineligible to hold elective public office for five years and ineligible to hold appointive office, to serve as paid staff or paid consultant to, the Board of Equalization, the Congress, the Legislature, or any legislator, or to register as a lobbyist in the state for three years.¹⁴²

The CRC shall use the following criteria, in the order of priority, in its mapping process:

- (1) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with the other districts, except where deviation is required to comply with the federal Voting Rights Act of 1965¹⁴³ or allowable by law.
- (2) Districts shall comply with the federal Voting Rights Act of 1965.
- (3) Districts shall be geographically contiguous.
- (4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible. A community of interest is defined as a contiguous population that shares common social and economic interests that should be included within a single district for effective and fair representation, but does not include political parties or candidates.
- (5) To the extent practicable, districts shall be drawn to encourage geographical compactness.¹⁴⁴

The CRC shall not consider the place of residence of any incumbent or political candidate in the creation of a map; nor shall districts be drawn to favor or discriminate against an incumbent, political candidate, or political party.¹⁴⁵

The CRC is required to comply with the Ralph M. Brown Act.¹⁴⁶ The CRC must establish a calendar of all public hearings and make it available to the public. The hearings are to be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible. The CRC shall post the hearing agenda at least seven days before the hearing dates.¹⁴⁷ The CRC shall arrange for the live translation of a hearing if a request for translation is made at least 24 hours before the hearing.¹⁴⁸ This applies to any language for which the number of county residents who are members of a language minority

¹⁴¹ Elections Code section 21533(d).

¹⁴² Elections Code section 21535.

¹⁴³ United States Code, title 52, section 10101 et seq.

¹⁴⁴ Elections Code section 21534(a).

¹⁴⁵ Elections Code section 21534(b).

¹⁴⁶ Elections Code section 21534(c)(1).

¹⁴⁷ Elections Code section 21534(c)(4).

¹⁴⁸ Elections Code section 21534(c)(5).

is greater than or equal to three percent of the total voting age residents of the county.¹⁴⁹ Before drawing a draft map, the CRC shall conduct at least seven public hearings, over no fewer than 30 days, with at least one public hearing held in each supervisorial district.¹⁵⁰ After drawing a draft map, the CRC shall post the map for public comment on the county website,¹⁵¹ include the map with the posted agenda,¹⁵² and conduct at least two public hearings over no fewer than 30 days before adoption of the final plan and map.¹⁵³

The CRC shall take steps to encourage residents to participate in the redistricting public review process. These steps may include:

- Providing information through media, social media, and public service announcements.
- Coordinating with community organizations.
- Posting information on the county website explaining the redistricting process, including a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the CRC.¹⁵⁴

The board of supervisors shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting and that procedures are in place to provide the public with ready access to redistricting data and computer software equivalent to what is available to the CRC.¹⁵⁵ The board shall provide reasonable funding and staffing for the CRC.¹⁵⁶ All records of the CRC relating to redistricting are public records.¹⁵⁷

The CRC is required to adopt a redistricting plan adjusting the boundaries of the supervisorial districts and file the plan with the county elections official before August 15 of the year after the census.¹⁵⁸ The plan shall be effective 30 days after filing and shall be subject to referendum in the same manner as ordinances.¹⁵⁹ The CRC shall issue, with the final map, a report that explains the basis on which the CRC made its decisions.¹⁶⁰

¹⁴⁹ Elections Code section 21534(c)(5)(B).

¹⁵⁰ Elections Code section 21534(c)(2).

¹⁵¹ Elections Code section 21534 (c)(3)(A).

¹⁵² Elections Code section 21534 (c)(4)(B).

¹⁵³ Elections Code section 21534(c)(3).

¹⁵⁴ Elections Code section 21534(c)(6).

¹⁵⁵ Elections Code section 21534(c)(7).

¹⁵⁶ Elections Code section 21534(c)(8).

¹⁵⁷ Elections Code section 21534(c)(9).

¹⁵⁸ Elections Code section 21534(d)(1).

¹⁵⁹ Elections Code section 21534(d)(2)-(3).

¹⁶⁰ Elections Code section 21534(d)(4).

III. Positions of the Parties

A. County of Los Angeles

The claimant alleges that the test claim statute results in state-mandated reimbursable costs incurred by two departments: the Registrar-Recorder/County Clerk (RR/CC) and the Commission Services Division of the Executive Office of the Board. Specifically, the claimant alleges that the following activities are imposed on the RR/CC:

- To educate and inform the public, through digital, print, radio, social, and earned media outreach on the importance of the Commission and how the public can apply and become a commission member¹⁶¹
- To create an application process, receive and review applications, and select the 60 most-qualified applicants.¹⁶² The county Auditor-Controller is required to randomly select eight commissioners from those 60. Those eight commissioner choose the remaining six commissioners.¹⁶³

And, once the CRC is formed, the claimant asserts that the county is mandated to:

- Provide reasonable funding and staffing for the Commission, so that the Commission may fulfill its obligations to redraw supervisorial districts, conduct public hearings, and encourage public participation in the process.¹⁶⁴
- Take all reasonable steps to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide the public with ready access to redistricting data and computer software equivalent to what is available to the Commission.¹⁶⁵

Additionally, the claimant alleges that “Elections Code section 21533, enables the County to retain a consultant in order to advise the newly formed Commission on issues related to redistricting, provided that the consultant meets all of the qualification requirements of the Commission members.”¹⁶⁶

The claimant alleges costs were first incurred on July 1, 2019.¹⁶⁷ The claimant incurred \$35,533.18 for the RR/CC staff meeting to create the application process and \$1,268.91 to design

¹⁶¹ Exhibit A, Test Claim, filed June 26, 2020, page 20.

¹⁶² Exhibit A, Test Claim, filed June 26, 2020, pages 9-10.

¹⁶³ Exhibit A, Test Claim, filed June 26, 2020, page 10.

¹⁶⁴ Exhibit A, Test Claim, filed June 26, 2020, page 13.

¹⁶⁵ Exhibit A, Test Claim, filed June 26, 2020, page 10.

¹⁶⁶ Exhibit A, Test Claim, filed June 26, 2020, page 20.

¹⁶⁷ Exhibit A, Test Claim, filed June 26, 2020, page 28 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

and develop the application process, create internal working documents, and design and set up a website for the CRC.¹⁶⁸

The claimant projects costs of \$100,000 for the RR/CC to review and track applications, answer phone calls, send emails, and direct the application process pursuant to Elections Code sections 21532(f)(1)(2) and 21532(e); \$250,000 to run a media campaign “to promote the application process and educate the public on the redistricting process” pursuant to Elections Code section 21532(b); \$5,000 to staff redistricting workshops pursuant to Elections Code sections 21532(a)-(e); and \$50,000 for County Counsel advice and miscellaneous expenses.¹⁶⁹

The claimant also projects costs to the Commission Services Division of \$184,000 to find and reserve CRC meeting locations, schedule meetings, and prepare agendas, minutes, and supporting documents pursuant to Elections Code section 21534(c)(8); \$439,000 for a computerized database for CRC and public use pursuant to Elections Code section 21534(c)(7); and \$250,000 to launch and engage in a media campaign to encourage residents to participate in the redistricting public review process pursuant to Elections Code section 21534(c)(6).¹⁷⁰

The claimant projects additional costs of \$4,620 to secure public address systems, audio equipment, translation services, and assisted-hearing devices at public hearings pursuant to Elections Code section 21534(c); and \$250,000 to “procure a consultant to guide the CRC and ensure it meets timelines for final map submission” pursuant to Elections Code section 21534(d)(1)(2).¹⁷¹ The claimant projects a total of \$1,127,620 in costs for FY 2020-21.¹⁷²

In its rebuttal to Finance’s comments, the claimant reasserts that the test claim statute mandates compliance with a new program.¹⁷³ The claimant also argues that the two cases relied upon by Finance are not applicable to defeat the Test Claim. Both *City of Anaheim v. State of California*¹⁷⁴ and *San Diego Unified School District v. Commission on State Mandates*¹⁷⁵ involve

¹⁶⁸ Exhibit A, Test Claim, filed June 26, 2020, pages 28-30 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

¹⁶⁹ Exhibit A, Test Claim, filed June 26, 2020, pages 20-21 and pages 28-30 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

¹⁷⁰ Exhibit A, Test Claim, filed June 26, 2020, page 21 and pages 32-34 (Declaration of Twila Kerr, Chief of the Commission Services Division at the Executive Office of the Board of Supervisors).

¹⁷¹ Exhibit A, Test Claim, filed June 26, 2020, page 21 and pages 32-34 (Declaration of Twila Kerr, Chief of the Commission Services Division at the Executive Office of the Board of Supervisors).

¹⁷² Exhibit A, Test Claim, filed June 26, 2020, pages 32-34 (Declaration of Twila Kerr, Chief of the Commission Services Division at the Executive Office of the Board of Supervisors).

¹⁷³ Exhibit C, Claimant’s Late Rebuttal Comments, filed February 26, 2021, page 2.

¹⁷⁴ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.

¹⁷⁵ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

increased costs in an existing program whereas, the test claim statute creates a new program with activities that were not required of the claimant prior to the enactment of the test claim statute.¹⁷⁶

B. Department of Finance

Finance asserts that the test claim statute is not a reimbursable state mandate as the costs are not the result of a new program or higher level of service, but rather are merely increased costs for redistricting; an activity for which the claimant has always been responsible. Finance requests that reimbursement should be denied under *City of Anaheim v. State of California*,¹⁷⁷ holding increased costs alone do not result in a reimbursable state mandate and *San Diego Unified School District v. Commission on State Mandates*,¹⁷⁸ holding reimbursement is not required if a statute merely implements a change that increases costs.¹⁷⁹

Finance argues that certain costs alleged by the claimant are not mandated by the test claim statute. The claimant's projected costs of \$250,000 for a media campaign by the RR/CC and \$250,000 for a media campaign by the board are not required by the text of the test claim statute. Rather, Elections Code section 21534(c)(6)(A)-(C) addresses the steps the claimant may take to inform the public including "(p)roviding information through media, social media, and public service announcements."¹⁸⁰ Also, Elections Code section 21533(d)(1) and (2) sets forth the qualifications for a consultant, but the test claim statute does not require the claimant to retain a consultant and the claimed cost of \$250,000 for the consultant should be denied.¹⁸¹

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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 such local government for the costs of such programs or increased level of service....

The purpose of article XIII B, section 6 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."¹⁸² Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government]"¹⁸³

¹⁷⁶ Exhibit C, Claimant's Late Rebuttal Comments, filed February 26, 2021, pages 2-3.

¹⁷⁷ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.

¹⁷⁸ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

¹⁷⁹ Exhibit B, Finance's Comments on the Test Claim, filed December 28, 2020, pages 1-2.

¹⁸⁰ Exhibit B, Finance's Comments on the Test Claim, filed December 28, 2020, page 2.

¹⁸¹ Exhibit B, Finance's Comments on the Test Claim, filed December 28, 2020, pages 2-3.

¹⁸² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁸³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹⁸⁴
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹⁸⁵
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.¹⁸⁶
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹⁸⁷

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.¹⁸⁸ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁸⁹ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁹⁰

¹⁸⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹⁸⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

¹⁸⁶ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁸⁷ *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; Government Code sections 17514 and 17556.

¹⁸⁸ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

¹⁸⁹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹⁹⁰ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 (citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817).

A. The Test Claim Was Timely Filed Pursuant to Government Code Section 17551 and Section 1183.1(c) of the Commission’s Regulations Because the Test Claim Was Filed Within Twelve Months of the Claimant First Incurring Costs to Comply with the Test Claim Statute.

Government Code section 17551(c) states: “test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations, effective April 1, 2020, clarifies that

any test claim or amendment filed with the Commission must be filed not later than 12 months (365 days) following the effective date of a statute or executive order, or within 12 months (365 days) of first incurring increased costs as a result of a statute or executive order, whichever is later.¹⁹¹

The test claim statute became effective on January 1, 2017.¹⁹² The claimant filed a declaration under penalty of perjury from the Finance Manager of the County Clerk’s Office stating that the county first incurred costs to comply with the test claim statute on July 1, 2019.¹⁹³ The claimant filed this Test Claim on June 26, 2020, within 12 months of first incurring costs to comply with the test claim statute.¹⁹⁴

Accordingly, this Test Claim was timely filed pursuant to Government Code section 17551.

B. The Test Claim Statute Imposes a Reimbursable State-Mandated Program on the County of Los Angeles.

1. Elections Code Sections 21531, 21532, and 21534, as Added by the Test Claim Statute, Impose State-Mandated Requirements on the County of Los Angeles.

The test claim statute divests the claimant’s board of supervisors of the authority to adjust supervisorial district lines and establishes and vests the authority with the CRC. The claimant is required by the test claim statute to create the CRC as follows:

- The CRC shall be created no later than December 31, 2020, and in each year ending in the number zero thereafter.¹⁹⁵

¹⁹¹ California Code of Regulations, title 2, section 1183.1(c), Register 2020, No. 4 (eff. April 1, 2020).

¹⁹² Statutes 2016, chapter 781.

¹⁹³ Exhibit A, Test Claim, filed June 26, 2020, page 28 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

¹⁹⁴ Exhibit A, Test Claim, filed June 26, 2020, page 1.

¹⁹⁵ Elections Code section 21532(a).

- The county elections official shall review the applications and eliminate applicants who do not meet the specified qualifications.¹⁹⁶
- From the pool of qualified applicants, the county elections official shall select 60 of the most qualified applicants, taking into account the requirements described in Elections Code section 21532(c) — that the political party preferences of the CRC members shall be as proportional as possible to the total number of voters who are registered with each political party in the county. The county elections official shall make public the names of the 60 most qualified applicants for at least 30 days.
- Thereafter, the county elections official shall create a subpool for each of the five existing supervisorial districts of the board.¹⁹⁷
- At a regularly scheduled meeting of the board, the Auditor-Controller of the County of Los Angeles shall conduct a random drawing to select one commissioner from each of the five subpools established by the county elections official.
- After completing the random drawing of commissioners from each of the five subpools as set forth above, the Auditor-Controller, at the same meeting of the board, shall conduct a random drawing from all of the remaining applicants, without respect to subpools, to select three additional commissioners.¹⁹⁸
- The board shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC members.¹⁹⁹

In addition, the claimant is required to “provide for reasonable funding and staffing for the commission,”²⁰⁰ and, thus, the requirements imposed on the CRC must be met at the expense of the claimant. These are as follows:

- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.²⁰¹
- In the year following the year in which the decennial federal census is taken, the CRC shall adjust the boundary lines of the supervisorial districts of the board in accordance with this chapter.²⁰² The CRC shall establish single-member supervisorial districts for

¹⁹⁶ Elections Code section 21532(e).

¹⁹⁷ Elections Code section 21532(f).

¹⁹⁸ Elections Code section 21532(g).

¹⁹⁹ Elections Code section 21534(c)(7).

²⁰⁰ Elections Code section 21534(c)(8).

²⁰¹ Elections Code section 21532(h).

²⁰² Elections Code section 21531.

the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:

(1) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or allowable by law.

(2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible without violating the requirements of paragraphs (1) to (3), inclusive. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where this does not conflict with paragraphs (1) to (4), inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.²⁰³ The CRC shall adopt a redistricting plan adjusting the boundaries of the supervisorial districts and shall file the plan with the county elections official before August 15 of the year following the year in which each decennial federal census is taken.²⁰⁴

- Before the CRC draws a map, the CRC shall conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.²⁰⁵
- After the CRC draws a draft map, the CRC shall do both of the following:
 - Post the map for public comment on the website of the County of Los Angeles.
 - Conduct at least two public hearings to take place over a period of no fewer than 30 days.²⁰⁶

²⁰³ Elections Code section 21534(a).

²⁰⁴ Elections Code section 21534(d)(1).

²⁰⁵ Elections Code section 21534(c)(2).

²⁰⁶ Elections Code section 21534(c)(3).

- The CRC shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) when conducting these public hearings.²⁰⁷
- The CRC shall establish and make available to the public a calendar of all public hearings described in Elections Code section 21534(c)(2) and (3).²⁰⁸
- Notwithstanding section 54954.2 of the Government Code — which requires the posting of an agenda 72 hours before a public meeting — the CRC shall post the agenda for the public hearings described in Elections Code section 21534(c)(2) and (3) at least seven days before the hearings. The agenda for a meeting required by Elections Code section 21534(c)(3) shall include a copy of the draft map.²⁰⁹
- The CRC shall arrange for the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing. An “applicable language” means a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to three percent of the total voting age residents of the county.²¹⁰
- The CRC shall take steps to encourage county residents to participate in the redistricting public review process.²¹¹
- The CRC shall issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the criteria described in Elections Code section 21534(a) and (b).²¹² Section 21534(a) is the criteria for the mapping process, listed above. Section 21534(b) states: “The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party.”

In addition, Elections Code section 21534(c)(9) states that “All records of the commission relating to redistricting, and all data considered by the commission in drawing a draft map or the final map, are public records.” Thus, the CRC, at the claimant’s expense pursuant to Elections Code section 21534(c)(8), is required to comply with the Public Records Act pursuant to Government Code section 6250 et seq., upon receipt of a public records request for these documents.

These requirements are mandated by the state. The county has no discretion and is forced to comply with these requirements.²¹³

²⁰⁷ Elections Code section 21534(c)(1).

²⁰⁸ Elections Code section 21534(c)(4)(A).

²⁰⁹ Elections Code section 21534(c)(4)(B).

²¹⁰ Elections Code section 21534(c)(5).

²¹¹ Elections Code section 21534(c)(6).

²¹² Elections Code section 21534(d)(4).

²¹³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

Finance argues, however, that certain costs alleged by the claimant to encourage county residents to participate in the redistricting public review process are not mandated by the state. In particular, Finance questions the claimant’s projected costs of \$250,000 for a media campaign by the Registrar-Recorder/County Clerk and \$250,000 for a media campaign by the board, and asserts that these costs are not mandated by the test claim statute.²¹⁴ Finance’s interpretation of the statute is wrong. The statute states the following:

The commission shall take steps to encourage county residents to participate in the redistricting public review process. These steps may include:

(A) Providing information through media, social media, and public service announcements.

(B) Coordinating with community organizations.

(C) Posting information on the Internet Web site of the County of Los Angeles that explains the redistricting process and includes a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the commission.²¹⁵

The statute uses the term “may” regarding the types of steps that the CRC can take, but uses the word “shall” regarding the requirement for the CRC to take steps. So, while the CRC has the option of which steps to take, it has no choice but to take steps to encourage participation as mandated by the state.

Accordingly, Elections Code sections 21531, 21532, and 21534 impose state-mandated requirements on the claimant.

2. Elections Code Sections 21530, 21533, and 21535 Do Not Impose Any Requirements or State-Mandated Costs on the Citizens Redistricting Commission or the Claimant and Thus the Costs Incurred to Comply with These Code Sections Are Not Eligible for Reimbursement.

Elections Code sections 21530, 21533, and 21535 impose no requirements on the claimant. Elections Code section 21530 contains only definitions of “Board,” “Commission,” and “Immediate family member.”

Elections Code section 21533 sets forth the terms of office, rules for establishing a quorum, designates CRC members as employees for purposes of the conflict of interest code adopted by the County of Los Angeles, and imposes limits on the hiring of consultants by the CRC (by stating that “[t]he commission shall not retain a consultant who would not be qualified as an applicant pursuant to paragraph (4) of subdivision (d) of Section 21532.”) Even though the claimant requests reimbursement for consultants retained by the CRC,²¹⁶ Elections Code section 21533 does not require the CRC to hire consultants and leaves that decision to the discretion of the CRC. Although the claimant is required by Elections Code section 21534(c)(8) to provide

²¹⁴ Exhibit B, Finance’s Comments on the Test Claim, filed December 28, 2020, page 2.

²¹⁵ Elections Code section 21534(c)(6).

²¹⁶ Exhibit A, Test Claim, filed June 26, 2020, pages 20-21.

reasonable funding to the CRC, which may include paying for a consultant hired by the CRC to help with the adjustment of district boundaries, the courts have made it clear that “[n]othing in article XIII B prohibits the shifting of costs between local governmental entities.”²¹⁷

Elections Code section 21535 provides for a period of ineligibility to hold elected or appointed public offices after their term on the CRC has ended and imposes no requirements on the claimant or the CRC.

Accordingly, Elections Code sections 21530, 21533, and 21535 do not impose any requirements or state-mandated costs on the CRC or the claimant and, thus, any costs incurred to comply with these code sections are not eligible for reimbursement.

3. Many State-Mandated Activities Imposed by Elections Code Sections 21532 and 21534 Constitute a New Program or Higher Level of Service. However, the Requirements and Costs Imposed by Elections Code Sections 21531 and 21534(a), (c)(9), and (d)(1)-(3) to Adjust the Supervisorial Boundaries and Adopt a Redistricting Plan Every Ten Years, and Comply with the Public Records Act Are Not New and Do Not Impose a New Program or Higher Level of Service.

For a statute to be subject to subvention, the mandated activity must constitute a “program” that either a) carries out the governmental function of providing a service to the public; or b) imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.²¹⁸ A mandated activity is new when the statute in question is compared with the legal requirements in effect immediately before the enactment of the statute and the activity increases the level of service provided to the public.²¹⁹

- a. Elections Code Sections 21532 and 21534 Impose New Mandated Activities on the Claimant. However, the Requirements Imposed by Elections Code Sections 21531 and 21534(a), (c)(9), and (d)(1)-(3) to Adjust the Supervisorial Boundaries, Adopt a Redistricting Plan, and Comply with the Public Records Act Are Not New.

Under prior law, the claimant’s board of supervisors adjusted the district boundary lines every ten years.²²⁰ As a result of the test claim statute, the claimant is now required to create the CRC to perform the supervisorial redistricting. The new mandated activities imposed on the claimant in forming the CRC are as follows:

²¹⁷ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1815.

²¹⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 [reaffirming *County of Los Angeles* (1987) 43 Cal.3d 46, 56]; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537-538.

²¹⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

²²⁰ Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36.

- The county shall create a CRC no later than December 31, 2020, and in each year ending in the number zero thereafter.²²¹
- The elections official shall review the applications and eliminate applicants who do not meet the specified qualifications, select 60 of the most qualified applicants, publish the list of qualified applicants for 30 days, and create a subpool for each of the five existing supervisorial districts of the board.²²²
- At a regularly scheduled meeting of the board, the Auditor-Controller conducts a random drawing to select one commissioner from each of the five subpools, then another random drawing from all of the remaining applicants to select three additional commissioners.²²³
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC.²²⁴
- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.²²⁵

These requirements mandated by Elections Code sections 21532 and 21534(c)(7) to create the CRC, to ensure a computerized database is available for redistricting, and to provide the public ready access to the redistricting data and computer software equivalent to what is available to the CRC, were not required by prior law and are newly imposed on the claimant itself and through the CRC since the county board of supervisors is required by Elections Code section 21534(c)(8) to fund and provide staff for the CRC.

However, some of the activities required to adopt a plan and adjust boundary lines of the supervisorial districts every ten years are the same as prior law and are *not* new. The test claim statute requires:

- In the year following the year in which the decennial federal census is taken, the CRC shall adjust the boundary lines of the supervisorial districts of the board in accordance with this chapter.²²⁶
- The CRC shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:

(1) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except

²²¹ Elections Code section 21532(a).

²²² Elections Code section 21532(e)-(g).

²²³ Elections Code section 21532(g).

²²⁴ Elections Code section 21534(c)(7).

²²⁵ Elections Code section 21532(h).

²²⁶ Elections Code section 21531.

where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or allowable by law.

(2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible without violating the requirements of paragraphs (1) to (3), inclusive.

(5) To the extent practicable, and where this does not conflict with paragraphs (1) to (4), inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.²²⁷

- The CRC shall adopt a redistricting plan adjusting the boundaries of the supervisorial districts and shall file the plan with the county elections official before August 15 of the year following the year in which each decennial federal census is taken.²²⁸
- All records of the CRC relating to redistricting, and all data considered by the CRC in drawing a draft map or the final map, are public records and subject to the Public Records Act.²²⁹

Under prior law, the claimant was also required to adopt a redistricting proposal and adjust the district boundaries every ten years. Prior law required the following:

- Following each decennial federal census, and using that census as a basis, the board shall adjust the boundaries of any or all of the supervisorial districts of the county so that the supervisorial districts shall be as nearly equal in population as may be and shall comply with the applicable provisions of Section 10301 of Title 52 of the United States Code, as amended. In establishing the boundaries of the supervisorial districts the board may give consideration to the following factors: (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the supervisorial districts.²³⁰
- Before adjusting the boundaries of a district pursuant to Section 21500, 21503, or 21504, or for any other reason, the board shall hold at least one public hearing on the proposal to adjust the boundaries of the district prior to the public hearing at which the board votes to approve or defeat the proposal.²³¹

²²⁷ Elections Code section 21534(a).

²²⁸ Elections Code section 21534(d).

²²⁹ Elections Code section 21534(c)(9).

²³⁰ Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36.

²³¹ Elections Code section 21507 as added by Statutes 2014, chapter 873.

Both prior law and the test claim statute require adjustment of the boundaries of the supervisorial districts in the year following the federal census. Both set forth criteria that must be met, but the stated criteria are somewhat different. In comparing them, the first requirement under prior law and the test claim statute is equality of population in each district which is required by *Reynolds v. Sims*²³² where the U.S. Supreme Court held that “the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators” and dilution of the vote “impairs basic constitutional rights under the Fourteenth Amendment.”²³³ The second requirement under prior law and the test claim statute is the same for both: compliance with the Voting Rights Act of 1965. The test claim statute includes three requirements — geographically contiguous districts; districting that respects the geographic integrity of cities, local neighborhoods, or local communities of interest; and geographically compact districts — similar to the prior law’s considerations of topography, geography, cohesiveness, contiguity, integrity, and compactness of territory, and communities of interest. Each of these, whether requirements or considerations, is a step toward ensuring compliance with the Voting Rights Act of 1965 and away from gerrymandering. Despite the small variance in language, both the prior law and the test claim statute set forth the process of redistricting using the mapping process to ensure compliance with the Voting Rights Act.

Thus, the requirements imposed by Elections Code sections 21531 and 21534(a) and (d)(1)-(3) to adjust the supervisorial boundaries and adopt a redistricting plan are not new.

In addition, the claimant was subject to the Public Records Act under prior law and, thus, the activity and costs to comply with the Public Records Act for the records of the CRC relating to redistricting, and all data considered by the CRC in drawing a draft map or the final map pursuant to Elections Code section 21534(c)(9), are not new. The Public Records Act defines “public records” broadly to include “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”²³⁴ Moreover, even if the Public Records Act requirements were found to be new, on June 3, 2014, before the test claim statute was enacted, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution to require local agencies “to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250).” Proposition 42 also amended section 6(a) of article XIII B of the California Constitution, by adding paragraph 4 to provide “that the Legislature may, but need not, provide a subvention of funds for ... legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of section 3 of article I.” Thus, the costs would not be eligible for reimbursement in any event.

Nevertheless, the test claim statute mandates the CRC to conduct more hearings before adopting a redistricting plan than were required under prior law, and mandates some additional activities as part of the redistricting process.

²³² *Reynolds v. Sims* (1964) 377 U.S. 533.

²³³ *Reynolds v. Sims* (1964) 377 U.S. 533, 566.

²³⁴ Government Code section 6252 as last amended by Statutes 2015, chapter 537.

Under prior law, the board of supervisors was required to have one public hearing before the hearing in which the board was scheduled to vote and adopt the proposal:

Before adjusting the boundaries of a district pursuant to Section 21601, 21603, or 21604, or for any other reason, the council shall hold at least one public hearing on the proposal to adjust the boundaries of the district prior to the public hearing at which the council votes to approve or defeat the proposal.²³⁵

The test claim statute mandates the CRC, at the expense of the claimant, to conduct at least eight more hearings before adopting the final plan and map, and mandates the CRC to perform the following additional activities as part of the redistricting process:

- Conduct at least seven public hearings before drafting a map, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.²³⁶
- Post the draft map for public comment on the website of the County of Los Angeles and conduct at least two more public hearings on the draft map (one more than prior law).²³⁷
- Comply with the Ralph M. Brown Act for these public hearings²³⁸ and yet, notwithstanding the Ralph M. Brown Act, the CRC shall post the agenda for the public hearings at least seven days before the hearing.²³⁹
- Establish and make available to the public a calendar of all public hearings.²⁴⁰
- Arrange for the live translation of a hearing in an applicable language (defined as “a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county”) if a request for translation is made at least 24 hours before the hearing.²⁴¹
- Take steps to encourage county residents to participate in the redistricting public review process.²⁴²

²³⁵ Elections Code section 21507 as added by Statutes 2014, chapter 873.

²³⁶ Elections Code section 21534(c)(2).

²³⁷ Elections Code section 21534(c)(3)(A)-(B).

²³⁸ Elections Code section 21534(c)(1).

²³⁹ Elections Code section 21534(c)(4)(B).

²⁴⁰ Elections Code section 21534(c)(4)(A).

²⁴¹ Elections Code section 21534(c)(5).

²⁴² Elections Code section 21534(c)(6).

- Issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.²⁴³

As indicated above, the hearings conducted by the CRC are subject to the Ralph M. Brown Act. The Ralph M. Brown Act requires local government to ensure that their meetings are noticed and open to the public. The Act requires that an agenda be posted 72 hours prior to the meeting in a location that is freely accessible to members of the public and on the local agency’s website, and which includes a brief general description of each item of business to be transacted or discussed.²⁴⁴

At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency’s Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.²⁴⁵

The Ralph M. Brown Act applies to “legislative bodies” which includes “[t]he governing body of a local agency or *any other local body created by state or federal statute.*”²⁴⁶ Thus, the Ralph M. Brown Act would have applied to the CRC whether or not the test claim statute stated as such. The Ralph M. Brown Act applied to all meetings held by the board of supervisors under prior law, including the public hearings on redistricting. But under prior law, the board of supervisors was only required to have one public hearing before the adoption of the redistricting plan.²⁴⁷ Although the requirements of the Ralph M. Brown Act are not new on their face, the test claim statute mandates at least eight more hearings than were required under prior law. The Ralph M. Brown Act requirements associated with those additional required hearings are new and are newly imposed on the claimant by the state since the county board of supervisors is required by Elections Code section 21534(c)(8) to fund and provide staff for the CRC.

²⁴³ Elections Code section 21534(d)(4).

²⁴⁴ Government Code section 54954.2.

²⁴⁵ Government Code section 54954.2(a)(1).

²⁴⁶ Government Code section 54952(a). Emphasis added.

²⁴⁷ Elections Code section 21507 as added by Statutes 2014, chapter 873.

Similarly, the CRC is required by the test claim statute to arrange for the live translation of a hearing in an applicable language if a request for translation is made at least 24 hours before the hearing. Under existing law, the Dymally-Alatorre Bilingual Services Act places requirements on state and local government to provide services in languages other than English.²⁴⁸ Specifically, local public agencies, “serving a substantial number of non-English-speaking people” are required to employ “qualified bilingual persons in public contact positions or as interpreters to assist those in such positions.”²⁴⁹ Local public agency is defined to include “a county, . . . or any board, commission or agency thereof, or any other local public agency.”²⁵⁰ Although the CRC is a separate entity from the claimant, it would still fall under the catch-all “any other local public agency” of the Dymally-Alatorre Bilingual Services Act. The Act does not specifically require translation services as set forth in the test claim statute for public hearings. Assuming, however, that the requirement to employ bilingual persons to act as interpreters indirectly requires translation services at public hearings, the CRC is only required to provide such services to the extent that the CRC serves a “substantial number” of non-English speakers. The Act does not quantify a “substantial number” for local public agencies, but instead leaves the agency to make that determination.²⁵¹ The Act does provide that state agencies must provide services in languages other than English when the non-English speakers comprise five per cent or more of the population being served.²⁵² Even if this were applicable to the CRC, the test claim statute requires “the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing” where “an ‘applicable language’ means a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county.”²⁵³ Although the requirements of the Dymally-Alatorre Bilingual Services Act are not new on their face, the test claim statute requires at least eight more hearings than were required under prior law and as part of those additional hearings, the CRC is required to arrange for the live translation of a hearing in an applicable language if a request for translation is made at least 24 hours before the hearing. These requirements are new and are newly mandated on the claimant since the county board of supervisors is required by Elections Code section 21534(c)(8) to fund and provide staff for the CRC.

Accordingly, Elections Code sections 21532 and 21534, as added by the test claim statute, impose the following new mandated activities on the claimant:

²⁴⁸ Government Code section 7290 et seq.

²⁴⁹ Government Code section 7293.

²⁵⁰ Government Code section 54951.

²⁵¹ Government Code sections 7293 and 7295.

²⁵² Government Code section 7596.2.

²⁵³ Government Code section 21534(c)(5).

- The county shall create a CRC no later than December 31, 2020, and in each year ending in the number zero thereafter.²⁵⁴
- The elections official shall review the applications and eliminate applicants who do not meet the specified qualifications, select 60 of the most qualified applicants, publish the list of qualified applicants for 30 days, and create a subpool for each of the five existing supervisorial districts of the board.²⁵⁵
- At a regularly scheduled meeting of the board, the Auditor-Controller conducts a random drawing to select one commissioner from each of the five subpools, then another random drawing from all of the remaining applicants to select three additional commissioners.²⁵⁶
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC.²⁵⁷

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities mandated by Elections Code sections 21532 and 21534 are newly imposed on the claimant:

- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.²⁵⁸
- Conduct at least seven public hearings before drafting a map, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.²⁵⁹
- Post the draft map for public comment on the website of the County of Los Angeles and conduct one public hearing on the draft map (in addition to the one hearing required under prior law, which is not reimbursable).²⁶⁰
- Comply with the Ralph M. Brown Act for these public hearings.²⁶¹ This includes posting an agenda seven days prior to the hearing in a location that is freely accessible to members of the public and on the website, and which includes a brief general description of each item of business to be transacted or discussed in accordance with Government Code section 54954.2.

²⁵⁴ Elections Code section 21532(a).

²⁵⁵ Elections Code section 21532(e)-(g).

²⁵⁶ Elections Code section 21532(g).

²⁵⁷ Elections Code section 21534(c)(7).

²⁵⁸ Elections Code section 21532(h).

²⁵⁹ Elections Code section 21534(c)(2).

²⁶⁰ Elections Code section 21534(c)(3)(A)-(B).

²⁶¹ Elections Code sections 21534(c)(1); 21534(c)(4)(B).

- Establish and make available to the public a calendar of all public hearings.²⁶²
- Arrange for the live translation of a hearing in an applicable language (defined as “a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to three percent of the total voting age residents of the county”) if a request for translation is made at least 24 hours before the hearing.²⁶³
- Take steps to encourage county residents to participate in the redistricting public review process.²⁶⁴
- Issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.²⁶⁵

b. The New Mandated Activities Imposed by Elections Code Sections 21532 and 21534 Are Unique to Government and Provide a Service to the Public and Therefore Impose a New Program or Higher Level of Service.

As set forth above, the test claim statute imposes new activities on the claimant necessary to create, staff, and fund the CRC. For the test claim statute to constitute a new program or higher level of service, it must either a) carry out the governmental function of providing a service to the public; or b) or impose unique requirements on local government that do not apply generally to all residents and entities in the state.²⁶⁶ The term “program,” therefore, has “two alternative meanings,” and “only one of these [alternatives] is necessary to trigger reimbursement.”²⁶⁷

In this case, the test claim statute meets both alternative tests. The test claim statute carries out the government function of redistricting and requires an independent redistricting commission. The purpose of redistricting is protection of the voters’ rights under the U.S. Constitution, the California Constitution, and the federal and state Voting Rights Acts. Redistricting by the CRC serves the county residents by ensuring fair representation and that their vote is not diluted to favor any particular group or political party.²⁶⁸ Further, the test claim statute only applies to the County of Los Angeles, a political subdivision of the State of California. It does not apply to any other residents or entities in the state. Thus, the test claim statute satisfies the requirement of being a new program or higher level of service.

²⁶² Elections Code section 21534(c)(4)(A).

²⁶³ Elections Code section 21534(c)(5).

²⁶⁴ Elections Code section 21534(c)(6).

²⁶⁵ Elections Code section 21534(d)(4).

²⁶⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 [reaffirming the test set forth in *County of Los Angeles* (1987) 43 Cal.3d 46, 56].

²⁶⁷ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

²⁶⁸ Exhibit X, Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading of Senate Bill 958 (2015-2016 Reg. Sess.), August 30, 2016, page 5.

Finance asserts that the test claim statute does not impose a new program or higher level of service, but rather merely increased costs for redistricting, an activity for which the claimant has always been responsible. Finance relies on *City of Anaheim v. State of California*,²⁶⁹ holding increased costs alone do not result in a reimbursable state mandate and *San Diego Unified School District v. Commission on State Mandates*,²⁷⁰ holding reimbursement is not required if a statute merely implements a change that increases costs.²⁷¹ Finance’s reliance on these cases is misplaced.

In *City of Anaheim v. State of California*, the city sought to obtain reimbursement from a change in law that required the Public Employees’ Retirement System (PERS) to increase pension payments to retired public employees. The city claimed that it had to contribute to the fund at a higher rate as a result of PERS’ compliance with the new law. The city’s case failed because the change in law did not impose any mandated activities upon the city and the city experienced only increased costs in the absence of having to provide a new program or higher level of service.²⁷² Here, the test claim statute imposes a number of new mandated activities on the claimant as set forth above. There was no requirement in prior law that the claimant create the CRC charged with redistricting.

In *San Diego Unified School District v. Commission on State Mandates*, the school district sought to obtain reimbursement for the increased costs to comply with the requirements for mandatory and discretionary expulsion of students.²⁷³ The court explained “that simply because a state law or order may *increase the costs* borne by local government *in providing services*, this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting ‘service to the public’ under article XIII B, section 6, and Government Code section 17514.”²⁷⁴ With regard to discretionary expulsions, the court held that the statutes merely implemented federal law and, to the extent that the state added requirements, the costs to comply with them were de minimis and should be considered part of the underlying federal mandate.²⁷⁵ *San Diego Unified* does not apply here. The test claim statute imposes a new state mandated program on the claimant to establish and fund an independent redistricting commission, which provides a service to the public, as explained above, by ensuring fair representation and that a vote is not diluted to favor any particular group or political party.

²⁶⁹ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.

²⁷⁰ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

²⁷¹ Exhibit B, Finance’s Comments on the Test Claim, filed December 28, 2020, pages 1-2.

²⁷² *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1482.

²⁷³ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 866.

²⁷⁴ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877. Emphasis in the original.

²⁷⁵ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 889-890.

Accordingly, the new activities mandated by Elections Code Sections 21532 and 21534 constitute a new program or higher level of service.

4. The Activities Mandated by Elections Code Section 21534(c)(1) and (c)(4)(B) to Comply with the Brown Act Do Not Impose Costs Mandated by the State Pursuant to Article XIII B, Section 6(a)(4) of the California Constitution. The Remaining New Activities Mandated by Elections Code Section 21532 and 21534 Impose Increased Costs Mandated by the State Pursuant to Article XIII B, Section 6, and Government Code Section 17514.

Government Code section 17514 defines “costs mandated by the state” as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim shall be made nor shall any payment be made unless the claim exceeds \$1,000.

The claimant claims costs of \$35,533.18 “related to planning the CRC’s application and selection process” and \$1,268.91 for having “designed and developed the CRC application process, created internal working documents, and designed and set up a CRC website.”²⁷⁶

The application and selection process of the CRC is a requirement mandated on the claimant by the test claim statute. The costs incurred by this requirement far exceed the required \$1,000, and are supported by substantial evidence in the record.

Article XIII B, section 6(a)(4) of the California Constitution states, however, that:

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:

[¶]

(4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.

And, Article I, section 3(b)(7) provides:

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the *California Public Records Act* (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the *Ralph M. Brown Act* (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a

²⁷⁶ Exhibit A, Test Claim, filed June 26, 2020, page 20 and pages 28-30 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.²⁷⁷

The Ralph M. Brown Act applies to all local agencies and “any other local body created by state statute,” and therefore applies to the CRC.²⁷⁸ Therefore, costs incurred to comply with the California Public Records Act and the Brown Act are specifically exempted from the subvention requirement by the California Constitution.

Therefore, there are *no* costs mandated by the state pursuant to article XIII B, section 6(a)(4), and reimbursement is not required for the following activities required by Elections Code sections 21534(c)(1); 21534(c)(4)(B):

- Comply with the Ralph M. Brown Act when conducting the additional public hearings.²⁷⁹ This includes posting an agenda seven days prior to the hearing in a location that is freely accessible to members of the public and on the website, and which includes a brief general description of each item of business to be transacted or discussed in accordance with Government Code section 54954.2.

Accordingly, the Commission finds that the following new state-mandated activities required by Elections Code sections 21532 and 21534 impose increased costs mandated by the state pursuant to article XIII B, section 6 and Government Code section 17514:

- The county shall create a CRC no later than December 31, 2020, and in each year ending in the number zero thereafter.²⁸⁰
- The elections official shall review the applications and eliminate applicants who do not meet the specified qualifications, select 60 of the most qualified applicants, publish the list of qualified applicants for 30 days, and create a subpool for each of the five existing supervisorial districts of the board.²⁸¹
- At a regularly scheduled meeting of the board, the Auditor-Controller conducts a random drawing to select one commissioner from each of the five subpools, then another random drawing from all of the remaining applicants to select three additional commissioners.²⁸²
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC.²⁸³

²⁷⁷ Emphasis added.

²⁷⁸ Government Code section 54952(a).

²⁷⁹ Elections Code sections 21534(c)(1); 21534(c)(4)(B).

²⁸⁰ Elections Code section 21532(a).

²⁸¹ Elections Code section 21532(e)-(g).

²⁸² Elections Code section 21532(g).

²⁸³ Elections Code section 21534(c)(7).

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities mandated by Elections Code sections 21532 and 21534 impose increased costs mandated by the state on the claimant:

- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.²⁸⁴
- Conduct at least seven public hearings before drafting a map, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.²⁸⁵
- Post the draft map for public comment on the website of the County of Los Angeles²⁸⁶ and conduct one public hearing on the draft map (in addition to the one hearing required under prior law, which is not reimbursable).²⁸⁷
- Establish and make available to the public a calendar of all public hearings.²⁸⁸
- Arrange for the live translation of a hearing in an applicable language (defined as “a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county”) if a request for translation is made at least 24 hours before the hearing.²⁸⁹
- Take steps to encourage county residents to participate in the redistricting public review process.²⁹⁰
- Issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.²⁹¹

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this Test Claim and finds that Elections Code sections 21532 and 21534 as added by the test claim statute impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following activities:

²⁸⁴ Elections Code section 21532(h).

²⁸⁵ Elections Code section 21534(c)(2).

²⁸⁶ Elections Code section 21534(c)(3)(A).

²⁸⁷ Elections Code section 21534(c)(3)(B).

²⁸⁸ Elections Code section 21534(c)(4)(A).

²⁸⁹ Elections Code section 21534(c)(5).

²⁹⁰ Elections Code section 21534(c)(6).

²⁹¹ Elections Code section 21534(d)(4).

- The county shall create a CRC no later than December 31, 2020, and in each year ending in the number zero thereafter.²⁹²
- The elections official shall review the applications and eliminate applicants who do not meet the specified qualifications, select 60 of the most qualified applicants, publish the list of qualified applicants for 30 days, and create a subpool for each of the five existing supervisorial districts of the board.²⁹³
- At a regularly scheduled meeting of the board, the Auditor-Controller conducts a random drawing to select one commissioner from each of the five subpools, then another random drawing from all of the remaining applicants to select three additional commissioners.²⁹⁴
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC.²⁹⁵

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities mandated by Elections Code sections 21532 and 21534 impose increased costs mandated by the state on the claimant:

- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.²⁹⁶
- Conduct at least seven public hearings before drafting a map, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.²⁹⁷
- Post the draft map for public comment on the website of the County of Los Angeles and conduct one public hearing on the draft map (in addition to the one hearing required under prior law, which is not reimbursable).²⁹⁸
- Establish and make available to the public a calendar of all public hearings.²⁹⁹
- Arrange for the live translation of a hearing in an applicable language (defined as “a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting

²⁹² Elections Code section 21532(a).

²⁹³ Elections Code section 21532(e)-(g).

²⁹⁴ Elections Code section 21532(g).

²⁹⁵ Elections Code section 21534(c)(7).

²⁹⁶ Elections Code section 21532(h).

²⁹⁷ Elections Code section 21534(c)(2).

²⁹⁸ Elections Code section 21534(c)(3)(A)-(B).

²⁹⁹ Elections Code section 21534(c)(4)(A).

age residents of the county”) if a request for translation is made at least 24 hours before the hearing.³⁰⁰

- Take steps to encourage county residents to participate in the redistricting public review process.³⁰¹
- Issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.³⁰²

All other code sections added by the test claim statute and activities alleged to be mandated in the Test Claim are denied.

³⁰⁰ Elections Code section 21534(c)(5).

³⁰¹ Elections Code section 21534(c)(6).

³⁰² Elections Code section 21534(d)(4).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 15, 2021, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued March 15, 2021**

County of Los Angeles Citizens Redistricting Commission, 19-TC-04
Elections Code Sections 21530, 21531, 21532, 21533, 21534, and 21535 as added by Statutes 2016, Chapter 781 (SB 958)
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 15, 2021 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/12/21

Claim Number: 19-TC-04

Matter: County of Los Angeles Citizens Redistricting Commission

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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