



September 29, 2021

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

Ms. Christina Snider  
County of San Diego  
1600 Pacific Highway,  
Room 355  
San Diego, CA 92101

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

**Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*Extended Conditional Voter Registration, 20-TC-02*  
Elections Code Section 2170 as Amended by Statutes 2019, Chapter 565 (SB 72)  
County of San Diego, Claimant

Dear Mr. Cook and Ms. Snider:

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 October 20, 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.<sup>1</sup>

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](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.

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<sup>1</sup> 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 Ms. Snider  
September 29, 2021  
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### **Hearing**

This matter is set for hearing on **Friday, December 3, 2021** at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about November 19, 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 Section 2170 as Amended by  
Statutes 2019, Chapter 565 (SB 72)  
*Extended Conditional Voter Registration*  
20-TC-02  
County of San Diego, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Test Claim filed by the County of San Diego (claimant) alleges that reimbursement is required for state-mandated activities arising from Statutes 2019, chapter 565 (SB 72). The test claim statute amended Elections Code section 2170 by expanding the locations at which county elections officials provide conditional voter registration and related provisional voting, (CVR and CVR provisional voting).

As explained below, staff finds that Elections Code section 2170, as amended by the test claim statute, does not mandate a new program or higher level of service on county elections officials and, thus, does not impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.

**Procedural History**

The claimant filed the Test Claim on December 23, 2020.<sup>1</sup> The Department of Finance (Finance) filed comments on the Test Claim on April 2, 2021.<sup>2</sup> The claimant filed rebuttal comments on May 5, 2021.<sup>3</sup> Commission staff issued the Draft Proposed Decision on September 29, 2021.<sup>4</sup>

**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

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<sup>1</sup> Exhibit A, Test Claim, filed December 23, 2020, page 1.

<sup>2</sup> Exhibit B, Finance’s Comments on the Test Claim, filed April 2, 2021, page 1.

<sup>3</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, page 1.

<sup>4</sup> Exhibit D, Draft Proposed Decision, issued September 29, 2021.

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.”<sup>5</sup>

**Claims**

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

| <b>Issue</b>   | <b>Description</b>   | <b>Staff Recommendation</b>  |
|--|--|--|
| Was the Test Claim timely filed pursuant to Government Code section 17551 and California Code of Regulations, title 2, section 1183.1? | 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 increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines 12 months as 365 days. <sup>6</sup> | <i>Timely filed</i> – The test claim statute became effective on January 1, 2020 and the Test Claim was filed on December 23, 2020, within 12 months of the effective date of the test claim statute.  |
| Does Elections Code section 2170, as amended by Statutes 2019, chapter 565, impose a reimbursable state-mandated program?              | The test claim statute expands the locations where county elections officials are required to provide CVR and CVR provisional voting to now include polling places and satellite election offices.<br><br>“Providing” CVR and CVR provisional voting requires county elections officials to provide a voter registration   | <i>Deny</i> – Elections Code section 2170, as amended by the test claim statute does not impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution on county elections officials.<br><br>The requirement to provide CVR and CVR provisional voting at satellite offices of the |

<sup>5</sup> *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.

<sup>6</sup> California Code of Regulations, title 2, section 1183.1(c).

| Issue | Description  | Staff Recommendation   |
|-------|--|--|
|       | <p>affidavit pursuant to Elections Code section 2170(d)(1) and perform the activities specified in Elections Code section 2170(d)(2) through (d)(5) to process conditional voter registration and include CVR provisional ballots in the official canvas, and requires county elections officials in non-Voter's Choice Act counties to follow the procedures specified in Elections Code section 2170(e)(1) through (e)(3) when providing a CVR voter with a provisional ballot. with Elections Code section 2170(d)(4) and (5) are not newly required by the test claim statute.</p> | <p>county elections official is not mandated by the state because county elections officials are not required by state law to create satellite offices.<sup>7</sup></p> <p>In addition, county elections officials have a preexisting duty to provide CVR and CVR provisional voting. The test claim statute simply expands the locations where these preexisting services must be provided, but does not otherwise change the actual activities that must be performed by a county elections official when offering CVR and CVR provisional voting. Thus, the activities of providing CVR and CVR provisional voting at satellite offices and polling places and processing these ballots does not constitute a new program or higher level of service.</p> |

**Staff Analysis**

**A. The Test Claim Was Timely Filed.**

Government Code section 17551(c) requires that a test claim be filed “not later than 12 months after the effective date of the statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines 12 months as 365 days.<sup>8</sup> Government Code section 17557(e) requires a test claim to be submitted by June 30 following a fiscal year in order to establish reimbursement eligibility for that fiscal year. The test claim statute became effective on January 1, 2020.<sup>9</sup> The Test Claim was filed on December 23, 2020, within 365 days of the test claim statute’s effective date. Accordingly, the Test Claim was timely filed.

<sup>7</sup> Elections Code section 3018(b).

<sup>8</sup> California Code of Regulations, title 2, section 1183.1(c).

<sup>9</sup> Statutes 2019, chapter 565.

**B. Elections Code Section 2170, as Amended by the Test Claim Statute, Does Not Mandate a New Program or Higher Level of Service on Counties and, Therefore, Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution**

Prior to the test claim statute, the elections official was required by state law to provide CVR and CVR provisional voting at its permanent offices and, pursuant to Elections Code section 4005, at all vote centers for counties operating under the Voter's Choice Act, during the 14-day period prior to election day and on election day.<sup>10</sup> In addition, counties were permitted to provide CVR and CVR provisional voting at county satellite offices during the 14-day period prior to election day and on election day under prior law, but were not required to do so.<sup>11</sup>

The test claim statute amended Elections Code section 2170(d) and (e) to extend the requirement for elections officials to provide CVR and CVR provisional voting to all satellite offices and polling places in the county. Providing CVR and CVR provisional ballots requires county elections officials to provide a voter registration affidavit pursuant to Elections Code section 2170(d)(1) and perform the activities specified in Elections Code section 2170(d)(2) through (d)(5) to process conditional voter registration and include CVR provisional ballots in the official canvas, and requires county elections officials in non-Voter's Choice Act counties to follow the procedures specified in Elections Code section 2170(e)(1) through (e)(3) when providing a CVR voter with a provisional ballot.

However, staff finds that Elections Code section 2170, as amended by the test claim statute, does not mandate a new program or higher level of service on county elections officials and, thus, does not impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution because:

- The requirement to provide CVR and CVR provisional voting at satellite offices of the county elections official is not mandated by the state because county elections officials are not required by state law to create satellite offices;<sup>12</sup> and
- County elections officials have a preexisting duty to provide CVR and CVR provisional voting. The test claim statute simply expands the locations where these preexisting services must be provided, but does not otherwise change the actual activities that must be performed by a county elections official to provide CVR and CVR provisional voting. Thus, the activities of providing CVR and CVR provisional voting at satellite offices and polling places and processing these ballots does not constitute a new program or higher level of service.

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<sup>10</sup> Elections Code section 2170(d)(1), (e) (Stats. 2012, ch. 497, § 2); Elections Code sections 4005(a)(2)(A)(ii), 4007; California Code of Regulations, title 2, section 20023(b).

<sup>11</sup> Elections Code section 2170(d)(1), (e) (Stats. 2012, ch. 497, § 2); Statutes 2015, chapter 734, section 2.

<sup>12</sup> Elections Code section 3018(b).

### **Conclusion**

Based on the forgoing analysis, staff finds that the test claim statute does not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B section 6 of the California Constitution.

### **Staff Recommendation**

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

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

|  |  |
|--|--|
| <p>IN RE TEST CLAIM</p> <p>Elections Code Section 2170 as Amended by Statutes 2019, Chapter 565 (SB 72)</p> <p>Filed on December 23, 2020</p> <p>County of San Diego, Claimant</p> | <p>Case No.: 20-TC-02</p> <p><i>Extended Conditional Voter Registration</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 December 3, 2021)</i></p> |
|--|--|

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on December 3, 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:

| <b>Member</b>  | <b>Vote</b> |
|--|-------------|
| Lee Adams, County Supervisor   |             |
| Natalie Kuffel, 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   |             |
| Yvette Stowers, Representative of the State Controller, Vice Chairperson               |             |
| Spencer Walker, Representative of the State Treasurer                                  |             |



## **Summary of the Findings**

This Test Claim filed by the County of San Diego (claimant) alleges that reimbursement is required for state-mandated activities arising from Statutes 2019, chapter 565 (SB 72), which amended Elections Code section 2170 by expanding the locations at which county elections officials provide conditional voter registration and related provisional voting (CVR and CVR provisional voting).

The Commission finds that the Test Claim was timely filed within one year of the effective date of the test claim statute.

The Commission further finds that the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Prior to the test claim statute, the elections official was required by state law to provide CVR and CVR provisional voting at its permanent offices and, pursuant to Elections Code section 4005, at all vote centers for counties operating under the Voter's Choice Act, during the 14-day period prior to election day and on election day.<sup>13</sup> In addition, counties were permitted to provide CVR and CVR provisional voting at county satellite offices during the 14-day period prior to election day and on election day under prior law, but were not required to do so.<sup>14</sup>

The test claim statute amended Elections Code section 2170(d) and (e) to extend the requirement for elections officials to provide CVR and CVR provisional voting to all satellite offices and polling places in the county. Providing CVR and CVR provisional ballots requires county elections officials to provide a voter registration affidavit pursuant to Elections Code section 2170(d)(1) and perform the activities specified in Elections Code section 2170(d)(2) through (d)(5) to process conditional voter registration and include CVR provisional ballots in the official canvas, and requires county elections officials in non-Voter's Choice Act counties to follow the procedures specified in Elections Code section 2170(e)(1) through (e)(3) when providing a CVR voter with a provisional ballot.

However, the Commission finds that Elections Code section 2170, as amended by the test claim statute, does not mandate a new program or higher level of service on county elections officials and, thus, does not impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution because:

- The requirement to provide CVR and CVR provisional voting at satellite offices of the county elections official is not mandated by the state because county elections officials are not required by state law to create satellite offices;<sup>15</sup> and
- County elections officials have a preexisting duty to provide CVR and CVR provisional voting. The test claim statute simply expands the locations where these preexisting services must be provided, but does not otherwise change the actual activities that must

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<sup>13</sup> Elections Code section 2170(d)(1), (e) (Stats. 2012, ch. 497, § 2); Elections Code sections 4005(a)(2)(A)(ii), 4007; California Code of Regulations, title 2, section 20023(b).

<sup>14</sup> Elections Code section 2170(d)(1), (e) (Stats. 2012, ch. 497, § 2); Statutes 2015, chapter 734, section 2.

<sup>15</sup> Elections Code section 3018(b).

be performed by a county elections official when providing and processing CVR and CVR provisional voting. Thus, the activities of providing CVR and CVR provisional voting at satellite offices and polling places do not constitute a new program or higher level of service.

Accordingly, the Commission denies this Test Claim.

## COMMISSION FINDINGS

### I. Chronology

01/01/2020 Effective date of Statutes 2019, chapter 565, amending Elections Code section 2170.

12/23/2020 The claimant, County of San Diego, filed the Test Claim.<sup>16</sup>

04/02/2021 The Department of Finance (Finance) filed comments on the Test Claim.<sup>17</sup>

05/05/2021 The claimant filed rebuttal comments.<sup>18</sup>

09/29/2021 Commission staff issued the Draft Proposed Decision.<sup>19</sup>

### II. Background

This Test Claim alleges reimbursable state-mandated activities and costs arising from Elections Code section 2170, as amended by Statutes 2019, chapter 565 (SB 72), effective January 1, 2020. Elections Code section 2170 was amended by the test claim statute to expand the locations at which county elections officials must provide conditional voter registration and provisional voting to conditional voter registrants from permanent offices of the county elections official and vote centers to also include all satellite county elections offices and all polling places in the county.

#### A. Conditional Voter Registration

To register to vote in California, an eligible person must properly execute an affidavit of voter registration to be postmarked or received by the county elections official on or before the fifteenth day prior to an election.<sup>20</sup> An affidavit of registration may also be submitted to the Department of Motor Vehicles or any other public agency designated as a voter registration agency under the federal National Voter Registration Act of 1993, provided the affidavit is submitted at least 15 days before the election.<sup>21</sup> Affidavits of registration may be completed in paper form or online through the Secretary of State's website.<sup>22</sup>

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<sup>16</sup> Exhibit A, Test Claim, filed on December 23, 2020.

<sup>17</sup> Exhibit B, Finance's Comments on the Test Claim, filed April 2, 2021.

<sup>18</sup> Exhibit C, Claimant's Rebuttal Comments, filed May 5, 2021.

<sup>19</sup> Exhibit D, Draft Proposed Decision, issued September 29, 2021.

<sup>20</sup> Elections Code section 2102(a).

<sup>21</sup> Elections Code section 2102(a)(2).

<sup>22</sup> Elections Code section 2102(a).

In 2012, the Legislature enacted Elections Code 2170 et seq., establishing conditional voter registration and related provisional voting (CVR and CVR provisional voting).<sup>23</sup> CVR gives eligible persons, who missed the traditional registration deadline, another opportunity to register or reregister to vote. Under Elections Code section 2170(a), a person who is otherwise qualified to vote, but who did not register or reregister by the 15-day registration deadline, is able to conditionally register to vote and provisionally vote during the 14 days prior to and on election day, if certain requirements are met.<sup>24</sup>

“Conditional voter registration” means a properly executed affidavit of registration that is delivered by the registrant to the county elections official during the 14 days immediately preceding an election or on election day and which may be deemed effective pursuant to this article after the elections official processes the affidavit, determines the registrant’s eligibility to register, and validates the registrant’s information, as specified in subdivision (c).<sup>25</sup>

While enacted in 2012, CVR and CVR provisional voting did not become operative until January 1, 2017, following the Secretary of State’s certification of a statewide voter registration database (VoteCal).<sup>26</sup>

CVR and CVR provisional voting was added in order to increase voter participation by providing a mechanism for eligible voters to retain the opportunity to register to vote and to vote, despite missing the 15-day registration deadline, as was seen in other states that adopted a similar process.

Citizen participation in elections is the bedrock of our representative democracy. Yet, in California, voter participation has fallen to troubling levels. In the November 2010 general election just 44.1% of eligible voters cast a vote. Fortunately there is more that we can do to promote increased participation, thus ensuring that election results reflect the will of the people to the greatest extent possible. Currently, individuals who are eligible to vote must submit a voter affidavit at least 15 days prior to an election. Unfortunately, the registration deadline hinders voter participation. This is illustrated by the ten states that allow some form of same-day registration and voting. All but one have higher voter participation rates than California—where only 44.1% of eligible voters participated in the 2010 general election. In comparison, Iowa, Wisconsin and Minnesota had respective rates of 50.0%, 52.1%, and 55.4% in the 2010 general election. Research also shows that same-day registration and voting lead to increased participation. North Carolina implemented same-day voter registration

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<sup>23</sup> Statutes 2012, chapter 497 (AB 1436).

<sup>24</sup> Elections Code section 2170(a).

<sup>25</sup> Elections Code section 2170(a).

<sup>26</sup> Statutes 2012, chapter 497; Exhibit A, Test Claim, filed December 23, 2020, page 75.

in 2007 and saw an 8% increase in voter turnout during the 2008 presidential election compared to the 2004 presidential election.<sup>27</sup>

The statute as originally enacted required county elections officials to provide CVR and CVR voting at all permanent offices of the county elections official during the 14-day period prior to election day and on election day, and permitted county elections officials to provide CVR and CVR voting at satellite offices of the county elections office on election day only.<sup>28</sup> In 2015, Elections Code section 2170 was amended to also permit CVR and CVR voting at satellite offices of the county elections office during the 14-day period prior to election day.<sup>29</sup> In addition to the test claim statute, Elections Code section 2170 was separately amended in 2019 to permit an elections official to provide a nonprovisional ballot to a conditional voter registrant, if certain requirements are satisfied.<sup>30</sup> The statute was also amended in 2020 to make non-substantive changes.<sup>31</sup>

Conditional voter registrants use the same affidavit of registration to register to vote as other voters – either a paper form or online through the Secretary of State’s website.<sup>32</sup> The elections official must advise conditional voter registrants that a conditional voter registration is effective only if the registrant is determined to be eligible to register to vote and the information on the registration affidavit is verified.<sup>33</sup>

A conditional voter registration is processed in the same manner as a “regular” registration:<sup>34</sup> The county elections official must determine the registrant’s eligibility and attempt to validate the registrant’s information.<sup>35</sup> For conditional voter registration to be deemed effective, the registrant must be found eligible to register and the information provided by the registrant on the affidavit of registration verified before or during the canvass period for the election.<sup>36</sup> If a voter

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<sup>27</sup> Exhibit X, Assembly Committee on Elections and Redistricting, Analysis of AB 1436 (2011-2012 Reg. Sess.), as amended March 20, 2012, page 3.

<sup>28</sup> Elections Code section 2170(d)(1), (e) (Stats. 2012, ch. 497, § 2).

<sup>29</sup> Statutes 2015, chapter 734, section 2.

<sup>30</sup> Statutes 2019, chapter 99. As a result of this separate 2019 amendment, the language of subdivision (d)(1) was changed as follows:

(d)(1) The elections official shall provide conditional voter registration and ~~provisional~~ voting pursuant to this article at all permanent offices of the county elections official in the county.<sup>30</sup>

<sup>31</sup> Statutes 2020, chapter 370.

<sup>32</sup> California Code of Regulations, title 2, section 20022; see Elections Code sections 2102, 2150, 2170(a).

<sup>33</sup> Elections Code section 2170(d)(2).

<sup>34</sup> Elections Code section 2171(b).

<sup>35</sup> Elections Code section 2170(d)(4).

<sup>36</sup> Elections Code section 2170(a), (c).

is otherwise eligible to vote but the information provided on the affidavit cannot be verified using a Department of Motor Vehicles or federal Social Security Administration database, the registrant is issued a unique identification number for voter registration identification purposes and the conditional voter registration is deemed effective.<sup>37</sup> Upon finding a conditional registration effective, the corresponding provisional ballot is included in the official canvass for the election.<sup>38</sup>

## **B. Provisional Voting**

Provisional voting has been in effect in California since 1984 and is meant to ensure that “no properly registered voter is denied their right to cast a ballot if that voter’s name is not on the polling place roster due to a clerical, processing, computer, or other error” and “that no voter votes twice, either intentionally or inadvertently, in a given election.”<sup>39</sup> Any voter who claims to be properly registered but whose qualifications cannot be immediately determined is entitled to cast a provisional ballot.<sup>40</sup> Common circumstances when an elections official will require a voter to cast a provisional ballot include: when a person is voting for the first time in a federal election and cannot provide the required proof of identification;<sup>41</sup> when a voter has moved within the same county but has not reregistered to vote;<sup>42</sup> a vote-by-mail voter voting in person;<sup>43</sup> and when a voter is not on the polling place roster for an unknown reason.<sup>44</sup>

An elections official must advise any voter who falls into any of these categories or otherwise claims to be properly registered, but whose voter eligibility cannot be determined, of the voter’s right to cast a provisional ballot, and must provide the voter with a provisional ballot, written instructions regarding the process and procedures for casting the ballot, and a written affirmation regarding the voter’s registration and eligibility to vote.<sup>45</sup> The written instructions provided to a provisional voter must include the following information in Elections Code section 14310(c) and (d):

- During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of

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<sup>37</sup> Elections Code section 2170(c)(2); see Elections Code section 2150(a)(7)(C).

<sup>38</sup> Elections Code section 2170(d)(5).

<sup>39</sup> Exhibit X, California Secretary of State, Provisional Voting, <https://www.sos.ca.gov/elections/voting-resources/provisional-voting> (accessed on June 2, 2021), page 2.

<sup>40</sup> Elections Code sections 2300, 14310.

<sup>41</sup> California Code of Regulations, title 2, sections 19075, 20107.

<sup>42</sup> Elections Code section 14311.

<sup>43</sup> Elections Code section 3016.

<sup>44</sup> Elections Code section 14310(a); see also Exhibit X, California Secretary of State, Provisional Voting, <https://www.sos.ca.gov/elections/voting-resources/provisional-voting> (accessed on June 2, 2021), page 3.

<sup>45</sup> Elections Code section 14310(a)(1), (a)(2).

signatures on vote by mail ballots pursuant to Section 3019, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration or other signature in the voter's registration record. If the signatures do not compare or the provisional ballot envelope is not signed, the ballot shall be rejected.

- The elections official establishes prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote, the provisional ballot has been cast pursuant to Elections Code section 2170 (with CVR and CVR provisional voting), or upon order of the court.
- A voter may seek the court order regarding his or her own ballot at any time prior to completion of the official canvass.
- The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official.

If the ballot cast by the voter contains the same candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct, the elections official shall count the votes for the entire ballot.

If the ballot cast by the voter contains candidates or measures on which the voter would not have been entitled to vote in his or her assigned precinct, the elections official shall count only the votes for the candidates and measures on which the voter was entitled to vote in his or her assigned precinct.

- Any voter who casts a provisional ballot may access a free access system established by the Secretary of State to discover whether the voter's provisional ballot was counted and, if not, the reason why it was not counted.<sup>46</sup>

The voter must then execute the written affirmation in the presence of an elections official, stating that the voter is eligible to vote and is registered in the county.<sup>47</sup>

A provisional ballot is simply a regular ballot that is sealed in an envelope that demarcates it as provisional prior to being placed in the ballot box.<sup>48</sup> Provisional ballot envelopes must be of a different color than the envelopes used for vote-by-mail ballots, but printed substantially similar to and completed in the same manner.<sup>49</sup>

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<sup>46</sup> Elections Code section 14310(a)(2).

<sup>47</sup> Elections Code section 14310(a)(3).

<sup>48</sup> Elections Code section 14310.

<sup>49</sup> Elections Code section 14310(b).

No provisional ballot is counted or rejected until the elections official goes through a detailed process to determine whether the ballot should be counted.<sup>50</sup> As explained in the written information provided to the voter, provisional ballots are processed and counted in the same manner as vote-by-mail ballots.<sup>51</sup> During the official canvass period for the election, the elections official compares the signature on the provisional ballot envelope with the signature in the voter’s registration record using the procedures applicable to comparing signatures for vote-by-mail ballots under Elections Code section 3019.<sup>52</sup>

If the signatures do not compare or the provisional ballot envelope is not signed, the ballot is rejected.<sup>53</sup> Provisional ballots are only included in any semiofficial or official canvass if at least one of the following is true: (1) the provisional voter’s right to vote is established; (2) the provisional ballot is cast and included in the canvass under the rules governing CVR and CVR provisional voting; or (3) by order of a superior court in the voter’s county of residence.<sup>54</sup>

A provisional ballot cast by an eligible voter shall not be rejected because it is cast at a location other than the voter’s assigned precinct.<sup>55</sup> The voter is entitled to have only the votes counted that are cast on the candidates and measures that the voter would have been entitled to vote on at the voter’s assigned precinct.<sup>56</sup> Additionally, any voter who casts a provisional ballot is entitled to find out whether their ballot was counted and, if not, the reason why it was not counted.<sup>57</sup> This information is made available on the Secretary of State’s “My Voter Status” page, along with the voter’s participation history.<sup>58</sup>

Provisional ballots cast by conditional voter registrants<sup>59</sup> are subject to the same requirements as provisional ballots generally.<sup>60</sup> Thus, a “CVR provisional ballot” is a provisional ballot that is

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<sup>50</sup> Elections Code sections 14310, 15350, and 15100-15112; see also Exhibit X, California Secretary of State, Provisional Voting, <https://www.sos.ca.gov/elections/voting-resources/provisional-voting> (accessed on June 2, 2021), page 3.

<sup>51</sup> Elections Code sections 14310(c)(1), 15350, 15100-15112.

<sup>52</sup> Elections Code section 14310(c)(1).

<sup>53</sup> Elections Code section 14310(c)(1).

<sup>54</sup> Elections Code section 14310(c)(2)(A).

<sup>55</sup> Elections Code section 14310(c)(3).

<sup>56</sup> Elections Code section 14310(c)(3)(A), (c)(3)(B).

<sup>57</sup> Elections Code section 14310(d); California Code of Regulations, title 2, sections 19093 (provisional ballots generally), 20025(f) (CVR provisional ballots).

<sup>58</sup> California Code of Regulations, title 2, sections 19093 (provisional ballots generally), 20025(f) (CVR provisional ballots).

<sup>59</sup> The Secretary of State’s regulations governing the conditional voter registration provisions of the Elections Code use the term “CVR voter” to mean a conditional voter registrant who requests a CVR provisional ballot. (California Code of Regulations, title 2, section 20021(b).)

<sup>60</sup> Elections Code sections 2171(c), 14310-14314.

issued to a conditional voter registrant.<sup>61</sup> CVR provisional ballot envelopes must look visibly different from all other ballot envelopes, which can include a different envelope color or placing a stamp or mark using a marking mechanism on the ballot envelope.<sup>62</sup>

If a conditional voter registration is deemed effective under Elections Code section 2170, the corresponding CVR provisional ballot must be processed in accordance with sections 20025 and 20026 of the Secretary of State's regulations.<sup>63</sup>

### **C. Voter's Choice Act**

In 2016, the Legislature enacted the Voter's Choice Act, which authorized the counties of Calaveras, Inyo, Madera, Napa, Nevada, Orange, Sacramento, San Luis Obispo, San Mateo, Santa Clara, Shasta, Sierra, Sutter, and Tuolumne to conduct any election as an all-mailed ballot election beginning January 1, 2018, if certain conditions are satisfied, including requirements for ballot drop-off locations, vote centers, and election administration plans.<sup>64</sup> Beginning January 1, 2020, any county may choose to conduct any election under the Voter's Choice Act, if specified requirements are met.<sup>65</sup> By the 2018 elections, five counties had implemented the Voter's Choice Act: Madera, Napa, Nevada, Sacramento, and San Mateo. By December 2020, 15 of 58 counties had implemented the Voter's Choice Act.<sup>66</sup>

Under the Voter's Choice Act, counties conduct elections in which all registered voters receive a ballot by mail.<sup>67</sup> Voters may then choose to mail in their ballot, drop off the ballot at a secure drop-off location, or vote in person at a vote center.<sup>68</sup> Beginning 10 days before the election and continuing through the Friday before election day, at least one vote center is required for every

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<sup>61</sup> California Code of Regulations, title 2, section 20021(c).

<sup>62</sup> California Code of Regulations, title 2, section 20024.

<sup>63</sup> California Code of Regulations, title 2, section 19095.

<sup>64</sup> Statutes 2016, chapter 832 (SB 450).

<sup>65</sup> Elections Code sections 4005, 4007. Los Angeles County is subject to the same general requirements specified in Elections Code section 4005, with certain exceptions as specified in Elections Code section 4007.

<sup>66</sup> Exhibit X, California Secretary of State, Voter's Choice Act Participating Counties, <https://www.sos.ca.gov/elections/voters-choice-act/vca-counties> (accessed on June 2, 2021). Voter's Choice Act counties include: Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne.

<sup>67</sup> Exhibit A, Test Claim, filed December 23, 2020, page 160 (California Secretary of State, About California's Voter's Choice Act).

<sup>68</sup> Exhibit A, Test Claim, filed December 23, 2020, page 160 (California Secretary of State, About California's Voter's Choice Act).



50,000 registered voters.<sup>69</sup> On election day and the Saturday, Sunday, and Monday prior, one vote center is required for every 10,000 registered voters.<sup>70</sup>

Under the Voter's Choice Act, vote centers replace traditional polling places and provide the following expanded voter services:

- Vote in-person;
- Secure ballot drop off;
- Get a replacement ballot;
- Vote using an accessible voting machine;
- Get help and voting material in multiple languages; and
- Register to vote or update voter registration, pursuant to Elections Code section 2170.<sup>71</sup>

Counties participating in the Voter's Choice Act must offer CVR and CVR voting at all vote centers.<sup>72</sup>

#### **D. Test Claim Statute**

As indicated above, before the test claim statute was enacted, Elections Code 2170 required county elections officials to provide CVR and CVR provisional voting at all permanent offices of the county elections official during the 14-day period prior to election day and on election day, and permitted county elections officials to provide CVR and CVR provisional voting at satellite offices of the county elections office during the 14-day period prior to election day and on election day.<sup>73</sup> In addition, Elections Code section 4005(a)(2)(A) required vote centers to provide CVR and CVR provisional voting pursuant to section 2170.

The test claim statute, Statutes 2019, chapter 565 (SB 72) became effective on January 1, 2020, amending Elections Code section 2170(d) and (e) to *require* county elections officials to provide CVR and CVR provisional voting at all satellite offices of the county elections official and all polling places in the county, and to specify the procedures that county elections officials in non-Voter's Choice Act counties must follow in providing a provisional ballot to a conditional voter registrant. Elections Code section 2170 was amended as follows:

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<sup>69</sup> Elections Code section 4005(a)(4)(A); Exhibit A, Test Claim, filed December 23, 2020, page 161 (California Secretary of State, About California's Voter's Choice Act).

<sup>70</sup> Elections Code section 4005(a)(3)(A); Exhibit A, Test Claim, filed December 23, 2020, page 161 (California Secretary of State, About California's Voter's Choice Act).

<sup>71</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 160-161 (California Secretary of State, About California's Voter's Choice Act); Elections Code section 4005(a)(2)(A).

<sup>72</sup> Elections Code sections 4005(a)(2)(A)(ii), 4007; California Code of Regulations, title 2, section 20023(b).

<sup>73</sup> Elections Code section 2170(d)(1), (e) (Stats. 2012, ch. 497, § 2); Statutes 2015, chapter 734, section 2.

(d) The county elections official shall offer conditional voter registration and provisional voting pursuant to this article, in accordance with all of the following procedures:

- (1) The elections official shall provide conditional voter registration and provisional voting pursuant to this article at all permanent and satellite offices of the county elections official and all polling places in the county.
- (2) The elections official shall advise registrants that a conditional voter registration will be effective only if the registrant is determined to be eligible to register to vote for the election and the information provided by the registrant on the registration affidavit is verified pursuant to subdivision (c).
- (3) The elections official shall conduct the receipt and handling of each conditional voter registration and offer and receive a corresponding provisional ballot in a manner that protects the secrecy of the ballot and allows the elections official to process the registration, determine the registrant's eligibility to register, and validate the registrant's information before counting or rejecting the corresponding provisional ballot.
- (4) After receiving a conditional voter registration, the elections official shall process the registration, determine the registrant's eligibility to register, and attempt to validate the registrant's information.
- (5) If a conditional registration is deemed effective, the elections official shall include the corresponding provisional ballot in the official canvass.

~~(e) The county elections official may offer~~ After receiving a conditional voter registration and provisional voting pursuant to this article at satellite offices of the county elections office, the elections official shall provide the voter a provisional ballot in accordance with the following procedures: specified in paragraphs (2) to (5), inclusive, of subdivision (d).

- (1) If the elections office, satellite office, or polling place is equipped with an electronic poll book, or other means to determine the voter's precinct, the elections official shall provide the voter with a ballot for the voter's precinct if the ballot is available. The ballot may be cast by any means available at the elections office, satellite office, or polling place.
- (2) If the elections official is unable to determine the voter's precinct, or a ballot for the voter's precinct is unavailable, the elections official shall provide the voter with a ballot and inform the voter that only the votes for the candidates and measures on which the voter would be entitled to vote in the voter's assigned precinct may be counted pursuant to paragraph (3) of subdivision (c) of Section 14310. The ballot may be cast by any means available at the elections office, satellite office, or polling place.
- (3) Notwithstanding paragraph (2), if the elections official is able to determine the voter's precinct, but a ballot for the voter's precinct is unavailable, the elections official may inform the voter of the location of

the voter's polling place. A voter described in this paragraph shall not be required to vote at the voter's polling place and may instead, at the voter's choosing, cast a ballot pursuant to paragraph (2).

(4) This subdivision does not apply to elections conducted pursuant to Section 4005 or 4007 [under the Voter's Choice Act].

### **1. Secretary of State's Interpretation of the Test Claim Statute.**

The Secretary of State is the chief elections officer of the state and is responsible for administering the provisions of the Elections Code.<sup>74</sup> According to a Secretary of State memorandum issued to county elections officials statewide, the test claim statute “amends Elections Code section 2170 to require county elections officials to offer CVR and CVR provisional voting at all permanent and satellite offices and all polling places in the county.”<sup>75</sup>

The Secretary of State's guidance for providing CVR and CVR provisional voting at all permanent and satellite county elections offices is as follows:

- Provide the individual a voter registration application.
- Once the voter completes the application, the county elections official determines the CVR voter's precinct.
- Provide the CVR voter a ballot for the voter's precinct.
- Voter places the voted ballot in a CVR provisional ballot envelope.<sup>76</sup>

The Secretary of State's guidance for providing CVR and CVR provisional voting at polling locations tracks Elections Code section 2170(e)(1) through (e)(3), which address the various circumstances that may arise at polling places depending on whether the polling place has technology to determine the CVR voter's precinct and whether the ballot for the CVR voter's assigned precinct is available.<sup>77</sup>

**If the polling location has technology to determine the CVR voter's precinct and:**

**Ballot for that precinct is available:**

- Provide the individual a voter registration application.

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<sup>74</sup> Government Code section 12172.5(a).

<sup>75</sup> Exhibit A, Test Claim, filed December 23, 2020, page 107 (California Secretary of State CC/ROV Memorandum #19125, November 20, 2019). The courts will give weight and appropriate deference to the interpretation of a statute by the agency charged with its implementation. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.)

<sup>76</sup> Exhibit A, Test Claim, filed December 23, 2020, page 108 (California Secretary of State CC/ROV Memorandum #19125, November 20, 2019).

<sup>77</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 110-111 (California Secretary of State CC/ROV Memorandum #19125, November 20, 2019).

- Once the voter completes the application, the county elections official determines the CVR voter's precinct.
  - The Secretary of State recommends having a minimum of two workers at the polling place who have credentials to access the technology that can determine a CVR voter's precinct in order to ensure adequate coverage.
- Provide the CVR voter a ballot for the voter's precinct.
  - The Secretary of State recommends having a minimum of two workers at the polling place who have access to the ballots for all the precincts in the county to ensure adequate coverage.
  - If access to all precinct ballots within the county is through the use of an electronic ballot marking device, poll workers should be made aware that a voter might refuse to use that voting option. If so, the CVR voter should be:
    - informed of the location of their correct polling place where the ballot for their precinct is available, or
    - given a ballot that is available at the precinct with information that only the votes for the candidates and measures on which the voter would be entitled to vote in the voter's assigned precinct may be counted.
- Voter places the voted ballot in a CVR provisional ballot envelope.

**Ballot for that precinct is NOT available:**

- Inform the voter of the location of their correct polling place and their option to vote at the correct polling place or at their current location.
- If the individual does not wish to go to their polling place, provide the individual a voter registration application.
  - Once the voter completes the application, the county elections official determines the CVR voter's precinct.
    - The Secretary of State recommends having a minimum of two workers at the polling place who have credentials to access the technology that can determine a CVR voter's precinct.
  - Give the CVR voter:
    - a ballot that is available at the precinct, and
    - inform the voter that only the votes for the candidates and measures on which the voter would be entitled to vote in the voter's assigned precinct may be counted.
  - Voter places the voted ballot in a CVR provisional ballot envelope.

**If polling location does NOT have technology to determine the CVR voter's precinct -OR- the ballot for the voter's precinct is NOT available:**

- If possible, inform the individual of the location of their correct polling place where the ballot for their precinct is available, and their option to vote at the correct polling place or at their current location.
- If the individual does not wish to go to their polling place (or if the polling location does not have the technology to determine the CVR's precinct), provide the individual a voter registration application.
  - Give the CVR voter:
    - a ballot that is available at the precinct, and
    - information that only the votes for the candidates and measures on which the voter would be entitled to vote in the voter's assigned precinct may be counted.
  - Voter places the voted ballot in a CVR provisional ballot envelope.<sup>78</sup>

**2. Legislative History of the Test Claim Statute.**

According to the legislative history, the purpose of the test claim statute was “to expand access to same day voter registration and voting” by “requir[ing] all counties to permit eligible voters to register and vote on Election Day at every polling site.”<sup>79</sup>

Additionally, the legislative history indicates that because voters who wish to change their political party preference in order to vote in a particular party’s presidential primary may do so either prior to the registration deadline or through the conditional voter registration process, providing CVR and CVR provisional voting at more locations may reduce some of the related voter confusion and frustration that reportedly occurred in California during the 2016 presidential primary election.<sup>80</sup>

**E. Past Commission Decisions on Elections Law**

The Commission has not received a prior test claim on Elections Code 2170, but has heard and decided a number of test claims on elections law, the following of which are relevant to this Test Claim.

***Voter Identification Procedures, 03-TC-23***

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<sup>78</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 110-111 (California Secretary of State CC/ROV Memorandum #19125, November 20, 2019), emphasis in original.

<sup>79</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 134-135 (Senate Committee on Elections and Constitutional Amendments, Analysis of SB 72 (2019-2020 Reg. Sess.), as amended March 25, 2019, pages 7-8).

<sup>80</sup> Exhibit A, Test Claim, filed December 23, 2020, page 133 (Senate Committee on Elections and Constitutional Amendments, Analysis of SB 72 (2019-2020 Reg. Sess.), as amended March 25, 2019, page 6).

On October 4, 2006, the Commission approved the *Voter Identification Procedures*, 03-TC-23 Test Claim, finding that Elections Code section 14310(c)(1), as amended by Statutes 2000, chapter 260, imposed a reimbursable state-mandated program on city and county elections officials to compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration, and to reject any ballot when the signatures do not compare, for statutorily required elections.

*Fifteen Day Close of Voter Registration, 01-TC-15*

On October 31, 2006, the Commission partially approved the *Fifteen Day Close of Voter Registration*, 01-TC-15 Test Claim.<sup>81</sup> At issue were changes to the voter registration deadline prior to an election. The test claim statute amended, repealed, and reenacted several Elections Code sections to allow new registrations or changes to voter registrations through the 15th day prior to an election. Under prior law, the registration period closed 29 days before an election. The claimant sought mandate reimbursement for costs incurred to register voters during the 28-day through 15-day period prior to an election, including implementation, planning, revising training programs, conducting an informational medial campaign, answering questions about the new law, and hiring additional staff.

In finding that most of the statutory amendments by Statutes 2000, chapter 899, did not impose a new program or higher level of service on county elections officials with the meaning of article XIII B, section 6, the Commission determined that processing and accepting voter registration affidavits and changes of address were not newly required activities because county elections officials had been required to perform those activities since long before the enactment of the test claim statute.<sup>82</sup> Therefore, because processing and accepting new voter registrations and changes of address constitute an existing program, increases in the cost of that program that result from the changed timeframes do not impose a state-mandated program or higher level of service within the meaning of article XIII B, section 6.<sup>83</sup>

*Vote by Mail Ballots: Prepaid Postage, 19-TC-01*

On July 24, 2020, the Commission partially approved the *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01 Test Claim, finding that Elections Code Section 3010, as amended by Statutes 2018, chapter 120, imposes a reimbursable state-mandated program on city and county elections officials to provide prepaid postage on identification envelopes delivered with vote-by-mail ballots for all state and local elections, except for those held at the discretion of the local

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<sup>81</sup> Exhibit X, Excerpts from Commission on State Mandates, Statement of Decision for *Fifteen Day Close of Voter Registration*, 01-TC-15, page 1.

<sup>82</sup> Exhibit X, Excerpts from Commission on State Mandates, Statement of Decision for *Fifteen Day Close of Voter Registration*, 01-TC-15, pages 1-2.

<sup>83</sup> Exhibit X, Excerpts from Commission on State Mandates, Statement of Decision for *Fifteen Day Close of Voter Registration*, 01-TC-15, pages 1-2.

governing body, or elections for which counties or cities have fee authority within the meaning of Government Code section 17556(d).<sup>84</sup>

### III. Positions of the Parties

#### A. County of San Diego

The claimant alleges that the test claim statute imposes a reimbursable state-mandated program under article XIII B, section 6 and Government Code section 17514 on counties by requiring county elections officials to offer conditional voter registration (CVR) at satellite offices of the county elections official and polling places in the county during the 14-day period prior to the election and on election day.<sup>85</sup> The mandate applies to all elections conducted by the county elections official but only in counties that have *not* implemented the Voter's Choice Act (Elections Code section 4005 et seq.).<sup>86</sup>

These requirements are new because under prior law, CVR and CVR provisional voting was only required at the county elections office during the 14-day period prior to the election and on election day, was optional at satellite offices, and was neither optional nor required at polling places.<sup>87</sup> The claimant states that because polling places in San Diego County are only open on election day, the claimant must now offer CVR and CVR provisional voting at all satellite offices of the county elections official during the 14-day period prior to the election, and at satellite offices and all polling places on election day.<sup>88</sup>

The claimant argues that the test claim statute constitutes a new program or higher level of service.<sup>89</sup> The new requirements under Elections Code section 2170(d)(1) carry out “the governmental function of providing services to the public – i.e., allowing voters to register to vote for the first time or re-register to vote just before (or on) election day so that they can vote in that election.”<sup>90</sup> Furthermore, the new requirements are unique to local government: only the county elections official is required to provide conditional voter registration.<sup>91</sup> Alternatively, the claimant argues, the test claim statute imposes a “higher level of service” on local governments because in addition to offering CVR and CVR provisional voting at the permanent office of the county elections official, counties must extend CVR and CVR provisional voting to satellite offices and polling places.<sup>92</sup>

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<sup>84</sup> Exhibit X, Excerpts from Commission on State Mandates, Statement of Decision for *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01, adopted July 24, 2020, pages 1-5.

<sup>85</sup> Exhibit A, Test Claim, filed December 23, 2020, page 10.

<sup>86</sup> Exhibit A, Test Claim, filed December 23, 2020, page 11.

<sup>87</sup> Exhibit A, Test Claim, filed December 23, 2020, page 11.

<sup>88</sup> Exhibit A, Test Claim, filed December 23, 2020, page 12.

<sup>89</sup> Exhibit A, Test Claim, filed December 23, 2020, page 12.

<sup>90</sup> Exhibit A, Test Claim, filed December 23, 2020, page 13.

<sup>91</sup> Exhibit A, Test Claim, filed December 23, 2020, page 13.

<sup>92</sup> Exhibit A, Test Claim, filed December 23, 2020, page 14.

The claimant alleges that as a result of the test claim statute, it incurred increased costs during the 2019-2020 fiscal year as follows:<sup>93</sup>

| <b>Activity</b>        | <b>Date(s) Performed</b> | <b>Description</b>  | <b>Total Cost</b> | <b>Fee Authority</b> | <b>Reimbursable Cost Claimed</b> |
|------------------------|--------------------------|---|-------------------|----------------------|----------------------------------|
| 1) Staffing costs      | FY 2019-2020             | Plan, prepare and design envelopes                                    | \$29,019          | N/A                  | \$29,019                         |
| 2) Staffing costs      | FY 2019-2020             | Conduct additional data entry and process CVR ballots                 | \$123,965         | \$27,648             | \$96,317                         |
| 3) Training            | FY 2019-2020             | Create new training materials for poll workers and train poll workers | \$32,166          | \$7,174              | \$24,992                         |
| 4) Election staffing   | FY 2019-2020             | Recruit and hire temporary staff and poll workers                     | \$96,608          | \$21,546             | \$75,062                         |
| 5) Ballot processing   | FY 2019-2020             | Additional CVR ballot processing                                      | \$10,773          | \$2,403              | \$8,370                          |
| 6) Supplies            | FY 2019-2020             | CVR envelopes for satellite offices and polling places                | \$91,476          | \$20,402             | \$71,074                         |
| 7) Satellite locations | FY 2019-2020             | Open and operate four new satellite locations                         | \$236,287         | \$52,698             | \$183,589                        |
| <b>TOTAL</b>           |                          |   | <b>\$620,294</b>  | <b>\$131,871</b>     | <b>\$488,423</b>                 |

The claimant alleges that the activities listed above were performed as part of the March 2020 presidential primary election.<sup>94</sup> The claimant asserts that, because of the large CVR voter turnout during the November 2018 election, there was concern that polling places would be overwhelmed during the March 2020 election.<sup>95</sup> As of February 2019, there were over 480,000 eligible electors in San Diego County who could potentially register to vote through the CVR process, not including voters reregistering to vote through CVR.<sup>96</sup> Therefore, the claimant argues, it was necessary to create four additional satellite offices so that traditional polling places would not be overwhelmed by large numbers of CVR voters, and potential voters would not have to endure long wait times.<sup>97</sup>

<sup>93</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 5-7.

<sup>94</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 16-22.

<sup>95</sup> Exhibit A, Test Claim, filed December 23, 2020, page 15.

<sup>96</sup> Exhibit A, Test Claim, filed December 23, 2020, page 14.

<sup>97</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 15-16, 21-22.



Offering CVR and CVR provisional voting at satellite offices of the elections official during the 14-day period before election day and at satellite offices and polling places on elections day required the claimant, through its Registrar of Voters, to incur planning and preparation costs to “design and develop the necessary envelopes and training and create the necessary workflows” and to hire additional temporary staff to complete data entry and to process the additional CVRs and CVR provisional ballots.<sup>98</sup> The claimant also alleges that because of the test claim statute, the Registrar of Voters must train poll workers on the new processes for CVR and CVR provisional voting and update the poll worker training handbook to reflect these new processes.<sup>99</sup> Because of the anticipated increased voter turnout generated by CVR and CVR provisional voting, the claimant states that it was forced to recruit and hire additional temporary staff and poll workers.<sup>100</sup>

Because the test claim statute directly resulted in an increased number of CVR provisional ballots, the claimant alleges that it was required to process and sort CVR provisional ballot envelopes using automated processing equipment, for which it incurred additional costs.<sup>101</sup> The claimant also argues that the test claim statute directly resulted in the need to purchase new CVR provisional ballot envelopes for satellite locations and polling places.<sup>102</sup> According to the claimant, the new CVR provisional ballot envelope served as the affidavit of registration for CVR voters at all locations.<sup>103</sup>

The claimant cites to the Commission’s recent decision in *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01, for the proposition that it can recover some of the costs of administering elections from the jurisdictions whose elections are consolidated with the primary and general elections.<sup>104</sup> However, the claimant maintains that it cannot recover the additional internal planning and preparation costs it is forced to incur as a result of the test claim statute.<sup>105</sup>

The claimant states that for the November 2020 election, it incurred \$191,154 in total additional costs, but anticipates receiving reimbursement from other jurisdictions for additional staffing and training costs, such that the estimated total additional costs after reimbursement are \$123,800.<sup>106</sup> The claimant may also receive federal Help America Vote Act funds to defray some of these costs.<sup>107</sup> The claimant anticipates incurring \$30,177 in additional costs to conduct a special

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<sup>98</sup> Exhibit A, Test Claim, filed December 23, 2020, page 17.

<sup>99</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 17-18.

<sup>100</sup> Exhibit A, Test Claim, filed December 23, 2020, page 18.

<sup>101</sup> Exhibit A, Test Claim, filed December 23, 2020, page 19.

<sup>102</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 19-20.

<sup>103</sup> Exhibit A, Test Claim, filed December 23, 2020, page 20.

<sup>104</sup> Exhibit A, Test Claim, filed December 23, 2020, page 17.

<sup>105</sup> Exhibit A, Test Claim, filed December 23, 2020, page 17.

<sup>106</sup> Exhibit A, Test Claim, filed December 23, 2020, page 24.

<sup>107</sup> Exhibit A, Test Claim, filed December 23, 2020, page 24.

primary election in April 2021 to fill a vacancy in Assembly District 79.<sup>108</sup> Because this special election is not consolidated with other local elections, the claimant cannot receive reimbursement to offset costs.<sup>109</sup>

The claimant estimates the statewide cost of implementing the test claim statute for fiscal year 2020-2021 at \$331,154 – 722,934.<sup>110</sup>

In rebuttal comments, the claimant asserts that Finance concedes that the test claim statute creates an unfunded mandate and that training and supply costs were necessarily incurred.<sup>111</sup> The claimant disputes Finance’s challenge to the following four categories of costs: (1) Registrar of Voters staffing; (2) election staffing; (3) CVR ballot processing; and (4) creating new satellite locations.<sup>112</sup> The claimant argues that while the Commission first determines in a test claim decision whether a statute imposes reimbursable state-mandated activities, and then, at the parameters and guidelines phase, separately determines whether certain costs are “reasonably necessary” to carry out the mandate, these inquiries overlap and intertwine and should therefore be considered in tandem.<sup>113</sup>

The claimant argues that because the test claim statute required for the first time that poll workers offer CVR at polling places, the Registrar of Voters was required to incur additional staffing costs to plan new workflows and develop new CVR envelopes.<sup>114</sup> Thus, these planning activities were not only reasonably necessary, but were required.<sup>115</sup> Similarly, the expected increase in CVR voters caused the Registrar to hire additional election workers.<sup>116</sup> Because the legislative history of the test claim statute expressly anticipated an increase in voter turnout, increased staffing costs were required as a result of the test claim statute.<sup>117</sup> The claimant maintains that using automated equipment to sort CVR ballots was a required labor cost, and not discretionary as Finance alleges.<sup>118</sup> The claimant was required to use automated equipment to reduce labor costs for CVR ballot processing.<sup>119</sup> While the claimant concedes that the test claim statute does not directly require satellite offices, satellite offices were necessary “to mitigate long

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<sup>108</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 24-25; Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, page 7.

<sup>109</sup> Exhibit A, Test Claim, filed December 23, 2020, page 25.

<sup>110</sup> Exhibit A, Test Claim, filed December 23, 2020, page 26.

<sup>111</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, page 1.

<sup>112</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, pages 1-2.

<sup>113</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, page 3.

<sup>114</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, pages 4-5.

<sup>115</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, pages 4-5.

<sup>116</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, page 5.

<sup>117</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, page 5.

<sup>118</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, page 5.

<sup>119</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, pages 5-6.

lines and wait times at the polling places,” a reasonably anticipated result of expanding CVR services to all polling places.<sup>120</sup>

### **B. Department of Finance**

Finance does not dispute the claimant’s position that as a result of the test claim statute, claimant’s county elections official was required to update its training handbook, train poll workers on the CVR process, and purchase new CVR envelopes for both polling and satellite locations.<sup>121</sup> However, Finance challenges the claimant’s assertion that it was required to incur staffing, equipment, and satellite office expenses, arguing that those activities are not required by the amended statute.<sup>122</sup> Specifically, Finance asserts that the test claim statute does not require the claimant to recruit and hire additional temporary staff and poll workers, use automated processing equipment to process and sort ballots, or create additional satellite offices, and therefore, the claimant exercised discretion in choosing to perform these activities.<sup>123</sup> As such, costs relating to the non-required activities of staffing, ballot processing equipment, and satellite offices are not reimbursable.<sup>124</sup>

### **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.”<sup>125</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>126</sup>

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

- A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>127</sup>
- The mandated activity constitutes a “program” that either:

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<sup>120</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 5, 2021, page 6.

<sup>121</sup> Exhibit B, Finance’s Comments on the Test Claim, filed April 2, 2021, page 1.

<sup>122</sup> Exhibit B, Finance’s Comments on the Test Claim, filed April 2, 2021, page 2.

<sup>123</sup> Exhibit B, Finance’s Comments on the Test Claim, filed April 2, 2021, page 2.

<sup>124</sup> Exhibit B, Finance’s Comments on the Test Claim, filed April 2, 2021, page 2.

<sup>125</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>126</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>127</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

- 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.<sup>128</sup>
- 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.<sup>129</sup>
  - 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.<sup>130</sup>

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.<sup>131</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>132</sup> 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.”<sup>133</sup>

**A. The Test Claim Was Timely Filed.**

Government Code section 17551(c) requires that a test claim be filed “not later than 12 months after the effective date of the statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines 12 months as 365 days.<sup>134</sup> Government Code section 17557(e) requires a test claim to be submitted by June 30 following a fiscal year in order to establish reimbursement eligibility for that fiscal year.

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<sup>128</sup> *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).

<sup>129</sup> *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

<sup>130</sup> *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.

<sup>131</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>132</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>133</sup> *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).

<sup>134</sup> California Code of Regulations, title 2, section 1183.1(c).

The test claim statute became effective on January 1, 2020.<sup>135</sup> The Test Claim was filed on December 23, 2020, within 365 days of the test claim statute’s effective date. Accordingly, the Test Claim was timely filed.

**B. Elections Code Section 2170, as Amended by the Test Claim Statute, Does Not Mandate a New Program or Higher Level of Service on Counties and, Therefore, Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution.**

The Commission finds that Elections Code section 2170, as amended by the test claim statute (Stats. 2019, ch. 565), does not impose a reimbursable state-mandated program on county elections officials. County elections officials have a preexisting duty to provide CVR and CVR provisional voting. The test claim statute simply expands the locations where these preexisting services must be provided to satellite offices and polling places, but does not otherwise change the actual activities that must be performed by a county elections official when offering CVR and CVR provisional voting. In addition, providing CVR and CVR provisional voting at satellite offices is not mandated by the state since the decision to have a satellite office is a local discretionary decision.<sup>136</sup> Thus, the activities of providing CVR and CVR provisional voting at the new locations does not mandate a new program or higher level of service.

**1. The Test Claim Statute Requires County Elections Officials to Provide Conditional Voter Registration and Provisional Voting at More Locations; Satellite Election Offices and Polling Places.**

Prior to the test claim statute, the elections official was required to provide CVR and CVR provisional voting at its permanent offices and, pursuant to Elections Code section 4005, at all vote centers for counties operating under the Voter’s Choice Act, during the 14-day period prior to election day and on election day.<sup>137</sup> In addition, counties were permitted to provide CVR and CVR provisional voting at county satellite offices during the 14-day period prior to election day and on election day under prior law, but were not required to do so.<sup>138</sup>

The test claim statute amended Elections Code section 2170(d) and (e) to extend the requirement for elections officials to provide CVR and CVR provisional voting to all satellite offices of the county elections official and all polling places in the county, as follows in underline and strikeout:

(a) “Conditional voter registration” means a properly executed affidavit of registration that is delivered by the registrant to the county elections official during the 14 days immediately preceding an election or on election day and which may be deemed effective pursuant to this article after the elections official processes the affidavit, determines the

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<sup>135</sup> Statutes 2019, chapter 565.

<sup>136</sup> Elections Code section 3018(b).

<sup>137</sup> Elections Code section 2170(d)(1), (e) (Stats. 2012, ch. 497, § 2); Elections Code sections 4005(a)(2)(A)(ii), 4007; California Code of Regulations, title 2, section 20023(b).

<sup>138</sup> Elections Code section 2170(d)(1), (e) (Stats. 2012, ch. 497, § 2); Statutes 2015, chapter 734, section 2.

registrant's eligibility to register, and validates the registrant's information, as specified in subdivision (c).

(b) In addition to other methods of voter registration provided by this code, an elector who is otherwise qualified to register to vote under this code and Section 2 of Article II of the California Constitution may complete a conditional voter registration and cast a provisional ballot, or nonprovisional ballot under subdivision (f), during the 14 days immediately preceding an election or on election day pursuant to this article.

(c)(1) A conditional voter registration shall be deemed effective if the county elections official is able to determine before or during the canvass period for the election that the registrant is eligible to register to vote and that the information provided by the registrant on the registration affidavit matches information contained in a database maintained by the Department of Motor Vehicles or the federal Social Security Administration.

(2) If the information provided by the registrant on the registration affidavit cannot be verified pursuant to paragraph (1) but the registrant is otherwise eligible to vote, the registrant shall be issued a unique identification number pursuant to Section 2150 and the conditional voter registration shall be deemed effective.

(d) The county elections official shall offer conditional voter registration and provisional voting pursuant to this article, in accordance with all of the following procedures:

(1) The elections official shall provide conditional voter registration and provisional voting pursuant to this article at all permanent and satellite offices of the county elections official and all polling places in the county.

(2) The elections official shall advise registrants that a conditional voter registration will be effective only if the registrant is determined to be eligible to register to vote for the election and the information provided by the registrant on the registration affidavit is verified pursuant to subdivision (c).

(3) The elections official shall conduct the receipt and handling of each conditional voter registration and offer and receive a corresponding provisional ballot in a manner that protects the secrecy of the ballot and allows the elections official to process the registration, determine the registrant's eligibility to register, and validate the registrant's information before counting or rejecting the corresponding provisional ballot.

(4) After receiving a conditional voter registration, the elections official shall process the registration, determine the registrant's eligibility to register, and attempt to validate the registrant's information.

(5) If a conditional registration is deemed effective, the elections official shall include the corresponding provisional ballot in the official canvass.

~~(e) The county elections official may offer~~ After receiving a conditional voter registration ~~and provisional voting pursuant to this article at satellite offices of the county elections office,~~ the elections official shall provide the voter a provisional

ballot in accordance with the following procedures: specified in paragraphs (2) to (5), inclusive, of subdivision (d).

(1) If the elections office, satellite office, or polling place is equipped with an electronic poll book, or other means to determine the voter's precinct, the elections official shall provide the voter with a ballot for the voter's precinct if the ballot is available. The ballot may be cast by any means available at the elections office, satellite office, or polling place.

(2) If the elections official is unable to determine the voter's precinct, or a ballot for the voter's precinct is unavailable, the elections official shall provide the voter with a ballot and inform the voter that only the votes for the candidates and measures on which the voter would be entitled to vote in the voter's assigned precinct may be counted pursuant to paragraph (3) of subdivision (c) of Section 14310. The ballot may be cast by any means available at the elections office, satellite office, or polling place.

(3) Notwithstanding paragraph (2), if the elections official is able to determine the voter's precinct, but a ballot for the voter's precinct is unavailable, the elections official may inform the voter of the location of the voter's polling place. A voter described in this paragraph shall not be required to vote at the voter's polling place and may instead, at the voter's choosing, cast a ballot pursuant to paragraph (2).

(4) This subdivision does not apply to elections conducted pursuant to Section 4005 or 4007 [under the Voter's Choice Act].<sup>139</sup>

Polling places are typically open on election day, and not during the 14 days prior to the election.<sup>140</sup> However, the Elections Code defines "polling place" broadly as "a location where a voter casts a ballot, including a vote center."<sup>141</sup> "Vote center" is defined as "a location established for holding elections that offers the services described in Sections 2170, 4005, and 4007."<sup>142</sup> Sections 4005 and 4007 address the Voter's Choice Act, where counties that participate in the Voter's Choice Act conduct elections using vote centers, rather than polling

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<sup>139</sup> Statutes 2019, chapter 565.

<sup>140</sup> Elections Code section 14212 provides the following: "The polls shall be open at 7 a.m. of the day of any election, and shall be kept open until 8 p.m. of the same day, when the polls shall be closed, except as provided in Sections 4005, 4007, and 14401." Elections Code section 14401 provides that "if at the hour of closing there are any other voters in the polling place, or in line at the door, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote." Elections Code sections 4005 and 4007 address Voter Choice Act counties, where counties agree to open one vote center per 50,000 registered voters ten days before the election and continuing through the Friday before election day, and one voter center per 10,000 registered voters beginning the Saturday before the election and continuing through election day. (Elec. Code, § 4005(a)(3)(A), (a)(4)(A).)

<sup>141</sup> Elections Code section 338.5.

<sup>142</sup> Elections Code section 357.5.

places.<sup>143</sup> Thus, a “polling place,” as used in Elections Code section 2170(d)(1), includes a vote center used by Voter Choice Act counties. Under prior law, counties were not required by state law to provide CVR and CVR provisional voting at polling places. Although counties that chose to participate in the Voter Choice Act were required to provide CVR and CVR provisional voting at vote centers, that requirement was triggered by a local discretionary decision.<sup>144</sup> Elections Code section 2170(d)(1), as amended by the test claim statute, now requires all counties to provide CVR and CVR provisional voting at polling places, including vote centers, and these locations are new.

Elections Code section 2170(d) and (e) identify the procedures for providing CVR and CVR provisional ballots at all satellite offices and polling places. The plain language of Elections Code section 2170(d) states that it is “the county elections official” that shall offer CVR and CVR provisional voting under the procedures set forth in subparts (d)(1) through (d)(5). However, subdivision(d)(1), which contains the specific requirement that CVR and CVR provisional voting be provided at satellite offices and polling places, uses the more general term “elections official,” as do the other four subparts of subdivision (d). Subdivision (e) also uses “elections official” when describing the process for providing the CVR provisional ballot to a voter that conditionally registered.

The Elections Code broadly defines “elections official” as “any of the following: (a) A clerk or any person who is charged with the duty of conducting an election. (b) A county clerk, city clerk, registrar of voters, or elections supervisor having jurisdiction over elections within any county, city, or district within the state.”<sup>145</sup> However, under the Elections Code, county elections officials are the only local elections officials authorized to receive and process affidavits of registration.<sup>146</sup>

This limitation as applied to CVR is reflected in the language of Elections Code section 2170(a), which first uses the specific term “*county* elections official” to refer to whom a conditional voter registration must be returned and then uses the more general term “elections official” to refer back to the county elections official. Given that subdivision (d) similarly uses *county* elections official” to specify “who shall offer conditional voter registration and provisional voting pursuant to this article,” the use of the more general “elections official” in subdivisions (d)(1) and (e) also refers back to the *county* elections official.<sup>147</sup> This interpretation is consistent with guidance from the Secretary of State, which expressly states that the test claim statute applies to county elections officials only.<sup>148</sup> Therefore, the requirements under subdivisions (d)(1) and (e)

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<sup>143</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 160-161 (California Secretary of State, About California’s Voter’s Choice Act); Elections Code sections 4005; 4007.

<sup>144</sup> Elections Code sections 4005(a)(2)(A)(ii), 4007; California Code of Regulations, title 2, section 20023(b).

<sup>145</sup> Elections Code section 320.

<sup>146</sup> Elections Code section 2102.

<sup>147</sup> Elections Code section 2170(d)(1), emphasis added.

<sup>148</sup> Exhibit A, Test Claim, filed December 23, 2020, page 107 (California Secretary of State CC/ROV Memorandum #19125, November 20, 2019).



to provide CVR and CVR provisional voting at all satellite offices and polling places in the county applies to county elections officials only.

While the plain language of Elections Code section 2170(d)(1) makes clear that county elections officials must now “provide” CVR and CVR provisional voting at all satellite offices of the county elections official and at all polling places in the county, further interpretation is required to determine what activities a county elections official is required to perform when “providing” CVR and CVR provisional voting at satellite offices and polling places.

- i. Providing CVR and CVR provisional voting at satellite offices and polling places requires county elections officials to provide a voter registration affidavit pursuant to Elections Code section 2170(d)(1).*

Elections Code section 2170(d)(1) states that that the elections official must provide “conditional voter registration.” Subdivision (a) defines a “conditional voter registration” as “a properly executed affidavit of registration that is delivered by the registrant to the county elections official during the 14 days immediately preceding an election or on election day.”<sup>149</sup> The Secretary of State’s existing regulations specify that conditional voter registrants “shall use the same affidavit of registration as other voters—either a paper form or online through the Internet Web site of the Secretary of State.”<sup>150</sup>

Therefore, because a “conditional voter registration” means a properly executed affidavit of registration that is delivered by the CVR registrant to the county elections official during the 14-day period before an election or on election day, providing “conditional voter registration” at all satellite offices and polling places must include providing an affidavit of registration. This interpretation is supported by the Secretary of State’s guidance to county elections officials, which states that in providing CVR, county elections officials must “Provide the individual a voter registration application.”<sup>151</sup>

- ii. Providing CVR and CVR provisional voting at satellite offices and polling places and processing the registrations and ballots requires county elections officials to perform the activities specified in Elections Code section 2170(d)(2) through (d)(5).*

There are specific activities that county elections officials are required to perform as part of offering CVR and CVR provisional voting at satellite offices and polling places. When providing a CVR and CVR provisional ballot at a satellite office and polling place, county elections officials are required to: advise CVR registrants regarding the requirements for a CVR to be deemed effective (section 2170(d)(2)); conduct the receipt and handling of the conditional voter registration (section 2170(d)(3)); and offer and receive a corresponding provisional ballot (section 2170(d)(3)).<sup>152</sup>

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<sup>149</sup> Elections Code section 2170(a).

<sup>150</sup> California Code of Regulations, title 2, section 20022 (Register 2018, No. 10).

<sup>151</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 109-111 (California Secretary of State CC/ROV Memorandum #19125, November 20, 2019).

<sup>152</sup> Elections Code section 2170(d)(2) through (d)(3).

Elections Code section 2170(d)(4) and (d)(5) then requires the county elections official to:

- process the CVR registration, determine the CVR registrant's eligibility to register, and validate the registrant's information before counting or rejecting the CVR voter's ballot (Elections Code section 2170(d)(4)); and
- if the CVR is deemed effective, include the CVR voter's ballot in the official canvass. (Elections Code section 2170(d)(5).

iii. *County elections officials in non-Voter's Choice Act counties are required to follow the procedures specified in Elections Code section 2170(e)(1) through (e)(3) when providing the CVR voter with a provisional ballot.*

The plain language of Elections Code section 2170(e), as amended by Statutes 2019, chapter 565 (the test claim statute), specifies the manner in which county elections officials must provide a CVR voter with a provisional ballot after receiving a conditional voter registration.

Under the plain language of Elections Code section 2170(e), after receiving a conditional voter registration, an elections official must provide the CVR voter with a provisional ballot in the following manner:

- (1) If the permanent or satellite office of the county elections official is equipped with an electronic poll book or other means to determine the CVR voter's precinct, the elections official must provide the voter with a ballot for the voter's precinct, if available.<sup>153</sup>
- (2) If the elections official is unable to determine the CVR voter's precinct, or a ballot for the voter's precinct is unavailable, the elections official must provide the voter with a ballot and inform the voter that pursuant to Elections Code section 14310(c)(3), only the votes for the candidates and measures on which the voter would be entitled to vote in the voter's assigned precinct may be counted.<sup>154</sup>
- (3) Notwithstanding paragraph (2), if the elections official is able to determine the voter's precinct, but a ballot for the voter's precinct is unavailable, the elections official may inform the voter of the location of the voter's polling place.<sup>155</sup>

Subdivision (e)(4) specifies that the procedures in subdivision (e) do *not* apply to elections conducted under the Voter's Choice Act.<sup>156</sup>

Prior law required county elections officials at satellite county elections offices to have the means to determine a CVR voter's precinct and access to all of the precinct ballots in the county,

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<sup>153</sup> Elections Code section 2170(e)(1).

<sup>154</sup> Elections Code section 2170(e)(2).

<sup>155</sup> Elections Code section 2170(e)(3).

<sup>156</sup> Elections Code section 2170(e)(4).

but not at polling places, unless the county elections official has specifically designated a polling place as a satellite county elections office.<sup>157</sup> This is still the case under the test claim statute.

The legislative history indicates that the procedures outlined in subdivision (e) are intended to address the various situations that may uniquely arise when county elections officials provide CVR provisional voting at polling places.

While this bill requires CVR to be available at every polling place, it does not mandate that each CVR location be able to provide the correct ballot for every voter. Instead, this bill anticipates and provides for situations in which a CVR location is unable to provide the correct ballot for a voter.<sup>158</sup>

The distinction between the activities county elections officials must perform when providing CVR provisional voting at satellite county elections offices versus at polling places is readily apparent from the Secretary of State's guidance to county elections officials regarding the changes in law following the test claim statute. According to the Secretary of State, providing CVR and CVR provisional voting at satellite county elections offices requires county elections officials to perform the following activities:

- Provide the individual a voter registration application.
- Once the voter completes the application, the county elections official determines the CVR voter's precinct.
- Provide the CVR voter a ballot for the voter's precinct.
- Voter places the voted ballot in a CVR provisional ballot envelope.<sup>159</sup>

In comparison, the Secretary of State's guidance for the activities to be performed by county elections officials when providing CVR and CVR provisional voting at polling places depends on whether the polling place has the means to determine the CVR voter's precinct and whether the ballot for the CVR voter's assigned precinct is available.<sup>160</sup> If the polling place has the means to determine the CVR voter's precinct and the ballot for that precinct is available, the Secretary of State advises that that the county elections official must adhere to the following process:

- Provide the individual a voter registration application.

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<sup>157</sup> California Code of Regulations, title 2, section 20023.

<sup>158</sup> Exhibit X, Assembly Committee on Elections and Redistricting, Analysis of SB 72 (2019-2020 Reg. Sess.), as amended May 17, 2019, page 5.

<sup>159</sup> Exhibit A, Test Claim, filed December 23, 2020, page 108 (California Secretary of State CC/ROV Memorandum #19125, November 20, 2019). These procedures also apply to vote centers under the Voter's Choice Act. Pursuant to California Code of Regulations, title 2, section 20023, vote centers are also required to have the means to determine a CVR voter's precinct and access to all of the precinct ballots in the county.

<sup>160</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 110-111 (California Secretary of State CC/ROV Memorandum #19125, November 20, 2019).

- Once the CVR voter completes the application, determine the voter's precinct.
- Provide the voter a ballot for the voter's precinct.
- Voter places the voted ballot in a CVR provisional ballot envelope.<sup>161</sup>

If the polling place has the means to determine the CVR voter's precinct, but the ballot for that precinct is not available, then the county elections official is required to:

- Inform the voter of the location of their correct polling place and their option to vote at the correct polling place or at their current location.
- If the individual does not wish to go to their polling place, provide the individual a voter registration application.
  - Once the CVR voter completes the application, determine the voter's precinct.
  - Give the voter:
    - a ballot that is available at the precinct, and
    - inform the voter that only the votes for the candidates and measures on which the voter would be entitled to vote in the voter's assigned precinct may be counted.
  - Voter places the voted ballot in a CVR provisional ballot envelope.<sup>162</sup>

Finally, if the polling place does not have the means to determine the CVR voter's precinct, or the ballot for the voter's precinct is not available:

- If possible, inform the individual of the location of their correct polling place where the ballot for their precinct is available, and their option to vote at the correct polling place or at their current location.
- If the individual does not wish to go to their polling place or if the polling place does not have the means to determine the individual's precinct, provide a voter registration application.
  - Give the voter:
    - a ballot that is available at the precinct, and
    - information that only the votes for the candidates and measures on which the voter would be entitled to vote in the voter's assigned precinct may be counted.

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<sup>161</sup> Exhibit A, Test Claim, filed December 23, 2020, page 110 (California Secretary of State CC/ROV Memorandum #19125, November 20, 2019).

<sup>162</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 110-111 (California Secretary of State CC/ROV Memorandum #19125, November 20, 2019).

- Voter places the voted ballot in a CVR provisional ballot envelope.<sup>163</sup>

The Secretary of State guidance tracks the requirements under Elections Code section 2170(e)(1) through (e)(3) and is consistent with the plain language of the statute.

Therefore, county elections officials in non-Voter's Choice Act counties are required to follow the procedures specified in Elections Code section 2170(e)(1) through (e)(3) when providing the CVR voter with a provisional ballot at satellite election offices and polling places.

## **2. The Requirement to Provide CVR and CVR Provisional Voting at Satellite Offices of the County Elections Official Is Not Mandated by the State Because County Elections Officials Are Not Required to Create Satellite Offices.**

The test claim statute requires that county satellite offices provide CVR and CVR provisional voting, and, in this respect, the claimant seeks reimbursement for the cost of creating four satellite county elections offices for the March 2020 election.<sup>164</sup> The claimant concedes that while the test claim statute does not directly require a county elections official to establish satellite locations, it was necessary to do so “to mitigate long lines and wait times at the polling places, when such long lines and wait times were a reasonably-anticipated result” of the test claim statute.<sup>165</sup>

However, based on the analysis below, the requirement to provide CVR and CVR provisional voting at satellite offices stems from an *initial discretionary decision* by the county elections official to establish satellite offices and, therefore, the requirements are not mandated by the state for county satellite election offices.

Government Code section 12172.5(d) authorizes the Secretary of State to adopt regulations “to assure the uniform application and administration of state election laws.”<sup>166</sup> Section 20021 of the Secretary of State's regulations, which provides definitions pertaining to conditional voter registration, defines “satellite office” as follows:

- (d) “Satellite office” has the same meaning as “satellite location,” as used in subdivision (b) of Elections Code section 3018.<sup>167</sup>

Elections Code section 3018, which governs the procedures for vote by mail applications and voting, states in pertinent part: “(b) For purposes of this section, the office of an elections official *may* include satellite locations.”<sup>168</sup> Elections Code section 354 states that “‘Shall’ is mandatory and ‘may’ is permissive.” Therefore, a county elections official is permitted, but not required, to create satellite offices.

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<sup>163</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 110-111 (California Secretary of State CC/ROV Memorandum #19125, November 20, 2019), emphasis in original.

<sup>164</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 15-16.

<sup>165</sup> Exhibit C, Claimant's Rebuttal Comments, filed May 5, 2021, page 6.

<sup>166</sup> Government Code section 12172.5(d).

<sup>167</sup> California Code of Regulations, title 2, section 20021.

<sup>168</sup> Elections Code section 3018(b), emphasis added.

In *Department of Finance v. Commission on State Mandates (Kern High School Dist.)*, the California Supreme Court held “that the proper focus under a legal compulsion inquiry is upon the nature of claimants’ participation in the underlying programs themselves.”<sup>169</sup> The court left open the possibility that where no “legal” compulsion exists, “practical” compulsion may be found if the local agency faces “certain and severe...penalties” such as “double...taxation” or other “draconian” consequences if they fail to comply with the statute.<sup>170</sup>

In *Department of Finance v. Commission on State Mandates (POBRA)*, the court emphasized that practical compulsion requires a *concrete* showing in the record that a failure to engage in the activities at issue will result in certain and severe penalties or other draconian consequences, such that the local government entity must comply in order to perform its core essential functions.<sup>171</sup> In *Department of Finance (POBRA)*, the court addressed legislation that provided procedural protections to peace officers employed by counties, cities, and school districts, when the officer is subject to investigation or discipline.<sup>172</sup> Because school districts are authorized, but not required, to hire peace officers, the court held that school districts were not legally compelled to comply with the legislation.<sup>173</sup> In dismissing the argument that local government entities must employ peace officers when necessary to carry out their basic functions, the court said “it is not manifest on the face of the statute cited nor is there any showing in the record that [a school district] hiring its own peace officers, rather than relying upon the county or city in which it is embedded, is the only way as a practical matter to comply.”<sup>174</sup> Thus, the court found that school districts were not mandated by the state to comply with the test claim statute.

Here, a county elections official has no legal compulsion to establish satellite elections offices, but has the discretion to do so. Thus, the requirements imposed by the test claim statute, which are triggered by that discretionary decision, are not legally compelled by state law. Furthermore, there is no evidence in the record to support a finding that county elections officials are practically compelled to have satellite election offices; that they will face certain or severe penalties or other draconian consequences if they fail to establish satellite election offices to carry out their core functions.

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<sup>169</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743 (agreeing with the court’s analysis in *City of Merced v. State of California* (1984) 153 Cal.App.3d 777).

<sup>170</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 754.

<sup>171</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367.

<sup>172</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355.

<sup>173</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1368.

<sup>174</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367.

Therefore, the requirement to provide CVR and CVR provisional voting at satellite offices of the county elections official is not mandated by the state.

**3. Although Counties Are Now Required to Perform CVR and CVR Provisional Voting Activities at Satellite Offices and Polling Places, County Election Officials Have Long Been Required to Perform the Same Activities and, Thus, the Test Claim Statute Does Not Impose a New Program or Higher Level of Service.**

Courts have repeatedly held that local government entities are not entitled to reimbursement simply because a state law or order increases the costs of providing mandated services.<sup>175</sup> Rather, reimbursement under article XIII B, section 6 requires that the increased costs result from a new program or an increased level of service mandated by the state.<sup>176</sup> To determine whether a test claim statute mandates a new program or higher level of service, the requirements in the test claim statute are compared with the preexisting scheme.<sup>177</sup> The requirements are new if they did not exist prior to the enactment of the test claim statute.<sup>178</sup> Alternatively, a new program or higher level of service can occur if the state transfers to local agencies complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.<sup>179</sup>

Here, the test claim statute requires that CVR and CVR provisional voting *also* be provided at satellite offices and polling places. However, the actual government services provided by county elections officials – CVR and CVR provisional voting – are not new and have not changed as a result of the test claim statute, nor have the activities that county elections officials must carry out in order to provide these services. Expanding the locations where mandated government services are provided does not, without more, amount to an increase in the level or quality of those services. Nor has the test claim statute transferred financial responsibility from the state to local government. Elections have always been conducted by local government, and not by the state.<sup>180</sup> Thus, the test claim statute does not constitute a new program or higher level of service.

As explained in the Background, the Legislature enacted Elections Code 2170 et seq. in 2012, establishing conditional voter registration and voting (CVR and CVR provisional voting).<sup>181</sup>

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<sup>175</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal. 4th 859, 877; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1196; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>176</sup> *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>177</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

<sup>178</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>179</sup> Article XIII B, section 6(c) of the California Constitution.

<sup>180</sup> Elections Code section 13001 (Stats. 2008, ch. 179) provides that “[a]ll expenses authorized and necessarily incurred in the preparation for, and conduct of, elections as provided in this code shall be paid from the county treasuries, except that when an election is called by the governing body of a city the expenses shall be paid from the treasury of the city.”

<sup>181</sup> Statutes 2012, chapter 497.

Under Elections Code section 2170(a), a person who is otherwise qualified to vote, but who did not register or reregister by the 15-day registration deadline, is able to conditionally register to vote and provisionally vote during the 14 days prior to and on election day, if certain requirements were met.<sup>182</sup> While enacted in 2012, CVR and CVR provisional voting did not become operative until January 1, 2017, following the Secretary of State's certification of a statewide voter registration database (VoteCal).<sup>183</sup>

Elections Code section 2170 as originally enacted required county elections officials to provide CVR and CVR voting at all permanent offices of the county elections official during the 14-day period prior to election day and on election day.<sup>184</sup> Conditional voter registrants use the same affidavit of registration to register to vote as other voters – either a paper form or online through the Secretary of State's website.<sup>185</sup> The elections official was required to advise conditional voter registrants that a conditional voter registration is effective only if the registrant is determined to be eligible to register to vote and the information on the registration affidavit is verified.<sup>186</sup>

In addition, preexisting law requires county elections officials to provide a CVR voter with a provisional ballot. Under Elections Code section 2170(d)(3):

The elections official shall conduct the receipt and handling of each conditional voter registration *and offer and receive a corresponding provisional ballot* in a manner that protects the secrecy of the ballot and allows the elections official to process the registration, to determine the registrant's eligibility to register, and to validate the registrant's information before counting or rejecting the corresponding provisional ballot.<sup>187</sup>

Furthermore, processing conditional voter registrations and CVR provisional ballots pursuant to Elections Code section 2170(d)(4) and (d)(5) are not newly required by the test claim statute. Elections Code section 2170(d)(4) and (d)(5), which were enacted by Statutes 2012, chapter 497, provide that, in offering CVR and CVR provisional voting, county elections officials must:

- process the CVR registration, determine the CVR registrant's eligibility to register, and validate the registrant's information before counting or rejecting the CVR voter's ballot (Elections Code section 2170(d)(4)); and
- if the CVR is deemed effective, include the CVR voter's ballot in the official canvass. (Elections Code section 2170(d)(5).

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<sup>182</sup> Elections Code section 2170(a) (Stats. 2012, ch. 497.)

<sup>183</sup> Statutes 2012, chapter 497; Exhibit A, Test Claim, filed December 23, 2020, page 75.

<sup>184</sup> Elections Code section 2170(d)(1) (Stats. 2012, ch. 497, § 2).

<sup>185</sup> California Code of Regulations, title 2, section 20022; see Elections Code sections 2102 (as last amended by Stats. 2015, ch. 736); 2150, 2170(a).

<sup>186</sup> Elections Code section 2170(d)(2) (Stats. 2012, ch. 497, § 2).

<sup>187</sup> Elections Code section 2170(d)(3) (Stats. 2012, ch. 497, § 2).



Under these provisions, the claimant alleges that as a result of the test claim statute, the county elections official was required to hire additional staff to process CVR registration forms and CVR provisional ballots and to purchase automated vote processing equipment to sort CVR provisional ballot envelopes.<sup>188</sup> The claimant argues that while purchasing the automated equipment to process the additional CVR provisional ballots was not expressly required by the test claim statute, doing so was necessary to avoid the higher labor costs that would have accrued otherwise.<sup>189</sup>

However, even though the claimant may have incurred increased costs because more CVRs and CVR provisional ballots are provided and returned, the requirements in Elections Code section 2170(d)(4) and (d)(5) were added by Statutes 2012, chapter 497, are not new, and were not amended by the test claim statute.<sup>190</sup>

In addition, counties have long had the duty to process conditional voter registration and include CVR provisional ballots in the official canvas. Preexisting law requires a conditional voter registration to be processed in the same manner as a general voter registration.<sup>191</sup> Processing ballots is governed by other code sections that became effective before the enactment of the test claim statute. A provisional ballot cast by a conditional voter registrant is subject to the same requirements as apply to provisional voting generally.<sup>192</sup> Additionally, section 20025 of the Secretary of State's regulations specifies the procedures to be followed when processing a CVR provisional ballot, none of which were changed as a result of the test claim statute.<sup>193</sup>

Because county elections officials have a preexisting duty to process conditional voter registrations and CVR provisional ballots, these activities are not newly required by the test claim statute.

Prior law did not specify the procedures now stated in Elections Code section 2170(e) when providing a CVR provisional ballot. As discussed above, section 2170(e)(1) through (e)(3) address different situations that may arise at CVR locations, including polling places, depending on whether the CVR voter's precinct can be determined and a precinct-specific ballot is available. However, county elections officials have been required to have the means to determine a CVR voter's precinct and access to a precinct-specific ballot at their permanent offices since before the enactment of the test claim statute.<sup>194</sup> Therefore, the requirement under (e)(1) to provide the CVR voter with a ballot for the voter's precinct is not newly required.

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<sup>188</sup> Exhibit A, Test Claim, filed December 23, 2020, pages 17-19.

<sup>189</sup> Exhibit C, Claimant's Rebuttal Comments, filed May 5, 2021, page 6.

<sup>190</sup> Elections Code section 2170(d)(4), (d)(5) (as added by Stats. 2012, ch. 497).

<sup>191</sup> Elections Code section 2171(b).

<sup>192</sup> Elections Code sections 2171(c), 14310, 15350, and 15100-15112; see also Exhibit X, California Secretary of State, Provisional Voting, <https://www.sos.ca.gov/elections/voting-resources/provisional-voting> (accessed on June 2, 2021), page 3.

<sup>193</sup> California Code of Regulations, title 2, section 20025.

<sup>194</sup> California Code of Regulations, title 2, section 20023(d), (Register 2018, No. 10).

In addition, providing a CVR voter with a ballot for the voter's precinct does not require the county elections official to perform any new activities. If the polling place has the capability to determine and produce a ballot for the CVR voter's precinct, it must do so. If not, then under the language of (e)(2), providing the CVR voter with whatever ballot is available at that polling place is sufficient. Under either scenario, the county elections official is performing the same activity it was already required to perform: providing a provisional ballot.

The activities under (e)(2) are limited to providing the CVR voter with a ballot that is available at that polling place and informing the voter that only the votes for the candidates and measures on which the voter would be entitled to vote in the voter's assigned precinct may be counted pursuant to Elections Code section 14310(c)(3). Neither of these require a county elections official to perform new activities. As discussed above, providing the CVR voter with "a ballot" does not require the county elections official to perform any new activities.<sup>195</sup> In addition, Elections Code section 14310(c)(3) has long provided the following:

(c)(3) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official.

(A) If the ballot cast by the voter contains the same candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct, the elections official shall count the votes for the entire ballot.

(B) If the ballot cast by the voter contains candidates or measures on which the voter would not have been entitled to vote in his or her assigned precinct, the elections official shall count only the votes for the candidates and measures on which the voter was entitled to vote in his or her assigned precinct.<sup>196</sup>

Furthermore, preexisting law requires that county elections officials provide any voter casting a provisional ballot with written instructions regarding the process and procedures for casting a provisional ballot, which must include, amongst other things, the information set forth in Elections Code section 14310(c)(3).<sup>197</sup> Elections Code section 14310(a)(2) provides as follows:

(a) At all elections, a voter claiming to be properly registered, but whose qualification or entitlement to vote cannot be immediately established upon examination of the roster for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot as follows:

[¶]

(2) The voter shall be provided a provisional ballot, written instructions regarding the process and procedures for casting the ballot, and a written

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<sup>195</sup> Elections Code section 2170(d)(3) (as amended by Stats. 2015, ch. 734).

<sup>196</sup> Elections Code section 14310(c)(3) (as last amended by Stats. 2017, Ch. 806).

<sup>197</sup> Elections Code section 14310(a)(2) (as last amended by Stats. 2017, Ch. 806).

affirmation regarding the voter's registration and eligibility to vote. The written instructions shall include the information set forth in subdivisions (c) and (d).<sup>198</sup>

Therefore, the requirement under Elections Code section 2170(e)(2), to “inform the [CVR] voter that only the votes for the candidates and measures on which the voter would be entitled to vote in the voter's assigned precinct may be counted pursuant to paragraph (3) of subdivision (c) of Section 14310” is not new.

Elections Code section 2170(e)(3) provides that if the elections official is able to determine the CVR voter's precinct, but a ballot for the voter's precinct is unavailable, then the elections official may inform the voter where the voter's polling place is located. Because county elections offices are required to have the means to determine a CVR voter's precinct and provide a ballot for the voter's precinct, the scenario contemplated under section 2170(e)(3) is limited to polling places, which may or may not have the equipment necessary to determine a CVR voter's assigned precinct.<sup>199</sup> However, under preexisting law, county elections officials have a general duty to ensure that voters are able to locate their assigned polling place.<sup>200</sup> The Secretary of State's Poll Worker Training Standards, which are intended to provide elections officials with the necessary information for training poll workers, state as follows:

If voters are in the wrong polling place, poll workers should tell them they can either go to their assigned polling place to vote a polling place ballot or they can stay and cast a provisional ballot. The poll workers should also explain the advantages and disadvantages of each option. For example, the polling place ballot may not contain all of the same candidates and measures as the ballot in a voter's home precinct. If this type of situation occurs late in the day, the poll worker should let the voter know that if the voter arrives at their assigned polling place after 8:00 p.m., the voter will not be allowed to cast a ballot.<sup>201</sup>

The Poll Worker Training Standards further state, consistent with the language of Elections Code section 2170(e)(3), that “[i]f the ballot for the voter's precinct is not available, the poll worker may inform the voter of the location of their polling place.”<sup>202</sup>

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<sup>198</sup> Elections Code section 14310(a)(2), (as last amended by Stats. 2017, Ch. 806).

<sup>199</sup> California Code of Regulations, title 2, section 20023(d).

<sup>200</sup> Elections Code section 12105(a) (“The elections official shall, not less than one week before the election, publish the list of the polling places designated for each election precinct”); Elections Code section 14105(h) (the elections official shall provide a “sufficient number of cards to each polling place containing the telephone number of the office to which a voter may call to obtain information about his or her polling place. The card shall state that the voter may call collect during polling hours”).

<sup>201</sup> Exhibit X, Excerpt from California Secretary of State, 2021 Poll Worker Training Standards, pages 3-4.

<sup>202</sup> Exhibit X, Excerpts from California Secretary of State, 2021 Poll Worker Training Standards, page 1.

Because county elections officials already have a general duty to assist voters in determining their polling place, and polling places are already required to make available to voters a means to obtain information about the voter's polling place, requiring county elections officials to inform CVR voters where their polling place is located, when they have the means to do so, does not require the county elections official to perform any new activities.

This claim is similar to *Fifteen Day Close of Voter Registration*, 01-TC-15. In *Fifteen Day Close of Voter Registration*, 01-TC-15, prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials until the twenty-ninth day before an election. After that date, voter registration closed for that election.<sup>203</sup> The test claim statute allowed new registrations or changes to voter registrations through the fifteenth day before an election.<sup>204</sup> The Commission concluded that the majority of the statutory provisions at issue did not constitute a new program or higher level of service because the activities required of the county – processing and accepting voter registration affidavits and changes of address – were not newly required because county elections officials had been required to perform those activities long before the enactment of the test claim statute.<sup>205</sup>

Similarly, here, expanding the locations where county elections officials are required to provide CVR and CVR provisional voting does not impose any new activities on county elections officials. In providing CVR and CVR provisional voting under the test claim statute, county elections officials are simply performing the same activities that they were already required to perform under preexisting law, except at more locations. That change alone does not fundamentally alter the services that county elections officials must provide when offering CVR and CVR provisional voting. Nor does any increase in costs that result from expanding the locations where CVR and CVR provisional voting must be provided equate to an increased level of service under article XIII B, section 6.<sup>206</sup>

Accordingly, the Commission finds that providing CVR and CVR provisional voting at all polling places in the county does not constitute a new program or higher level of service.

## V. Conclusion

Based on the foregoing analysis, the Commission concludes that Elections Code section 2170, as amended by the test claim statute (Stats. 2019, ch. 565), does not impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514.

Accordingly, the Commission denies this Test Claim.

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<sup>203</sup> Exhibit X, Excerpts from Commission on State Mandates, Statement of Decision for *Fifteen Day Close of Voter Registration*, 01-TC-15, adopted October 31, 2006, page 2.

<sup>204</sup> Exhibit X, Excerpts from Commission on State Mandates, Statement of Decision for *Fifteen Day Close of Voter Registration*, 01-TC-15, adopted October 31, 2006, page 2.

<sup>205</sup> Exhibit X, Excerpts from Commission on State Mandates, Statement of Decision for *Fifteen Day Close of Voter Registration*, 01-TC-15, adopted October 31, 2006, page 2.

<sup>206</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877, fn. 12.

**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 September 29, 2021, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued September 29, 2021**

*Extended Conditional Voter Registration, 20-TC-02*

Elections Code Section 2170 as Amended by Statutes 2019, Chapter 565 (SB 72)

County of San Diego, 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 September 29, 2021 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

# COMMISSION ON STATE MANDATES

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**Claim Number:** 20-TC-02

**Matter:** Extended Conditional Voter Registration

**Claimant:** County of San Diego

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**Adaoha Agu**, *County of San Diego Auditor & Controller Department*

Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123

Phone: (858) 694-2129

Adaoha.Agu@sdcounty.ca.gov

**Lili Apgar**, *Specialist, State Controller's Office*

Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 324-0254

lapgar@sco.ca.gov

**Socorro Aquino**, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

**Guy Burdick**, *Consultant, MGT Consulting*

2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 833-7775

gburdick@mgtconsulting.com

**Allan Burdick**,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

**J. Bradley Burgess**, *MGT of America*

895 La Sierra Drive, Sacramento, CA 95864

Phone: (916)595-2646

Bburgess@mgtamer.com

**Evelyn Calderon-Yee**, Bureau Chief, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,  
Sacramento, CA 95816

Phone: (916) 324-5919

ECalderonYee@sco.ca.gov

**Steven Carda**, *California Secretary of State's Office*

Elections Division, 1500 11th Street, 5th Floor, Sacramento, CA 95814

Phone: (916) 657-2166

scarda@sos.ca.gov

**Annette Chinn**, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630

Phone: (916) 939-7901

achinnrcs@aol.com

**Carolyn Chu**, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8326

Carolyn.Chu@lao.ca.gov

**Kris Cook**, Assistant Program Budget Manager, *Department of Finance*

915 L Street, 10th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

Kris.Cook@dof.ca.gov

**Tracy Drager**, Auditor and Controller, *County of San Diego***Claimant Contact**

5530 Overland Ave, Suite 410, San Diego, CA 92123-1261

Phone: (858) 694-2176

tracy.drager@sdcounty.ca.gov

**Donna Ferebee**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

**Susan Geanacou**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

**Dillon Gibbons**, Legislative Representative, *California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887

dillong@csda.net

**Heather Halsey**, Executive Director, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

heather.halsey@csm.ca.gov

**Chris Hill**, Principal Program Budget Analyst, *Department of Finance*

Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

Chris.Hill@dof.ca.gov

**Tiffany Hoang**, Associate Accounting Analyst, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,  
Sacramento, CA 95816  
Phone: (916) 323-1127  
THoang@sco.ca.gov

**Catherine Ingram-Kelly**, *California Secretary of State's Office*  
Elections Division, 1500 11th Street, 5th Floor, Sacramento, CA 95814  
Phone: (916) 657-2166  
ckelly@sos.ca.gov

**Jason Jennings**, Director, *Maximus Consulting*  
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236  
Phone: (804) 323-3535  
SB90@maximus.com

**Angelo Joseph**, Supervisor, *State Controller's Office*  
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,  
Sacramento, CA 95816  
Phone: (916) 323-0706  
AJoseph@sco.ca.gov

**Paige Kent**, Voter Education and Outreach, *California Secretary of State's Office*  
1500 11th Street, 5th Floor, Sacramento, CA 95814  
Phone: (916) 657-2166  
MyVote@sos.ca.gov

**Anita Kerezsi**, *AK & Company*  
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446  
Phone: (805) 239-7994  
akcompanysb90@gmail.com

**Lisa Kurokawa**, Bureau Chief for Audits, *State Controller's Office*  
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 327-3138  
lkurokawa@sco.ca.gov

**Kirsten Larsen**, *California Secretary of State's Office*  
Elections Division, 1500 11th Street, 5th Floor, Sacramento, CA 95814  
Phone: (916) 657-2166  
KLarsen@sos.ca.gov

**Kim-Anh Le**, Deputy Controller, *County of San Mateo*  
555 County Center, 4th Floor, Redwood City, CA 94063  
Phone: (650) 599-1104  
kle@smcgov.org

**Jana Lean**, *California Secretary of State's Office*  
Elections Division, 1500 11th Street, 5th Floor, Sacramento, CA 95814  
Phone: (916) 657-2166  
jlean@sos.ca.gov

**Fernando Lemus**, Principal Accountant - Auditor, *County of Los Angeles*  
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012  
Phone: (213) 974-0324  
flemus@auditor.lacounty.gov

**Erika Li**, Chief Deputy Director, *Department of Finance*  
915 L Street, 10th Floor, Sacramento, CA 95814



Phone: (916) 445-3274  
erika.li@dof.ca.gov

**Everett Luc**, Accounting Administrator I, Specialist, *State Controller's Office*  
3301 C Street, Suite 740, Sacramento, CA 95816  
Phone: (916) 323-0766  
ELuc@sco.ca.gov

**Jill Magee**, Program Analyst, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
Jill.Magee@csm.ca.gov

**Darryl Mar**, Manager, *State Controller's Office*  
3301 C Street, Suite 740, Sacramento, CA 95816  
Phone: (916) 323-0706  
DMar@sco.ca.gov

**Elizabeth McGinnis**, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
Elizabeth.McGinnis@csm.ca.gov

**Michelle Mendoza**, *MAXIMUS*  
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403  
Phone: (949) 440-0845  
michellemendoza@maximus.com

**Lourdes Morales**, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8320  
Lourdes.Morales@LAO.CA.GOV

**Marilyn Munoz**, Senior Staff Counsel, *Department of Finance*  
915 L Street, Sacramento, CA 95814  
Phone: (916) 628-6028  
Marilyn.Munoz@dof.ca.gov

**Geoffrey Neill**, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*  
1100 K Street, Suite 101, Sacramento, CA 95814  
Phone: (916) 327-7500  
gneill@counties.org

**Hang Nguyen**, Assistant Registrar of Voters, *County of Sacramento*  
7000 65th Street, Suite A, Sacramento, CA 95823  
Phone: (916) 875-6255  
nguyenha@saccounty.net

**Andy Nichols**, *Nichols Consulting*  
1857 44th Street, Sacramento, CA 95819  
Phone: (916) 455-3939  
andy@nichols-consulting.com

**Patricia Pacot**, Accountant Auditor I, *County of Colusa*  
Office of Auditor-Controller, 546 Jay Street, Suite #202, Colusa, CA 95932  
Phone: (530) 458-0424  
ppacot@countyofcolusa.org

**Arthur Palkowitz, Artiano Shinoff**

2488 Historic Decatur Road, Suite 200, San Diego, CA 92106

Phone: (619) 232-3122

apalkowitz@as7law.com

**Heather Parrish-Salinas, Office Coordinator, County of Solano**

Registrar of Voters, 675 Texas Street, Suite 2600, Fairfield, CA 94533

Phone: (707) 784-3359

HYParrishSalinas@SolanoCounty.com

**Jai Prasad, County of San Bernardino**

Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018

Phone: (909) 386-8854

jai.prasad@atc.sbcounty.gov

**Camille Shelton, Chief Legal Counsel, Commission on State Mandates**

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

camille.shelton@csm.ca.gov

**Carla Shelton, Commission on State Mandates**

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

carla.shelton@csm.ca.gov

**Natalie Sidarous, Chief, State Controller's Office**

Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: 916-445-8717

NSidarous@sco.ca.gov

**Christina Snider, Senior Deputy County Counsel, County of San Diego****Claimant Representative**

1600 Pacific Highway, Room 355, San Diego, CA 92101

Phone: (619) 531-6229

Christina.Snider@sdcounty.ca.gov

**Joanna Southard, California Secretary of State's Office**

Elections Division, 1500 11th Street, 5th Floor, Sacramento, CA 95814

Phone: (916) 657-2166

jsouthar@sos.ca.gov

**Joe Stephenshaw, Director, Senate Budget & Fiscal Review Committee**

California State Senate, State Capitol Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103

Joe.Stephenshaw@sen.ca.gov

**Brittany Thompson, Budget Analyst, Department of Finance**

Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

Brittany.Thompson@dof.ca.gov

**Jolene Tollenaar, MGT Consulting Group**

2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 243-8913

jolenetollenaar@gmail.com

**Evelyn Tseng, City of Newport Beach**

100 Civic Center Drive, Newport Beach, CA 92660  
Phone: (949) 644-3127  
etseng@newportbeachca.gov

**Brian Uhler**, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8328  
Brian.Uhler@LAO.CA.GOV

**Antonio Velasco**, Revenue Auditor, *City of Newport Beach*  
100 Civic Center Drive, Newport Beach, CA 92660  
Phone: (949) 644-3143  
avelasco@newportbeachca.gov

**Ada Waelder**, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*  
1100 K Street, Suite 101, Sacramento, CA 95814  
Phone: (916) 327-7500  
awaelder@counties.org

**Renee Wellhouse**, *David Wellhouse & Associates, Inc.*  
3609 Bradshaw Road, H-382, Sacramento, CA 95927  
Phone: (916) 797-4883  
dwa-renee@surewest.net

**Jacqueline Wong-Hernandez**, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*  
1100 K Street, Sacramento, CA 95814  
Phone: (916) 650-8104  
jwong-hernandez@counties.org

**Hasmik Yaghobyan**, *County of Los Angeles*  
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012  
Phone: (213) 974-9653  
hyaghobyan@auditor.lacounty.gov