

July 13, 2022

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

Mr. Fernando Lemus
County of Los Angeles
500 West Temple Street,
Room 603
Los Angeles, CA 90012

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
California Voting for All Act: Ballot Translations and Posting Requirements, 20-TC-03
Elections Code Section 14201 as Added and Amended by Statutes 2017, Chapter 845
(AB 918) and Statutes 1994, Chapter 920, (SB 1547); California Secretary of State,
County Clerk/Registrar of Voters (CC/ROV) Memorandum #20096, Effective
May 21, 2020
County of Los Angeles, Claimant

Dear Mr. Cook and Mr. Lemus

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

Written Comments

Written comments may be filed on the Draft Proposed Decision no later than **5:00 pm on August 3, 2022**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

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

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

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

Mr. Cook and Mr. Lemus
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Hearing

This matter is set for hearing on **Friday, September 23, 2022**, at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about September 9, 2022.

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 and email addresses 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 black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

ITEM ____
TEST CLAIM

DRAFT PROPOSED DECISION

Elections Code section 14201 as Added and Amended by
Statutes 1994, Chapter 920 (SB 1547) and Statutes 2017, Chapter 845 (AB 918)
California Secretary of State, County Clerk/Registrar of Voters (CC/ROV)
Memorandum #20096 (May 21, 2020)

California Voting for All Act: Ballot Translations and Posting Requirements
20-TC-03

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This Test Claim filed by the County of Los Angeles (claimant) alleges that reimbursement is required for state-mandated activities arising from Elections Code section 14201, as added by Statutes 1994, chapter 920 (SB 1547) and amended by Statutes 2017, chapter 845 (AB 918), and from California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #20096 (May 21, 2020) (Memo #20096).¹

Elections Code section 14201 requires a county elections official to provide translated facsimile ballots and other specified forms of language assistance *if* the Secretary of State determines that there is a need for that assistance in the county or precincts within the county, whether because low-English proficiency members of a single language minority meet a three percent threshold in the county or precincts or because the Secretary has been presented with enough information to believe that a need for that assistance exists.

In Memo #20096, the Secretary of State's office notified counties that Elections Code section 14201 required certain counties and precincts to provide language assistance in additional languages for elections conducted between May 20, 2020 and December 31, 2021.

As explained below, staff finds that the Test Claim was not timely filed with respect to Elections Code section 14201, as added and amended by Statutes 1994, chapter 920 and Statutes 2017, chapter 845. Staff further finds that Memo #20096 does not mandate a new program or higher level of service on county elections officials and therefore does not impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.

¹ Exhibit A, Test Claim, filed May 21, 2021, pages 174-184 (Memo #20096, May 21, 2020).

Procedural History

The claimant filed the Test Claim on May 21, 2021.² The Department of Finance (Finance) filed comments on the Test Claim on January 31, 2022.³ The claimant filed rebuttal comments on March 1, 2022.⁴ Commission on State Mandates (Commission) staff issued the Draft Proposed Decision on July 13, 2022.⁵

Commission Responsibilities

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

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

Claims

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

Issue	Description	Staff Recommendation
Was the Test Claim timely filed 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	<i>Not timely filed with respect to Elections Code section 14201, as added and amended by Statutes 1994, chapter 920 and Statutes 2017, chapter 845 –</i> The test claim statutes became effective on January 1, 1995 and January 1, 2018, respectively. The claimant was required to fully comply with them and incur costs in 2018,

² Exhibit A, Test Claim, filed May 21, 2021.

³ Exhibit B, Finance’s Comments on the Test Claim, filed January 31, 2022.

⁴ Exhibit C, Claimant’s Rebuttal Comments, filed March 1, 2022.

⁵ Exhibit D, Draft Proposed Decision, issued July 13, 2022.

⁶ *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.

Issue	Description	Staff Recommendation
	defines 12 months as 365 days. ⁷	several years before the Test Claim was filed, and does not claim otherwise. <i>Timely filed with respect to Memo #20096</i> – The memo went into effect on May 21, 2020, and the claimant first incurred costs relating to implementing the memo on August 20, 2020, which is less than 365 days before May 21, 2021, the date this test claim was filed. ⁸
Does Memo #20096 impose a reimbursable state-mandated local program?	Memo #20096 notifies counties of additional languages in which certain counties and precincts were required to provide language assistance for elections taking place between May 21, 2020, and December 31, 2021.	<i>Deny</i> – Memo #20096 does not mandate a new program or higher level of service within the meaning of article XIII B, section 6. Elections Code section 14201 requires a county elections official to provide translated facsimile ballots and other specified forms of language assistance if the Secretary of State determines that there is a need for that assistance in the county or precincts within the county, whether because low-English proficiency members of a single language minority meet a three percent threshold in the county or precincts or because the Secretary has been presented with enough information to believe that a need for that assistance exists. These requirements have been

⁷ California Code of Regulations, title 2, section 1183.1(c).

⁸ Exhibit A, Test Claim, filed May 21, 2021, page 23 (Declaration of Albert Navas, Assistant Registrar and County Clerk for the County of Los Angeles, para. 9).

Issue	Description	Staff Recommendation
		<p>imposed on counties since 2018.⁹</p> <p>In Memo #20096, the Secretary of State’s office notified the counties that Elections Code section 14201 required certain counties and precincts to provide language assistance in additional languages for elections conducted between May 20, 2020 and December 31, 2021. Although Memo #20096 includes additional languages for which county elections officials were required to provide language assistance services, it did not itself require or mandate county elections officials to provide those services. Rather, it was Elections Code section 14201 that required those officials to post facsimile ballots, provide specified information on the county elections website, and include translated text in the county voter information guide.</p>

Staff Analysis

A. The Test Claim Was Not Timely Filed with Respect to Elections Code Section 14201 as Added and Amended by Statutes 1994, Chapter 920 and Statutes 2017, Chapter 845 but Was Timely Filed with Respect to Memo #20096.

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.

The Test Claim was not filed within 365 days following the effective dates of Elections Code section 14201 as added and amended by Statutes 1994, chapter 920 and Statutes 2017, chapter

⁹ Elections Code section 14201, as amended by Statutes 2017, chapter 845.

845 because those statutes went into effect more than 26 years¹⁰ and three years,¹¹ respectively, before this Test Claim was filed. The Test Claim was not filed within 365 days of incurring increased costs as a result of those statutes because the claimant was required to – and therefore presumptively did¹² – provide language assistance pursuant to Elections Code section 14201 as added and amended by the those statutes in connection with elections that occurred in 2018, three years before this Test Claim was filed.¹³

However, there is substantial evidence in the record that the Test Claim was timely filed with respect to Memo #20096, within one year of allegedly incurring increased costs as a result of that memo.¹⁴

B. Memo #20096 Does Not Mandate a New Program or Higher Level of Service and, Therefore, Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution.

Staff finds that Memo #20096 does not mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

Elections Code section 14201 requires a county elections official to provide translated facsimile ballots and other specified forms of language assistance *if* the Secretary of State determines that there is a need for that assistance in the county or precincts within the county, whether because low-English proficiency members of a single language minority meet a three percent threshold in the county or precincts or because the secretary has been presented with enough information to believe that a need for that assistance exists. These requirements have been imposed on counties since 2018.¹⁵

In Memo #20096, the Secretary of State’s office determined that Elections Code section 14201 required certain counties and precincts to provide language assistance in additional languages for elections conducted between May 20, 2020 and December 31, 2021. Although Memo #20096 notified counties of additional languages for which county elections officials were required to provide language assistance services, it did not itself require or mandate county elections

¹⁰ Statutes 1994, chapter 920 went into effect on January 1, 1995. (Cal. Const., art. IV, § 8(c).)

¹¹ Statutes 2017, chapter 845 went into effect on January 1, 2018. (Cal. Const., art. IV, § 8(c).)

¹² Evidence Code section 664 (“It is presumed that official duty has been regularly performed.”).

¹³ See Exhibit A, Test Claim, filed May 21, 2021, page 189 (California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148, December 29, 2017) (requiring precincts in the County of Los Angeles to provide Elections Code section 14201 language assistance in Armenian and Persian for elections conducted between January 1, 2018, and December 31, 2021); Elections Code sections 1200 and 1201 (requiring statewide elections to be held in June and November of 2018); see also Exhibit C, Claimant’s Rebuttal Comments, filed March 1, 2022, page 2 (“Indeed, the County was already complying with minority language translations as required in Elections Code section 14201.”).

¹⁴ Exhibit A, Test Claim, filed May 21, 2021, page 23 (Declaration of Albert Navas, Assistant Registrar and County Clerk for the County of Los Angeles, para. 9).

¹⁵ Elections Code section 14201, as amended by Statutes 2017, chapter 845.

officials to provide those services. Rather, Elections Code section 14201 required the Secretary to make this determination and further required those officials to post facsimile ballots, provide specified information on the county elections website, and include translated text in the county voter information guide.

Conclusion

Staff finds that the Test Claim was not timely filed with respect to Elections Code section 14201 as added by Statutes 1994, chapter 920 or as amended by Statutes 2017, chapter 845. Staff further finds that Memo #20096 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 the 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 14201 as Added and Amended by Statutes 1994, chapter 920 (SB 1547), and Statutes 2017, chapter 845 (AB 918); and</p> <p>Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #20096 (May 21, 2020)</p> <p>Filed on May 21, 2021</p> <p>County of Los Angeles, Claimant</p>	<p>Case No.: 20-TC-03</p> <p><i>California Voting for All Act: Ballot Translations and Posting Requirements</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 September 23, 2022)</i></p>
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DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on September 23, 2022. [Witness list will be included in the adopted Decision.]

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

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

Member	Vote
Lee Adams, County Supervisor	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Renee Nash, School District Board Member	
Sarah Olsen, Public Member	
Shawn Silva, Representative of the State Controller	
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	

Summary of the Findings

This Test Claim filed by the County of Los Angeles (claimant) alleges that reimbursement is required for state-mandated activities arising from Elections Code section 14201, as added by Statutes 1994, chapter 920 (SB 1547) and amended by Statutes 2017, chapter 845 (AB 918), and from Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #20096 (May 21, 2020) (Memo #20096).¹⁶

The Commission finds that the Test Claim was not timely filed with respect to Elections Code section 14201 as added and amended by Statutes 1994, chapter 920 and Statutes 2017, chapter 845 because the Test Claim was neither filed within 365 days following the effective dates of the test claim statutes nor filed within 365 days of incurring increased costs as a result of those statutes as required by Government Code section 17551. The Test Claim was not filed within 365 days following the effective dates of Statutes 1994, chapter 920 and Statutes 2017, chapter 845 because those statutes went into effect more than 26 years¹⁷ and three years,¹⁸ respectively, before this Test Claim was filed. The Test Claim was not filed within 365 days of incurring increased costs as a result of those statutes because the claimant was required to – and therefore presumptively did¹⁹ – provide language assistance pursuant to Elections Code section 14201 as added and amended by the those statutes in connection with elections that occurred in 2018, three years before this Test Claim was filed.²⁰ However, there is substantial evidence in the record that the Test Claim was timely filed with respect to Memo #20096, within one year of incurring increased costs as a result of that memo.²¹

The Commission further finds that Memo #20096 does not mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

Elections Code section 14201 requires a county elections official to provide translated facsimile ballots and other specified forms of language assistance *if* the Secretary of State determines that there is a need for that assistance in the county or precincts within the county, whether because low-English proficiency members of a single language minority meet a three percent threshold in

¹⁶ Exhibit A, Test Claim, filed May 21, 2021, pages 174-184 (Memo #20096, May 21, 2020).

¹⁷ Statutes 1994, chapter 920 went into effect on January 1, 1995. (Cal. Const., art. IV, § 8(c).)

¹⁸ Statutes 2017, chapter 845 went into effect on January 1, 2018. (Cal. Const., art. IV, § 8(c).)

¹⁹ Evidence Code section 664 (“It is presumed that official duty has been regularly performed.”).

²⁰ See Exhibit A, Test Claim, filed May 21, 2021, page 189 (California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148, December 29, 2017) (requiring precincts in the County of Los Angeles to provide Elections Code section 14201 language assistance in Armenian and Persian for elections conducted between January 1, 2018, and December 31, 2021); Elections Code sections 1200 and 1201 (requiring statewide elections to be held in June and November of 2018); see also Exhibit C, Claimant’s Rebuttal Comments, filed March 1, 2022, page 2 (“Indeed, the County was already complying with minority language translations as required in Elections Code section 14201.”).

²¹ Exhibit A, Test Claim, filed May 21, 2021, page 23 (Declaration of Albert Navas, Assistant Registrar and County Clerk for the County of Los Angeles, para. 9).

the county or precincts or because the Secretary has been presented with enough information to believe that a need for that assistance exists. These requirements have been imposed on counties since 2018.²²

In Memo #20096, the Secretary of State's office notified counties that Elections Code section 14201 required certain counties and precincts to provide language assistance in additional languages for elections conducted between May 20, 2020 and December 31, 2021. Although Memo #20096 included additional languages for which county elections officials were required to provide language assistance services, it did not itself require or mandate county elections officials to provide those services. Rather, it was Elections Code section 14201 that required those officials to post facsimile ballots, provide specified information on the county elections website, and include translated text in the county voter information guide. All Memo #20096 did was provide notice of these preexisting requirements in Elections Code section 14201.

Accordingly, Memo #20096 does not mandate a new program or higher level of service on county elections officials, and therefore does not impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution. The Commission denies this Test Claim.

COMMISSION FINDINGS

I. Chronology

- 01/01/1995 Effective Date of Statutes 1994, chapter 920, enacting Elections Code section 14201.
- 01/01/2018 Effective Date of Statutes 2017, chapter 845, amending Elections Code section 14201.
- 05/21/2020 Effective Date of Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #20096 (May 21, 2020), determining that Elections Code section 14201 required language assistance to be provided in 14 additional languages for elections conducted between May 21, 2020 and December 31, 2021.
- 05/21/2021 The claimant filed the Test Claim.²³
- 01/31/2022 The Department of Finance (Finance) filed comments on the Test Claim.²⁴
- 03/01/2022 The claimant filed rebuttal comments.²⁵
- 07/13/2022 Commission staff issued the Draft Proposed Decision.²⁶

²² Elections Code section 14201, as amended by Statutes 2017, chapter 845.

²³ Exhibit A, Test Claim, filed May 21, 2021.

²⁴ Exhibit B, Finance's Comments on the Test Claim, filed January 31, 2022.

²⁵ Exhibit C, Claimant's Rebuttal Comments, filed March 1, 2022.

²⁶ Exhibit D, Draft Proposed Decision, issued July 13, 2022.

II. Background

This Test Claim alleges reimbursable state-mandated activities and costs arising from Elections Code section 14201, as added by Statutes 1994, chapter 920 (SB 1547) and amended by Statutes 2017, chapter 845 (AB 918). The Test Claim also alleges reimbursable state-mandated activities and costs arising from Memo #20096, in which the Secretary of State's office provided notice of its determination that Elections Code section 14201 required county elections officials for certain counties and precincts, including a number of precincts in the claimant county, to provide language assistance in additional languages for elections conducted between May 20, 2020 and December 31, 2021.

A. Section 203 of the Federal Voting Rights Act of 1965

“The Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting.”²⁷

Section 203 of that act requires a state or political subdivision to provide translations of “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots,” that it provides if the Director of the Census has determined that “more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient,” “more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient,” or “more than 5 percent of the American Indian or Alaska Native citizens of voting age within [an] Indian reservation [located at least in part in the political subdivision] are members of a single language minority and are limited-English proficient” and (2) “the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.”²⁸ Section 203 further defines “language minorities” or “language minority group” for these purposes as “persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.”²⁹

B. Elections Code Section 14201

Under California Elections Code section 14201, the Secretary of State, by January 1 of each year in which the Governor is elected, must determine the precincts where 3 percent or more of the voting-age residents are members of a “single language minority” and lack sufficient skills in English to vote without assistance. Specifically, section 14201(c) provides:

In determining whether it is appropriate to post the election materials in Spanish or other languages, the Secretary of State shall determine the number of residents of voting age in each county and precinct who are members of a single language minority, and who lack sufficient skills in English to vote without assistance. If the number of these residents equals 3 percent or more of the voting age residents of a particular county or precinct, or in the event that interested citizens or organizations provide the Secretary of State with information which gives the

²⁷ *South Carolina v. Katzenbach* (1966) 383 U.S. 301, 315.

²⁸ 52 United States Code section 10503(b), (c).

²⁹ 52 United States Code section 10503(d).

Secretary of State sufficient reason to believe a need for the furnishing of facsimile ballots, the Secretary of State shall find a need to post at least one facsimile copy of the ballot with the ballot measures and ballot instructions printed in Spanish or other applicable language in the affected polling places.

Since 1983, state law now contained in Elections Code section 14201 has required local officials to post a translated, facsimile copy of the ballot in each polling place in a county or precinct where the Secretary of State has determined that there is a need for those copies in a particular language, whether because low-English proficiency members of a single language minority meet a three percent threshold in the county or precinct or because the secretary was presented with enough information to believe that a need for that assistance exists.³⁰ From 1983 to 2018, the local officials required to post the facsimile copy were city or county precinct boards.³¹ Effective January 1, 2018, amendments made by Statutes 2017, chapter 845 now require county elections officials to perform this duty.³²

When Statutes 2017, chapter 845 shifted the facsimile copy duty from precinct boards to county elections officials, it also further amended Elections Code section 14201 to require those county elections officials to provide additional forms of language assistance upon the Secretary's determination of need, as follows:³³

- The county elections official must provide at least two facsimile copies of the ballot with the ballot measures and ballot instructions printed that language at each polling place. One of these required copies must be posted in a conspicuous location in the polling place while the other must be made available for voters at the polling place to use as a

³⁰ Former Elections Code section 14203(b) (Stats. 1982, ch. 373, § 1).

³¹ Elections Code sections 14201 (Stats. 1994, ch. 920, § 2) and 14203(b) (Stats. 1982, ch. 373, § 1). When Statutes 1994, chapter 920 repealed and added former Elections Code section 14203 as Elections Code section 14201, it did not make any substantive changes to those provisions. (See Stats. 1994, ch. 920, § 3 (“The Legislature intends that the changes made to the Elections Code, as reorganized by this act, have only technical and non-substantive effect.”).)

From 1983 to 1996, members of precinct boards were appointed by the county clerk at least 29 days prior to the election. (Former Elec. Code, §§ 23528 (Stats. 1982, ch. 1166, § 21), 23528 (Stats. 1984, ch. 1023, § 6), 12286 (Stats. 1994, ch. 920, § 2).) From 1996 onward, members of the precinct boards have been appointed by either the city or county elections official in charge of the election at least 29 days prior to the election. (Elec. Code, §§ 12286, 13001, see former Elec. Code, §§ 10000 (Stats. 1993, ch. 39, § 2), 12286 (Stats. 1995, ch. 725, § 17).)

³² Elections Code section 14201 (Stats. 2017, ch. 845, § 9).

³³ Although Statutes 2019, chapter 597 further amended Elections Code section 14201, all of the changes that statute made to that section were non-substantive, so the section is substantively the same as it was as amended by Statutes 2017, chapter 845 (See Stats. 2019, ch. 497, § 107 (making gender-neutralizing changes, replacing “Internet Web site” with “internet website,” and replacing “index of registration” with “roster” as a conforming change to Statutes 2017, chapter 805, which replaced references to “index of registration” with “roster” throughout the Elections Code).)

reference when casting a private ballot. The copy made available for voters to use as a reference must be sufficiently distinct in appearance from a regular ballot to prevent voters from attempting to vote on the copy.³⁴

- If the secretary determines that the number of voting-age residents in a precinct who are members of a single language minority and who lack sufficient skills in English to vote without assistance *exceeds 20 percent* of the voting-age residents in that precinct, the county elections official must also make at least two additional facsimile copies available for voters at the polling place to use as a reference when casting a private ballot.³⁵
- “At least 14 days before an election, the county elections official shall provide information on the county elections internet website identifying all polling places in the county and the languages of facsimile copies of the ballot that will be available to voters at each polling place. Explanatory information pertaining to the list of polling places, but not the list itself, shall be available in all languages in which the county provides facsimile copies of the ballot.”³⁶
- The county elections official shall include text in the county voter information guide that, in all languages in which the county provides facsimile copies, refers voters with language needs to that portion of that website.³⁷
- In each polling place, members of the precinct board must be trained on the purpose and proper handling of the facsimile copies of the ballot and shall be prepared to inform voters of the existence of the facsimile copies of the ballot, as appropriate,³⁸ and provide a facsimile copy to a voter upon request for use as a reference when casting a private ballot.³⁹
- In each polling place, a sign near the roster must also inform voters, in both English and all languages of facsimile copies available at that polling place, of the existence of the facsimile copies of the ballot.⁴⁰

County elections officials need not comply with any of these requirements with respect to a language if they provide and publicize ballots translated into that language in the same manner as translated ballots provided and publicized pursuant to Section 203 of the federal Voting Rights Act of 1965 (VRA).⁴¹

³⁴ Elections Code section 14201(a).

³⁵ Elections Code section 14201(b)(2).

³⁶ Elections Code, section 14201(d).

³⁷ Elections Code section 14201(e).

³⁸ Elections Code section 14201(c)(1).

³⁹ Elections Code section 14201(c)(2).

⁴⁰ Elections Code section 14201(c)(3).

⁴¹ Elections Code section 14201(g).

C. Memo #20096

Prior to Memo #20096, the Secretary of State’s office had determined that there was a significant and substantial need for facsimile ballots in a number of precincts in various counties, including the claimant, for elections taking place between January 1, 2018, and December 31, 2021.⁴² Under this prior determination, the claimant’s county elections official was required to provide facsimile ballots in Armenian and Persian in a number of precincts for elections held during this period.⁴³

In 2019, *Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850 (*Asian Americans*) partially invalidated the methodology that the Secretary had used to make this determination. Up until *Asian Americans*, the Secretary had “consistently followed the practice of interpreting “single language minority” as used in Elections Code section 14201 to include the specific language groups identified under the VRA by the Director of the Census and published in the Federal Register.”⁴⁴ However, as the First District Court of Appeal explained in *Asian Americans*, this practice necessarily – and erroneously – imported the VRA’s five percent threshold into the Secretary’s Elections Code section 14201 determinations because the only specific language groups the Director of the Census published in the Federal Register were those that met the VRA’s five percent threshold.⁴⁵ Thus, the Secretary’s practice of interpreting “single language minority” as only including those groups necessarily excluded any group that met Elections Code section 14201’s three percent threshold in at least one precinct but failed to meet the VRA’s five percent threshold in any covered jurisdiction.⁴⁶ Consequently, the court invalidated that practice and found that the Secretary must make the State law equivalent of the coverage determinations made by the Director of the Census and the Attorney General and published in the Federal Register, for those precincts that meet the State’s three percent threshold but failed to meet the federal five percent threshold.⁴⁷

⁴² Exhibit A, Test Claim, filed May 21, 2021, pages 188-191 (California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148, December 29, 2017).

⁴³ Exhibit A, Test Claim, filed May 21, 2021, page 189 (California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148, December 29, 2017). Although this memo also indicates that five of the claimant’s precincts were required to provide language assistance in Bengali, a subsequent memo clarified that assistance in Bengali was not required. (Exhibit X, California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #18051 (Mar. 5, 2018), page 1 footnote 1, <https://elections.cdn.sos.ca.gov/ccrov/pdf/2018/march/18051sr.pdf> (accessed on June 6, 2022)).

⁴⁴ *Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850, 859; see e.g. Exhibit A, Test Claim, filed May 21, 2021, page 194 (California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148, December 29, 2017).

⁴⁵ *Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850, 876.

⁴⁶ *Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850, 876.

⁴⁷ *Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850, 877-878.

On May 21, 2020, in Memo #20096, the Secretary’s office responded to this holding and notified counties of its determination that 14 more languages met Elections Code section 14201’s three percent threshold in a number of precincts for elections taking place between May 21, 2020 and December 31, 2021.⁴⁸ This resulted in the claimant’s county elections official needing to provide facsimile ballots in Bengali, Burmese, Gujarati, Hindi, Indonesian, Japanese, Mongolian, Telugu, and Thai in a number of precincts for elections held during this time period.⁴⁹

The memo also provided county elections officials with “a summary of applicable requirements” imposed by existing law with respect to these languages,⁵⁰

- “Poll Worker Training and Education: Poll workers must be educated on the purpose of providing facsimile ballots to limited English proficient (LEP) voters and specifically trained with instructions on how to handle facsimile ballots. (Sec. 14201(c)(1).) Further, poll workers must be aware that LEP voters may bring up to two individuals they choose to assist them in casting their ballot, with the exception of their employer, an agent of their employer, or their union representative. (Sec. 14282(a).)”
- “Bilingual Poll Workers: County elections officials must make a good faith effort to recruit bilingual poll workers for any precinct in which 3% or more of the voting-age residents are members of a single language minority. (Sec. 12303(c).)”
- “Include Polling Place/Vote Center Information in County Voter Information Guide (VIG): The county VIG must include text referring LEP voters to the portion of the county elections website identifying the polling place/vote center locations and the facsimile ballot language(s) provided at those specific locations. The text must be printed in English and any Section 14201 required language(s) as well as federally required language(s) under Section 203 of the federal Voting Rights Act of 1965 (VRA Section 203) for your county. (Sec. 14201(e).) Additionally, the county elections website and VIG must inform voters that if they are unable to mark a ballot, the voter may bring up to two individuals to the polls to assist in voting. (Sec. 14282(b).) This information must also be provided in any covered languages under Section 14201 and the VRA Section 203. (Sec. 14282(b).)”
- “Post Polling Place/Vote Center Locations: At least 14 days before an election, the county elections official shall provide information on the county elections website site identifying all county polling places and/or vote centers and the languages of facsimile copies of the ballot that will be available to voters at each location. Additionally, explanatory information pertaining to the list of polling places, but not the list itself, shall be available in all languages in which the county provides facsimile copies of the ballot. (Sec. 14201(d).)”

⁴⁸ Exhibit A, Test Claim, filed May 21, 2021, page 174 (Memo #20096, May 21, 2020).

⁴⁹ Exhibit A, Test Claim, filed May 21, 2021, page 181 (Memo #20096, May 21, 2020).

⁵⁰ Exhibit A, Test Claim, filed May 21, 2021, page 175 footnote 2 (Memo #20096, May 21, 2020).

- “Mail/Distribute Facsimile Ballots to Vote-by-Mail (VBM) Voters: If a VBM voter lives within a precinct that requires facsimile ballots, he/she may request a facsimile ballot in their preferred facsimile ballot language, if that language is available in that precinct. (Sec. 13400(a).)”
- “Election Administration Plan (EAP) for VCA Counties: Through a process of public input and public hearings, the EAP is required to describe how the county will administer elections under the VCA and include their plans to educate and outreach to the public, including communities for which the county is required to provide language coverage under Section 14201 and the VRA Section 203. (See Sec. 4005(a)(10).) The draft, amended draft, and adopted final EAP shall be posted on the internet website of the county elections official in each language in which the county is required to provide language coverage under Section 14201 and the VRA Section 203 and the SOS website in an accessible format. (Sec. 4005(a)(10)(E)(iii).)”
- “Notices for Voters in VCA Counties: The county elections official shall deliver to each voter, with either the county VIG sent pursuant to Section 13303 or with the vote-by-mail ballot packet, a notice, translated in all languages required under subdivision (a) of Section 14201 and the VRA Section 203 that informs voters of all of the following:”
 - “An all-mailed ballot election is being conducted and each eligible voter will be issued a vote-by-mail ballot by mail.”
 - “The voter may cast a vote-by-mail ballot in person at a vote center during the times and days, as specified, or on election day.”
 - “No later than 7 days before the day of the election, the voter may request the county elections official to send a vote-by-mail ballot in a language other than English pursuant to the VRA Section 203 or a facsimile copy of the ballot printed in a language other than English pursuant to Section 14201. (Sec. 4005(a)(8)(B).)”
- “Facsimile Ballot Distribution for VCA Counties: Prior to every election, the county elections official shall determine if a voter has previously identified a preferred language other than English to the elections official or to the Secretary of State. If the voter’s precinct is required to have a facsimile copy of the ballot in the voter’s preferred language pursuant to Section 14201, the county elections official shall send via mail or email a facsimile copy of the ballot in that language. The voter shall receive the facsimile copy of the ballot before vote centers open. (Sec. 4005.6(b)).”
- “Bilingual Poll Workers in VCA Counties: If a vote center is located in, or adjacent to, a precinct, census tract, or other defined geographical subsection required to establish language requirements under subdivision (c) of Section 12303 or the VRA Section 203, or if it is identified as needing language assistance through the public input process, then the county elections official shall ensure that the vote center is staffed by election board members who speak the required language. If the county elections official is unable to recruit election board members who speak the required language, alternative methods of effective language assistance shall be provided by the county elections official. (Sec. 4005(a)(6)(B)(i).)”

- “Ballot Drop Boxes: The drop box shall be clearly and visibly marked, as an “Official Ballot Drop Box,” and provide specified information, in a manner prescribed by the county elections official, in all languages required under the VRA Section 203 and those languages applicable under Section 14201. (See California Code of Regulations, title 2, section 20132(f).)”
- “Toll-Free Voter Assistance Hotline in VCA Counties: This hotline must be maintained by the county and operational no later than 29 days before the day of the election until 5 p.m. on the day after the election and shall provide assistance to voters in all languages in which the county is required to provide voting materials and assistance under subdivision (a) of Section 14201 and the VRA Section 203. (Sec. 4005(a)(10)(I)(vii).)”
- “Facsimile Ballot Posting Requirements: For each required language under Section 14201, a minimum of two facsimile ballots must be provided with the ballot measures and ballot instructions. One must be made available to voters to take into the voting booth and use as a reference in casting their ballots privately and the other must be posted in a conspicuous location in the polling place or vote center. (Sec. 14201(a).)”
 - “For precincts where the single language minority group exceeds 20%, an additional two facsimile ballots must be made available to voters to take into the voting booth and use as a reference in casting their ballots privately. (Sec. 14201(b)(2).)”
 - “A sign must be posted near the index of registration to inform voters of the presence of facsimile ballots. (Sec. 14201(c)(3).)”
 - “The sign must be in English and in the facsimile ballot language(s) relevant to that polling place or vote center.”
 - “If a voter requests a facsimile ballot that is available at the polling place or vote center, then the poll worker must provide it to the voter. (Sec. 14201(c)(2).)”
 - “At least one sign must be publicly posted indicating the languages other than English that are spoken by the poll workers at that polling place or vote center, if applicable.”
 - “This information must be provided in all the languages other than English spoken by the poll workers. (Sec. 14200(g).)”
 - “Bilingual poll workers must wear an item (e.g. name tag, button, etc.) which identifies non-English language(s) spoken by that specific poll worker. (Sec. 12303(c)(3).)”

“Additional Requirements for VCA Counties”

“Each vote center must provide facsimile ballots translated in all languages required in the jurisdiction under subdivision (a) of Section 14201. (Sec. 4005(a)(6)(C).)”

- “Report of Bilingual Poll Worker Recruitment: Within 150 days following each statewide general election, counties must provide the Secretary of State a report of bilingual poll

worker recruitment, including the number of bilingual poll workers recruited that are fluent in each of the VRA Section 203 and 14201 languages. (Sec. 12303(c)(2)(A).)”⁵¹

D. Past Commission Decisions on Elections Law

The Commission has not received a prior test claim on Elections Code section 14201, its predecessor statute, or Secretary of State determinations under those statutes, but has heard and decided a number of Test Claims on elections law, which include several Decisions relevant to this Test Claim, as follows.

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

On October 4, 2006, the Commission partially approved the *Fifteen Day Close of Voter Registration, 01-TC-15* Test Claim.⁵² The Commission determined that a statute that pushed the voter registration deadline back from the 29th day before an election to the 15th day before the election did not newly require activities, but rather increased the cost of preexisting activities by requiring county elections officials to perform them over a longer time period.⁵³ The Commission also determined that a statute that required county elections officials to include additional information in a preexisting notice newly required an activity because county elections officials had not previously been required to include that information in that notice.⁵⁴

Permanent Absent Voters II (As Amended), 03-TC-11

On July 28, 2006, the Commission partially approved the *Permanent Absent Voters II, 03-TC-11* Test Claim.⁵⁵ The Commission determined that expanding eligibility for permanent absent voter status to all voters went “beyond creating a higher level of service in an existing program, but rather create[d] an entirely different program.”⁵⁶ The Commission also determined that requiring related, additional information to be included in absentee ballot mailings was also newly requiring an activity.⁵⁷ However, the Commission also determined that requiring county elections officials to treat applications for absentee ballots as permanent absentee ballot requests

⁵¹Exhibit A, Test Claim, filed May 21, 2021, pages 175-179 (Memo #20096, May 21, 2020).

⁵² Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Fifteen Day Close of Voter Registration, 01-TC-15*, adopted October 4, 2006, page 1.

⁵³ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Fifteen Day Close of Voter Registration, 01-TC-15*, adopted October 4, 2006, pages 10-14.

⁵⁴ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Fifteen Day Close of Voter Registration, 01-TC-15*, adopted October 4, 2006, pages 16-17.

⁵⁵ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Permanent Absent Voters II (As Amended), 03-TC-11*, adopted July 28, 2006, page 1.

⁵⁶ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Permanent Absent Voters II (As Amended), 03-TC-11*, adopted July 28, 2006, page 10.

⁵⁷ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Permanent Absent Voters II (As Amended), 03-TC-11*, adopted July 28, 2006, page 11.

was not newly requiring an activity, as county elections officials were already required to process permanent absentee ballot requests by a different statute.⁵⁸

Post Election Manual Tally (PEMT), 10-TC-08

On July 25, 2014, the Commission partially approved the *Post Election Manual Tally (PEMT)*, 10-TC-08 Test Claim.⁵⁹ At issue was a set of emergency regulations that temporarily imposed new standards and procedures for conducting post-election manual tallies of votes for narrow races in elections conducted at least partially on a mechanical, electromechanical, or electronic voting system.⁶⁰ The Commission found that determining the margin of victory, manually tallying a higher percentage of precincts in narrow elections according to specific standards and procedures, and including additional related information on a preexisting notice were all newly required activities because existing law had only required a one percent manual tally in all elections and did not require counties to determine the margin of victory or conduct a higher manual tally in close races.⁶¹

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.⁶² The Commission determined that requiring city and county elections officials to provide vote-by-mail voters with prepaid postage was newly requiring an activity because existing law, which required election officials to provide vote-by-mail voters with identification envelopes, did not require those envelopes to have prepaid postage.⁶³

⁵⁸ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Permanent Absent Voters II (As Amended)*, 03-TC-11, adopted July 28, 2006, page 14. The Commission also determined that any increases in costs due to this statute were nevertheless reimbursable as costs attributable to the statute that expanded eligibility for permanent absent voter status. (*Ibid.*)

⁵⁹ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Post Election Manual Tally (PEMT)*, 10-TC-08, adopted July 25, 2014, page 1.

⁶⁰ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Post Election Manual Tally (PEMT)*, 10-TC-08, adopted July 25, 2014, page 1.

⁶¹ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Post Election Manual Tally (PEMT)*, 10-TC-08, adopted July 25, 2014, pages 28-31.

⁶² Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01, adopted July 24, 2020, page 1.

⁶³ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01, adopted July 24, 2020, page 23. However, the Commission also determined that this activity was not state-mandated, and therefore not reimbursable, with respect to certain discretionary elections or elections that the city or county chose not to consolidate. (Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01, adopted July 24, 2020, pages 34-36.)

Extended Conditional Voter Registration, 20-TC-02

On December 3, 2021, the Commission denied the *Extended Conditional Voter Registration, 20-TC-02* Test Claim.⁶⁴ The Commission determined that requiring county elections officials to provide conditional voter registration and related provisional voting services at additional locations was not newly requiring an activity because county elections officials already had a preexisting duty to provide those services.⁶⁵

III. Positions of the Parties

A. County of Los Angeles

The claimant alleges that Elections Code section 14201, as added by Statutes 1994, chapter 920 and as amended by Statutes 2017, chapter 845, and Memo #20096 impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514 on counties by requiring county election officials to provide mandatory language assistance in additional languages.⁶⁶

According to the claimant, this requirement is new and imposes a higher level of service because prior to Memo #20096, the claimant had not been required to provide language assistance in Bengali, Burmese, Gujarati, Indonesian, Mongolian, and Telugu.⁶⁷

The claimant asserts that Elections Code section 14201, as clarified in Memo #20096, constitutes a new program or higher level of service because (1) the language assistance activities it requires are unique to county elections officials and (2) these activities provide a governmental service to the public, similar to the activity that the Commission found to be a state-mandated program on local governments in its Decision on *Vote by Mail Ballots: Prepaid Postage, 19-TC-01*.⁶⁸

The claimant alleges that as a result of the test claim statutes and Memo #20096, it has spent \$221,391.61 since August 20, 2020, and will incur an estimated total of \$350,000 in increased costs in fiscal year 2020-21, to perform the following activities:⁶⁹

- “Translat[ing] facsimile ballots, ballot instructions, and election materials in six additional languages pursuant to EC 14201(a), (b)(1), (g)(2) and Memorandum No. 20096, at paragraph 4.”⁷⁰

⁶⁴ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Extended Conditional Voter Registration, 20-TC-02*, adopted December 3, 2021, pages 1-3.

⁶⁵ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Extended Conditional Voter Registration, 20-TC-02*, adopted December 3, 2021, pages 43-54.

⁶⁶ Exhibit A, Test Claim, filed May 21, 2021, pages 9, 13-14, and 17.

⁶⁷ Exhibit A, Test Claim, filed May 21, 2021, page 13; Exhibit C, Claimant’s Rebuttal Comments, filed March 1, 2022, page 2.

⁶⁸ Exhibit A, Test Claim, filed May 21, 2021, pages 13 and 18; Exhibit C, Claimant’s Rebuttal Comments, filed March 1, 2022, page 2.

⁶⁹ Exhibit A, Test Claim, filed May 21, 2021, page 14.

⁷⁰ Exhibit A, Test Claim, filed May 21, 2021, page 14.

- “[T]ranslat[ing], provid[ing], and post[ing] on RR/CC’s website a draft, amended draft, and adopted final Election Administration Plan under EC 14201(c)(1), (c)(2) and Memorandum No. 20096, at paragraph entitled “Poll Worker Training and Education.””⁷¹
- “[R]ecruit[ing] recruit election workers who can speak one or more of the additional languages in vote centers as indicated in Memorandum No. 20096, at paragraph entitled “Bilingual Poll Workers,” and paragraph entitled “Bilingual Poll Workers in VCA Counties.””⁷²
- “[P]rovid[ing] information in additional languages to voters on RR/CC’s website, including identifying all vote centers in the County and the language of facsimile ballots available at each vote center, and information pertaining to the list of vote centers under EC 14201(d) and Memorandum No. 20096, at paragraph entitled “Post Polling Place/Vote Center Locations.””⁷³
- “[I]nclud[ing] text in additional languages in the County voter information guide pursuant to EC 14201(e) and Memorandum No. 20096, at paragraph “Include Polling Place/Vote Center Information in County Voter Information Guide.””⁷⁴
- “[M]ail[ing] or distribut[ing] translated facsimile ballots or translated vote-by-mail (VBM) ballots in additional languages to VBM voters upon request under Memorandum No. 20096, at paragraph entitled “Mail/District Facsimile Ballots to Vote-by-Mail (VBM) Voters.””⁷⁵
- “[T]ranslat[ing] notices as directed under Memorandum No. 20096, at paragraph entitled “Notices for Voters in VCA Counties.””⁷⁶
- “[D]istribut[ing] translated facsimile ballots or translated VBM ballots in additional languages pursuant to Memorandum No. 20096, at paragraph entitled “Facsimile Ballot Distribution for VCA Counties.””⁷⁷
- “[I]nclud[ing] information in additional languages to clearly and visibly mark a drop box as “Official Ballot Drop Box” and provide specified information in additional languages on drop boxes under Memorandum No. 20096, at paragraph entitled “Ballot Drop Boxes.””⁷⁸

⁷¹ Exhibit A, Test Claim, filed May 21, 2021, page 14.

⁷² Exhibit A, Test Claim, filed May 21, 2021, page 15.

⁷³ Exhibit A, Test Claim, filed May 21, 2021, page 15.

⁷⁴ Exhibit A, Test Claim, filed May 21, 2021, page 15.

⁷⁵ Exhibit A, Test Claim, filed May 21, 2021, page 15.

⁷⁶ Exhibit A, Test Claim, filed May 21, 2021, page 15.

⁷⁷ Exhibit A, Test Claim, filed May 21, 2021, page 15.

⁷⁸ Exhibit A, Test Claim, filed May 21, 2021, page 16.

- “[M]aintain[ing] staff who can speak one or more of the additional languages to support the voter assistance hotline under Memorandum No. 20096, at paragraph entitled “Toll-Free Assistance Hotline in VCA Counties.””⁷⁹
- “[P]ost[ing] facsimile ballots in additional languages to inform voters of presence of facsimile ballots under EC 14021(a), (b)(2), and Memorandum No. 20096, at paragraph entitled “Facsimile Ballot Posting Requirements”.”⁸⁰

The claimant further alleges that it hired temporary staff members and incurred \$102,576.89 in additional costs, and utilized a contract vendor to provide translation services and incurred \$118,814.71 in additional costs, from August 2020 to March 2021 to comply with the test claim statutes and Memo #20096.⁸¹ The claimant states that it expects to continue to incur \$1,047,000 in increased costs in complying with Memo #20096 in fiscal year 2021-22 and reasonably estimates increased costs of as much as \$6,324,446 for fiscal year 2021-22 for all local agencies in the state to implement the alleged mandate.⁸²

B. Department of Finance

Finance recommends that the Commission examine the timeliness of the Test Claim under Government Code section 17551(c).⁸³

Finance does not dispute the claimant’s position that Memo #20096 required the claimant to provide elections materials and other language assistance activities in specified precincts in six additional languages or that claimant expects to incur increased costs of \$350,000 in fiscal year 2020-21 and \$1,047,000 in fiscal year 2021-22 for these activities.⁸⁴

However, Finance challenges claimant’s conclusion that these activities constitute a new program or higher level of service.⁸⁵ Specifically, Finance argues that like the activities the Commission addressed in its Decision on *Extended Conditional Voter Registration*, 20-TC-02, the activities at issue in this Test Claim were already required by existing law.⁸⁶ According to Finance, “[t]he activities that are the subject of this Test Claim were already required by Elections Code section 14201 and other elections related statutes, prior to the issuance of Memorandum 20096.”⁸⁷

⁷⁹ Exhibit A, Test Claim, filed May 21, 2021, page 16.

⁸⁰ Exhibit A, Test Claim, filed May 21, 2021, page 16.

⁸¹ Exhibit A, Test Claim, filed May 21, 2021, page 16.

⁸² Exhibit A, Test Claim, filed May 21, 2021, page 17.

⁸³ Exhibit B, Finance’s Comments on the Test Claim, filed January 31, 2022, page 2.

⁸⁴ Exhibit B, Finance’s Comments on the Test Claim, filed January 31, 2022, pages 1-2.

⁸⁵ Exhibit B, Finance’s Comments on the Test Claim, filed January 31, 2022, page 2.

⁸⁶ Exhibit B, Finance’s Comments on the Test Claim, filed January 31, 2022, page 2.

⁸⁷ Exhibit B, Finance’s Comments on the Test Claim, filed January 31, 2022, page 2.

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.”⁸⁸ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁸⁹

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

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.⁹⁰
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁹¹
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁹²
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁹³

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

⁸⁸ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁸⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁹⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

⁹¹ *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).

⁹² *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.

⁹³ *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.

Constitution.⁹⁴ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁹⁵ 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.”⁹⁶

A. The Test Claim Was Not Timely Filed with Respect to Elections Code Section 14201 as Added and Amended by Statutes 1994, Chapter 920 and Statutes 2017, Chapter 845 but Was Timely Filed with Respect to Memo #20096.

Government Code section 17551(c) states that 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.⁹⁷

However, the Test Claim was neither filed within 365 days following the effective dates of the test claim statutes nor filed within 365 days of incurring increased costs as a result of those statutes. The Test Claim was not filed within 365 days following the effective dates of Statutes 1994, chapter 920 and Statutes 2017, chapter 845 because those statutes went into effect more than 26 years⁹⁸ and three years,⁹⁹ respectively, before this Test Claim was filed. The Test Claim was not filed within 365 days of incurring increased costs as a result of those statutes because the claimant was required to – and therefore presumptively did¹⁰⁰ – provide language assistance pursuant to Elections Code section 14201 as added and amended by the those statutes in connection with elections that occurred in 2018, three years before this Test Claim was filed.¹⁰¹

⁹⁴ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

⁹⁵ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁹⁶ *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].

⁹⁷ California Code of Regulations, title 2, section 1183.1(c).

⁹⁸ Statutes 1994, chapter 920 went into effect on January 1, 1995. (Cal. Const., art. IV, § 8(c).)

⁹⁹ Statutes 2017, chapter 845 went into effect on January 1, 2018. (Cal. Const., art. IV, § 8(c).)

¹⁰⁰ Evidence Code section 664 (“It is presumed that official duty has been regularly performed.”).

¹⁰¹ See Exhibit A, Test Claim, filed May 21, 2021, page 189 (California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148, December 29, 2017) (requiring precincts in the County of Los Angeles to provide Elections Code section 14201 language assistance in Armenian and Persian for elections conducted between January 1, 2018, and December 31, 2021); Elections Code sections 1200 and 1201 (requiring statewide elections to be held in June and November of 2018); see also Exhibit C, Claimant’s Rebuttal Comments, filed March 1, 2022, page 2 (“Indeed, the County was already complying with minority language translations as required in Elections Code section 14201.”).

Accordingly, the Test Claim was not timely filed with respect to Elections Code section 14201 as added and amended by Statutes 1994, chapter 920 or Statutes 2017, chapter 845.

However, the claimant declares that it first incurred costs relating to implementing Memo #20096 on August 20, 2020,¹⁰² which is less than 365 days before the claimant filed this Test Claim on May 21, 2021. Accordingly, the Test Claim was timely filed with respect to Memo #20096.

B. Memo #20096 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, as described below, that Memo #20096 identifies the languages that met Elections Code section 14201's three percent threshold in certain precincts for elections taking place between May 21, 2020 and December 31, 2021, but does not mandate any new requirements on counties when compared to prior law.

1. Memo #20096 Does Not Impose Any New State-Mandated Requirements When Compared To Existing Legal Requirements.

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.¹⁰³ 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.¹⁰⁴ To determine whether a test claim statute or executive order mandates a new program or higher level of service, the requirements in the test claim statute or executive order are compared with the preexisting scheme.¹⁰⁵ The requirements are new if they did not exist prior to the enactment of the test claim statute or executive order.¹⁰⁶

For example, in *San Diego Unified School District*, the court determined that the required activities imposed by 1993 test claim statutes, which addressed the suspension and expulsion of K-12 students from school, were “new in comparison with the preexisting scheme in view of the

¹⁰² Exhibit A, Test Claim, filed May 21, 2021, page 23 (Declaration of Albert Navas, Assistant Registrar and County Clerk for the County of Los Angeles, para. 9, which states the following: “The County first incurred costs related to implementing the SOS’ corrected methodology under EC 14201 on August 20, 2020.”).

¹⁰³ *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.

¹⁰⁴ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁰⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

¹⁰⁶ *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.

circumstances that they did not exist prior to the enactment of [the 1993 test claim statutes].”¹⁰⁷ And in *Department of Finance. v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, the court found that installing and maintaining trash receptacles at transit stops and performing certain inspections were both *new duties* that local governments were required to perform, when compared to prior law.¹⁰⁸

Here, unlike the situations addressed in *San Diego Unified School District* and *Department of Finance*, Memo #20096 does not mandate counties to perform any activities that are “new in comparison with the preexisting scheme.”¹⁰⁹

First, as claimant implicitly recognizes, it is Elections Code section 14201, not Memo #20096, that requires county elections officials to provide language assistance services upon the Secretary’s determination of need:

EC 14201 requires the County to comply with facsimile posting and availability requirements if there are three percent or more of voting-age residents in a precinct who are part of a “language minority group....

[¶]

Therefore the County ... hereby submits this Test Claim (TC) seeking to recover its cost in performing the additional *mandated activities under EC 14201*, as clarified in Memorandum No. 20096.¹¹⁰

“[T]he usual rule with California codes is that “shall” is mandatory and “may” is permissive unless the context requires otherwise.”¹¹¹ Here, the plain language of Elections Code section 14201 itself requires county elections officials to post facsimile ballots, provide specified information on the county elections website, and include translated text in the county voter information guide, through repeated use of the term “shall,” as follows:

¹⁰⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (see also page 869, footnotes 6 and 7, and page 870, footnote 9, where the court describes in detail the state of the law immediately before the enactment of the 1993 test claim statutes).

¹⁰⁸ *Department of Finance v. Commission State Mandates* (2021) 59 Cal.App.5th 546, 558.

¹⁰⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

¹¹⁰ Exhibit A, Test Claim, filed May 21, 2021, page 13, emphasis added.

¹¹¹ *Walt Rankin & Associates, Inc. v. City of Murrieta* (2000) 84 Cal.App.4th 605, 614; see Elections Code section 354 (“‘Shall’ is mandatory and ‘may’ is permissive.”). The Commission is not aware of any context that would require otherwise in this case; to the contrary, the use of “may” in subdivision (g) of the same section confirms that the use of “shall” in the quoted provisions of Elections Code section 14201 was intended to denote requirements (see *People v. Heisler* (1987) 192 Cal.App.3d 504, 507 (“where the Legislature has used both “shall” and “may” in the same section it must be presumed to have attached to them their ordinary meanings.”), and, as described below, the Secretary of State has also interpreted these provisions as containing mandatory requirements (see e.g. Exhibit A, Test Claim, filed May 21, 2021, pages 175-178 (Memo #20096, May 21, 2020)).

(a) In counties and precincts where the Secretary of State has determined that it is appropriate, the county elections official *shall* provide facsimile copies of the ballot, as described in subdivision (b), with the ballot measures and ballot instructions printed in Spanish, one of which *shall* be posted in a conspicuous location in the polling place and at least one of which *shall* be made available for voters at the polling place to use as a reference when casting a private ballot. Facsimile ballots *shall* also be printed in other languages and provided in the same manner if a significant and substantial need is found by the Secretary of State....

(b) (1) In determining if it is appropriate to provide the election materials in Spanish or other languages, the Secretary of State shall determine the number of residents of voting age in each county and precinct who are members of a single language minority, and who lack sufficient skills in English to vote without assistance. If the number of these residents equals 3 percent or more of the voting-age residents of a particular county or precinct, or if interested citizens or organizations provide the Secretary of State with information that gives the Secretary of State sufficient reason to believe a need for the furnishing of facsimile ballots, the Secretary of State shall find a need to provide at least two facsimile copies with the ballot measures and ballot instructions printed in Spanish or other applicable language in the affected polling places.

...

(c) (1) In polling places where facsimile copies of the ballot are necessary, members of the precinct boards *shall* be trained on the purpose and proper handling of the facsimile copies of the ballot and *shall* be prepared to inform voters of the existence of the facsimile copies of the ballot, as appropriate.

(2) If a voter requests a facsimile copy of a ballot that is available in the voter's language of preference pursuant to subdivision (a), a member of the precinct board *shall* provide the facsimile copy of the ballot to the voter.

(3) In polling places where facsimile copies of the ballot are necessary, a sign near the roster *shall* inform voters of the existence of the facsimile copies of the ballot. The sign *shall* be in English and in the language or languages of the facsimile copies available in that polling place.

(d) At least 14 days before an election, the county elections official *shall* provide information on the county elections internet website identifying all polling places in the county and the languages of facsimile copies of the ballot that will be available to voters at each polling place. Explanatory information pertaining to the list of polling places, but not the list itself, *shall* be available in all languages in which the county provides facsimile copies of the ballot.

(e) The county elections official *shall* include text in the county voter information guide that refers voters with language needs to the portion of the county elections internet website containing the information specified in subdivision (d). The text

shall be in all languages in which the county provides facsimile copies of the ballot. (Emphasis added.)

So, even though Memo #20096 specified the additional languages for which county elections officials were required to provide language assistance services by setting forth the Secretary of State’s expanded determinations of need, it did not *itself* require or mandate county elections officials to provide those services. Rather, it was Elections Code section 14201 that required those officials to post facsimile ballots, provide specified information on the county elections website, and include translated text in the county voter information guide. These requirements have been imposed on counties since 2018.¹¹² All Memo #20096 did was to provide notice that these preexisting requirements in Elections Code section 14201 apply with respect to additional languages based on the three percent trigger.

Second, the plain language of Memo #20096 echoes this understanding of Elections Code section 14201. In that memo, the secretary describes his determinations as “adding fourteen new languages under the formula-based provisions of Section 14201”¹¹³ and the required activities set forth in that memo as a “non-exhaustive list [] intended as a summary of applicable requirements.”¹¹⁴ This is not the language of a state official who is imposing newly required activities on local governments, but rather the language of a state official who is providing notice of the factual determination made as required under Section 14201, which triggers the requirement for certain counties to engage in a number of activities.

Third, although the claimant also claims costs for a number of activities that are not required by Elections Code section 14201, all of those activities are similarly imposed by preexisting law. Specifically, although claimant alleges costs for posting its Election Administration Plan and providing vote-center-related information on its County Clerk/Registrar-Recorder’s website, recruiting election workers, “translating notices as directed under Memorandum No. 20096, at paragraph entitled “Notices for Voters in VCA Counties,”” and maintaining staff to support a voter assistance hotline, those activities are required by Elections Code sections 4005 and 4007. Although the claimant alleges costs for mailing or distributing translating facsimile ballots or translated vote-by-mail ballots, that activity is required by Elections Code sections 4005.6 and 13400. And although the claimant alleges costs for including information on drop boxes, that activity is required by one of the Secretary’s regulations, California Code of Regulations title 2, section 20132. None of these activities are required by Memo #20096, but simply mentioned in that memo as part of its “summary of applicable requirements.”¹¹⁵

In sum, Memo #20096 identifies the languages that meet the three percent threshold under Elections Code section 14201, but does not mandate any new activities on counties. All of the activities that the claimant seeks reimbursement for are required by preexisting law, not Memo

¹¹² Elections Code section 14201, as amended by Statutes 2017, chapter 845.

¹¹³ Exhibit A, Test Claim, filed May 21, 2021, page 174 (Memo #20096, May 21, 2020).

¹¹⁴ Exhibit A, Test Claim, filed May 21, 2021, page 175 footnote 2, (Memo #20096, May 21, 2020).

¹¹⁵ Exhibit A, Test Claim, filed May 21, 2021, page 175 footnote 2, (Memo #20096, May 21, 2020).

#20096, and therefore these activities are not “new in comparison with the preexisting scheme” and cannot constitute new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution.

2. The Conclusion that Memo #20096 Does Not Mandate a New Program or Higher Level of Service Is Consistent With Those Reached in Prior Commission Decisions.

In prior elections-related test claims, the Commission has generally found that state elections statutes or executive orders that only increase the availability of, or population served by, existing programs do not require “new” programs or “higher” levels of service.

For example, in *Extended Conditional Voter Registration*, 20-TC-02, the Commission found that just expanding the locations at which conditional voter registration and related provisional voting must be provided, without expanding the times at which those services were required to be provided or requiring counties to open new locations for those services, was not requiring a “new” activity or “higher level” of service because county elections officials were already required to provide those services.¹¹⁶ In *Fifteen Day Close of Voter Registration*, 01-TC-15, the Commission similarly found that a statute that pushed the voter registration deadline back from the 29th day before an election to the 15th day before the election did not newly require activities, but rather increased the cost of preexisting activities, as existing law already required elections officials to perform the same voter registration activities that they would now have to provide over a longer time period.¹¹⁷

But in *Permanent Absent Voters II (As Amended)*, 03-TC-11, the Commission also found that expanding eligibility for permanent absent voter status from persons with specific conditions or disabilities to all voters went “beyond creating a higher level of service in an existing program, but rather create[d] an entirely different program.”¹¹⁸ And in *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01, which claimant relies on here,¹¹⁹ the Commission determined that requiring city and county elections officials to provide vote-by-mail voters with prepaid postage was newly requiring an activity because existing law, which required election officials to provide vote-by-mail voters with identification envelopes, did not require those envelopes to have prepaid postage.¹²⁰

Similar to the requirements addressed in *Extended Conditional Voter Registration*, 20-TC-02, and *Fifteen Day Close of Voter Registration*, 01-TC-15, and unlike the requirement discussed in

¹¹⁶ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Extended Conditional Voter Registration*, 20-TC-02, adopted December 3, 2021, page 54.

¹¹⁷ Exhibit X, Commission on State Mandates, Excerpts Statement of Decision for *Fifteen Day Close of Voter Registration*, 01-TC-15, adopted October 4, 2006, pages 10-14.

¹¹⁸ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Permanent Absent Voters II (As Amended)*, 03-TC-11, adopted July 28, 2006, pages 8-9.

¹¹⁹ Exhibit C, Claimant’s Rebuttal Comments, filed March 1, 2022, page 2.

¹²⁰ Exhibit X, Commission on State Mandates, Excerpts from Statement of Decision for *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01, adopted July 24, 2020, page 23.

Vote By Mail Ballots: Prepaid Postage, 19-TC-01, there are no requirements imposed by Memo #20096. The requirements (including the requirement for the Secretary to make the determination) are imposed by section 14201 and to the extent there is a resultant increase in the reach of preexisting services, no new activities or new components to existing activities are required. Prior to Memo #20096, Elections Code section 14201 already required county elections officials to provide translated facsimile ballots and other language assistance in languages for which the Secretary of State determined there was a need. Memo #20096 complied with Elections Code section 14201 and simply identified the languages and precincts in which the already required services must be provided.

Consequently, the Commission's finding that Memo #20096 does not mandate a new program or higher level of service, is consistent with conclusions that the Commission reached in prior elections-related test claims.

V. Conclusion

Based on the foregoing analysis, the Commission finds that the Test Claim was not timely filed with respect to Elections Code section 14201 as added by Statutes 1994, chapter 920 or as amended by Statutes 2017, chapter 845. The Commission further finds that Memo #20096 does not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Accordingly, the Commission denies this Test Claim.

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 July 13, 2022, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued July 13, 2022**

California Voting for All Act: Ballot Translations and Posting Requirements, 20-TC-03 Elections Code Section 14201 as Added and Amended by Statutes 2017, Chapter 845 (AB 918) and Statutes 1994, Chapter 920, (SB 1547); California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #20096, Effective May 21, 2020
County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 13, 2022 at Sacramento, California.



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

Mailing List

Last Updated: 5/13/22

Claim Number: 20-TC-03

Matter: California Voting for All Act: Ballot Translations and Posting Requirements

Claimant: County of Los Angeles

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