Hearing Date: July 31, 2009
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# ITEM 6

# TEST CLAIM
# PROPOSED STATEMENT OF DECISION

Elections Code, Division 21, Chapter 2 (§ 21100 et seq.), and Chapter 5 (§21400 et seq.)

Statutes 2001, Chapter 348 (AB 632)

Senate's Election and Reapportionment Committee Instructions (Dated September 24, 2001)

*Redistricting: Senate and Congressional Districts*
02-TC-50
County of Los Angeles, Claimant

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## EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates (Commission) is whether the proposed Statement of Decision accurately reflects any decision made by the Commission at the July 31, 2009 hearing on the above named test claim.[1]

**Recommendation**

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

If the Commission's vote on item 5 modifies the staff analysis, staff recommends that the motion to adopt the proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a proposed Statement of Decision be continued to the September 25, 2009 Commission hearing.

[1] California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

| IN RE TEST CLAIM: | Case No.: 02-TC-50 |
|---|---|
| Elections Code, Division 21, Chapter 2 (§ 21100 et seq.), and Chapter 5 (§21400 et seq.), Statutes 2001, Chapter 348 (AB 632), and | *Redistricting: Senate and Congressional Districts* |
| Senate's Election and Reapportionment Committee Instructions (Dated September 24, 2001) | STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 |
| Filed on June 30, 2003, By County of Los Angeles, Claimant. | *(Proposed for Adoption on July 31, 2009)* |

# PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on July 31, 2009. [Witness list will be included in the final Statement of 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 section 17500 et seq., and related case law.

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final Statement of Decision] to deny this test claim.

**Summary of Findings**

This test claim was filed on June 30, 2003, by the County of Los Angeles on statutes that set forth the Senate and congressional districts. Pursuant to article XXI of the California Constitution the Legislature enacted the test claim statute, Statutes 2001, chapter 348 (Assem. Bill No. (AB) 632) to adjust the Senate and congressional district boundary lines. The test claim statute is composed of five sections, with only the first two sections codified into the Elections Code. Sections 1 and 2 of the test claim statute adjusted the Senate and congressional boundary lines through the addition of chapter 2 (§21100 et seq.) and chapter 5, (§ 21400 et seq.) to the Elections Code, division 21. Section 3 declared that the redistricting plans as set forth in sections 1 and 2 are severable. Section 4 of the test claim statute directed county elections officials to rely on the maps prepared by the Legislature pursuant to Elections Code section 21001 to determine the Senate and congressional boundary lines if a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and, as a result, an ambiguity or dispute arises. Section 5 declares the statute shall go into immediate effect as an urgency statute.

The Commission finds that sections 1, 2, 3 and 5 of the test claim statute do not constitute a reimbursable state-mandated program, as the language of those sections do not mandate any

activity upon claimant. The Commission finds that section 4 of the test claim statute mandates a new program or higher level of service by requiring claimant to rely on maps prepared by the Legislature pursuant to Elections Code section 21001 to determine the Senate and congressional boundary lines if a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and as a result, an ambiguity or dispute arises. The Commission finds that the section 4 activity is necessary to implement article XXI of the California Constitution, which was a ballot measure approved by the California voters. Therefore, section 4 is statutorily excluded from a finding that it imposes costs mandated by the state pursuant to Government Code section 17556, subdivision (f).

In addition, on September 24, 2001, the claimant received a letter from Senator Perata in his role as the Chair of the Senate Committee on Elections and Reapportionment. The letter has been pled as, "State Senate's Election and Reapportionment Committee Instructions Issued on September 24, 2001." The Commission finds that the letter does not constitute an enacted statute or an issued executive order from the executive branch of the government, and thus is not within the Commission's jurisdiction and not subject to article XIII B, section 6.

The Commission concludes that Statutes 2001, chapter 348 (AB 632) does not constitute a reimbursable state-mandated program within the meaning of article XIII, subdivision (b), section 6 of the California Constitution.

## BACKGROUND

This test claim addresses the methodology used for the redistricting of Senate and congressional districts. The United States Supreme Court has interpreted the right to vote, guaranteed by the Fourteenth and Fifteenth Amendments of the United States Constitution, as requiring equal legislative representation and as a result periodic redistricting.[2] The Supreme Court, however, has left each state with the discretion to choose a specific methodology to use for redistricting, declaring, "In substance, we do not regard the Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation."[3]

The Voting Rights Act (43 U.S.C. § 1971 et seq., hereafter "Act") was enacted by Congress for the primary purpose of further protecting the right to vote guaranteed by the Fourteenth and Fifteenth Amendments. The Act prohibits states and their political subdivisions from using voting qualifications, prerequisites to voting, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or membership in a "language minority group."[4] In addition, the Act requires that any redistricting or other change of voting procedures in jurisdictions in which fewer than half of the residents of voting age were registered to vote, or voted, in the Presidential elections, be cleared in advance either by the federal district court in Washington D.C., or by the United States Attorney General.[5]

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

[3] *Reynolds v. Sims, supra*, 377 U.S. 533, 583.

[4] Title 42 United States Code sections 1973(a), 1973b(f)(2).

[5] Title 42 United States Code section 1973c.

In 1980, article XXI was added to the California Constitution by California voters. Article XXI requires the Legislature to adjust the boundary lines of the Senate, Assembly, Board of Equalization, and congressional districts in the year after the national decennial census is taken. Like the United States Constitution, the California Constitution does not detail a specific methodology to be used in adjusting the districts. Instead, the Legislature has the discretion to use any legal methodology of redistricting as long as it is in conformance with the following standards:

> (1) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single-member district; (2) the population of all districts of a particular type shall be reasonably equal; (3) every district shall be contiguous; (4) districts of each type shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary; and (5) the geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.[6]

The 1990 redistricting plan followed census tract lines and nested two Assembly districts within each Senate district.[7] After the redistricting plan is enacted, the Legislature must prepare detailed maps illustrating the redistricting plan and must provide these maps to county elections officials for use in conducting elections.[8]

Prior law requires county elections officials to establish election precinct boundaries so that the precinct boundaries do not cross the boundary of any Senate, Assembly, Board of Equalization, or congressional district.[9] Also, the number of voters per precinct may not exceed 1,250.[10] Additionally, the person in charge of elections for any county, city and county, city, or district is required to provide ballots for any elections within his or her jurisdiction.[11]

Pursuant to article XXI of the California Constitution, the test claim statute, Statutes 2001, chapter 348 (AB 632), adjusted the Senate and congressional boundary lines through the addition of chapter 2 (§ 21100 et seq.) and chapter 5, (§ 21400 et seq.) to Elections Code, division 21.[12] In addition, the test claim statute requires county elections officials to rely on the maps prepared

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[6] California Constitution, article 21, section 1, added by initiative, Primary Election (June 3, 1980) commonly known as Proposition 6.

[7] The 1990 redistricting plan was developed by special masters and approved by the California Supreme Court, due to the failure of the Legislature and the Governor to adopt congressional, legislative and State Board of Equalization apportionment plans for the 1992 primary and general elections.

[8] Elections Code section 21001, subdivision (a).

[9] Elections Code sections 12220 and 12222, subdivision (a), as added by Statutes 1994, chapter 920, section 2 (SB 1547).

[10] Elections Code section 12223, as amended by Statutes 2001, chapter 904, section 2 (SB 1547).

[11] Elections Code section 13000, as added by Statutes 1994, chapter 920, section 2 (SB 1547).

[12] Although not controlling, the Legislative Counsel's Digest also notes that the test claim statute was enacted pursuant to the California Constitution.

by the Legislature pursuant to Elections Code section 21001 to determine the Senate and congressional boundary lines if "a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and, as a result, an ambiguity or dispute arises… ."[13]

Unlike the 1990 redistricting plan, the test claim statute did not follow census tract lines. Instead, the test claim statute followed census blocks which split census tracts in the formation of the Senate and congressional districts.[14] Additionally, the test claim statute in conjunction with Statutes 2001, chapter 349 (Sen. Bill No. (SB) 802), which readjusted the Assembly and Board of Equalization districts, did not nest two Assembly districts within each Senate district.[15] The claimant contends that the Legislature's use of census blocks and the decision not to nest two Assembly districts within each Senate district has resulted in a significant increase in work related to establishing election precinct boundaries and other election related activities.

Prior to the enactment of the test claim statute, the claimant received a letter dated September 24, 2001, from former Senator Perata in his role as the Chair of the Senate Committee on Elections and Reapportionment.[16] The letter has been pled as, "State Senate's Election and Reapportionment Committee Instructions Issued on September 24, 2001" (hereafter Senator Perata's Letter). Senator Perata's Letter was written so that the claimant would be "afforded the maximum amount of time for preparation and implementation of the new districts." Although Senator Perata's Letter included the metes and bounds report, tract and block-level descriptions and maps for the Senate and congressional districts, the claimant did not include these documents in the test claim.

On March 9, 2009, the Third District Court of Appeal issued its decision in *California School Boards Association v. State of California*, 171 Cal.App.4th 1183. As relevant to this test claim, the Third District Court of Appeal addressed whether Government Code section 17556, subdivision (f), as amended by Statutes 2005, chapter 72 (AB 138), is consistent with article XIII B, section 6 of the California Constitution. AB 138 amended Government Code section 17556, subdivision (f) to provide, in relevant part, that costs are not reimbursable if "[t]he statute or executive order imposes duties that are *necessary to implement, reasonably within the scope of, or* expressly included in a ballot measure approved by the voters in a statewide or local election." The court found in relevant part:

> [T]o the extent that the amended statute provides that the state need not reimburse local governments for imposing duties that are expressly included in or necessary to implement a ballot measure, the statute is consistent with article XIII B, section 6. However, any duty not expressly included in or necessary to implement the ballot measure gives rise to a reimbursable state mandate, even if the duty is reasonably within the scope of the measure.[17]

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[13] Statutes 2001, chapter 348 (AB 632), section 4.

[14] Census tracts are made up of census blocks.

[15] Statutes 2001, chapter 349 (SB 802), was not pled in the test claim.

[16] Statutes 2001, chapter 348 (AB 632) enacted on September 27, 2001.

[17] *California School Boards Association v. State of California*, *supra*, 171 Cal.App.4th at 1189-1190.

In effect, the court severed the "reasonably within the scope of" language from Government Code section 17556, subdivision (f).

**Claimant's Position**

The claimant, County of Los Angeles, contends that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The claimant asserts the test claim statute mandates a new program or higher level of service, and as a result, the claimant seeks reimbursement for the following costs and activities associated with implementing the test claim statute:

- redistricting costs;
- ballot printing costs; and
- initiation of a Precinct Reduction Program.

The claimant argues that redistricting pursuant to the test claim statute is a new program or higher level of service because it "…was a much more complex project than under prior law."[18] Use of census blocks and failure to nest Assembly districts in Senate districts resulted in "…substantial work in redrawing precinct boundaries within each of 700 of the County's 2,054 census tracts."[19] This increased work resulted in increased costs as compared to prior redistricting years.

In addition to increased redistricting activities and costs, the claimant asserts that as a result of implementing the test claim statute, "an additional 171 unique ballot groups (a unique set of candidates and propositions dependent upon geographic area and political district boundaries)"[20] was required. The increase in ballot groups "resulted in soaring sample ballot booklet printing costs."[21] Thus, the claimant contends that the increased number of ballot groups required more ballots to be printed constituting a new program which resulted in increased costs.

The claimant also asserts that the test claim statute coupled with the first Primary Election in March instead of June required the creation of new and unnecessary precincts. Consequently, the claimant initiated a Precinct Reduction Program to lessen ongoing costs that would be incurred with the maintenance of the unnecessary precincts.

On February 28, 2007, the Commission received the claimant's comments in rebuttal to the draft staff analysis, and on June 19, 2009, the Commission received the claimant's comments in rebuttal to the revised draft staff analysis. The claimant's comments will be addressed, as appropriate in the analysis below.

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[18] Test Claim 02-TC-50, p. 2 (Exhibit A to Item 5, July 31, 2009 Commission Hearing).

[19] *Id.*, at p. 3.

[20] *Ibid.*

[21] *Ibid.*

**Department of Finance's Position**

The Department of Finance (Finance) filed comments dated August 14, 2003 addressing claimant's test claim allegations.[22] Finance disagrees with the claimant's test claim allegations and asserts that the test claim statute is not a reimbursable state mandate because the test claim statute: (1) does not mandate a "new program or higher level of service," and (2) does not impose "costs mandated by the state" pursuant to Government Code section 17556, subdivision (f).

Government Code section 17556, subdivision (f) provides that the Commission shall not find costs mandated by the state if "[t]he statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election." Finance cites Article XXI of the California Constitution which was added through a ballot measure approved by voters in the June 3, 1980 primary election. Article XXI requires the Legislature to adjust the boundary lines of the Senate, Assembly, Congressional, and Board of Equalization districts in the year after the national census is taken. Finance argues that the test claim statute is necessary to implement Article XXI, concluding, "…although [the test claim statute] may result in additional costs to local entities, those costs are not reimbursable because this implements a voter-approved ballot measure which has existed in law for more than 23 years."

Additionally, Finance asserts that the test claim statute does not mandate a "new program or higher level of service." Finance states:

> Since the requirement to adjust the boundary lines of the various districts after each census was added to the California Constitution in 1980, local agencies have been constitutionally performing these duties on a regular basis for the past 3 decades. Furthermore, the 1849 version of the California Constitution (see Articles IV and XII) provided for the re-evaluation of districts as needed. Since this activity has been occurring in the State for more than 150 years, the duties cited in this claim do not qualify as a new program or higher level of service.[23]

Finance further contends that the test claim statute does not impose "costs mandated by the state," and instead argues that the claimant incurred costs at its own discretion. The California Constitution does not detail a specific methodology to define the new boundaries, and therefore gives the Legislature the discretion to choose any legal method for redistricting. In light of the Legislature's discretion to choose any legal methodology to conduct redistricting, Finance argues that a county which assumes the Legislature will use a particular methodology incurs the costs of that assumption at the county's own discretion.

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[22] Finance comments to the test claim filed August 14, 2003, p. 1 (Exhibit C to Item 5, July 31, 2009 Commission Hearing).

[23] *Ibid.*

## COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[24] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[25] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[26] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[27] In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[28]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[29] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[30] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[31]

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[24] California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected.
(2) Legislation defining a new crime or changing an existing definition of a crime.
(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

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

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

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

[28] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988), 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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

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

[31] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[32]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[33] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[34]

The analysis addresses the following issues:

1. Does Senator Perata's Letter qualify as an "executive order," as defined by Government Code section 17516, subject to article XIII B, section 6?
2. Does Statutes 2001, Chapter 348 (AB 632) mandate a new program or higher level of service subject to article XIII B section 6 of the California Constitution?
3. Does Section 4 of Statutes 2001, chapter 348 (AB 632), impose "costs mandated by the state" on local agencies within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556?

**Issue 1: Is Senator Perata's Letter within the Commission's jurisdiction and subject to article XIII B, section 6?**

The claimant pled Senator Perata's Letter as part of the "test claim legislation" and argues that it constitutes a reimbursable state mandate. However, before discussing whether Senator Perata's Letter constitutes a reimbursable state mandate, it must be determined if the Commission has jurisdiction over Senator Perata's Letter.

Pursuant to Government Code section 17551, the Commission hears and decides claims for reimbursement of costs mandated by the state. Government Code section 17514 defines "costs mandated by the state" as increased costs incurred as a result of an enacted statute or an issued executive order which mandates a new program or higher level of service. An "executive order" is defined as any order, plan, requirement, rule, or regulation issued by: (1) the Governor; (2) any officer or official serving at the pleasure of the Governor; or (3) any agency, department, board, or commission of state government.[35]

Senator Perata's Letter was addressed to Conny McCormack, the claimant's Registrar of Voters, to advise the claimant that the test claim statute had been adopted by the Legislature and was awaiting signature by the Governor. Senator Perata's Letter also provided the claimant with the metes and bounds report, tract and block-level descriptions and maps for the Senate and

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

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

[34] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[35] Government Code section 17516.

congressional districts to afford the claimant "…the maximum amount of time for preparation and implementation of the new districts." [36]

Senator Perata's Letter does not constitute an enacted statute or an issued executive order from the executive branch of the government. Rather, Senator Perata's Letter was issued by Senator Perata, in his role as the Chair of the Senate Committee on Elections and Reapportionment, to provide information to the claimant "so that [the claimant] may begin preparing to implement the new boundaries should the Governor sign the [test claim statute]." [37] As a result, Senator Perata's Letter is not within the Commission's jurisdiction and is not subject to article XIII B, section 6. Any reference hereafter to the test claim statute will exclude Senator Perata's Letter.

**Issue 2: Does Statutes 2001, chapter 348 (AB 632) mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution?**

To be subject to article XIII B, section 6 of the California Constitution, a test claim must: (1) mandate a new activity upon the claimant, that (2) constitutes a new program or higher level of service.

In order for test claim statutes to impose a reimbursable, state-mandated, program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental entities. If the statutory language does not mandate or require the claimant to perform a task, then article XIII B, section 6, does not apply.

> In statutory construction cases, our fundamental task is to ascertain the intent of lawmakers so as to effectuate the purpose of the statute…If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.][38]

The test claim statute is composed of five sections, with only the first two sections codified into the Elections Code. Sections 1 and 2 of the test claim statute add chapter 2 (§21100 et seq.) and chapter 5 (§21400 et seq.) to division 21 of the Elections Code which set forth the Legislature's redistricting plan for the Senate and congressional districts. Elections Code, division 21, chapter 2 begins by stating, "This chapter sets forth the Senate districts."[39] The remaining sections of chapter 2 set forth the Senate districts by census blocks. Chapter 5 of division 21 of the Elections Code sets forth the congressional districts in the same manner.

The language of Sections 1 and 2 of the test claim statute do not mention any acts that counties must take. Rather, sections 1 and 2 merely set forth the Legislature's redistricting plans by census block description. Thus, the plain meaning of Sections 1 and 2 of the test claim statute do not mandate any activity upon counties.

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[36] Test Claim 02-TC-50, Senator Perata's Letter, test claim Exhibit 4 (Exhibit A to Item 5, July 31, 2009 Commission Hearing).

[37] *Ibid.*

[38] *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

[39] Elections Code section 21100.

Sections 3 and 5 of the test claim statute also do not mandate any activities upon counties. Section 3 of the test claim statute provides:

> The redistricting plans enacted by this act are severable. If any Senate or congressional redistricting plan or its application is held invalid, that invalidity shall not affect other plans or applications that can be given effect without the invalid plan or application.

Section 5 of the test claim statute provides in relevant part:

> This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect.

The language of sections 3 and 5 do not mention counties or any acts that counties must take. Rather, section 3 merely makes the individual redistricting plans set forth in chapters 1 and 2 of the test claim statute severable, and section 5 makes the test claim statute an urgency statute as defined by article IV of the California Constitution. Thus, the plain meaning of sections 3 and 5 of the test claim statute do not mandate any activity upon counties.

In the claimant's February 28, 2007 response to the draft staff analysis, the claimant asserts that the test claim statute mandates activities upon counties by implication. The claimant references a "Legislative Blueprint" consisting of various code sections used to implement the redistricting process. The claimant cites the existing Elections Code sections 12220, 12221, 12222, 12223, 12262, and 21001, that relate to county redistricting and elections duties, as examples of the "Legislative Blueprint." The claimant contends that because of the existing "Legislative Blueprint":

> [I]t was unnecessary for the Legislature to add thousands of obvious and repetitive imperatives to the test claim statute…imperatives that explicitly command that each county election official <u>shall</u> use their designated census block descriptions. Rather, the Legislature in an economy of expression, simply listed the descriptions by county. The test claim statute then, embodies a type of shorthand which still required a 432 page statute, but not a much longer one.[40]

Thus, the claimant appears to argue that sections 1 and 2 of the test claim statute, in conjunction with the "Legislative Blueprint," mandate activities upon the county election officials.

In the claimant's June 18, 2009 response to the revised draft staff analysis, the claimant does not discuss the existing "Legislative Blueprint," and instead states that the "Legislature set district boundaries in Section 1 and 2 [of the test claim statute] and the County complied. Clearly, there was no other choice."[41] The claimant reasserts that the Legislature used "a type of shorthand" in enacting the test claim statute and as a result did not include obvious and repetitive imperatives.[42] The claimant argues that this is consistent with the Commission's prior decisions, as the

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[40] Claimant response to the draft staff analysis, dated February 28, 2007, p. 2 (Exhibit F to Item 5, July 31, 2009 Commission Hearing).

[41] Claimant response to the revised draft staff analysis, dated June 18, 2009, p. 6 (Exhibit I to Item 5, July 31, 2009 Commission Hearing).

[42] *Ibid.*

Commission has previously approved a mandate by implication in the "Rape Victim Counseling Center Notice" test claim (CSM-4426).

Implicit in the claimant's argument that it is unnecessary for the Legislature to add thousands of *obvious* and *repetitive* imperatives to the test claim statute, however, is an acknowledgment that the imperatives exist elsewhere in law. The claimant did not plead Elections Code sections 12220, 12221, 12222, 12223, 12262, and 21001, or any other part of a "Legislative Blueprint" as part of the test claim. Rather, the claimant pled Statutes 2001, Chapter 348 (AB 632), which includes only sections 21100 et seq., and 21400 et seq. of the Elections Code. These code sections do not mandate any activities on counties. Courts have held that in construing a statute, the duty of the court:

> [I]s simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted. … It is … against all settled rules of statutory construction that courts should write into a statute by implication express requirements which the Legislature itself has not seen fit to place in the statute.[43]

As a result, the test claim statute cannot be interpreted to mandate activities upon a claimant based on unstated or implied requirements of a statute where the terms of the statute are unambiguous.[44] The terms of sections 1 and 2 of the test claim statute are clear and unambiguous as they set forth the Legislature's redistricting plans by census block description. The extent that the claimant is required to use the descriptions is not a subject of sections 1 and 2 of the test claim statute, and cannot be implied into or from the language of the test claim statute. Nor has the claimant pled the source of any requirement or pointed to any language in sections 1 and 2 that require the claimant to engage in any activities claimed by the claimant. Thus, as discussed above, the language of sections 1 and 2 of the test claim statute do not mandate any activity upon counties.

In regard to the claimant's comments that the Commission has found an activity to be mandated by implication in a prior Commission decision, without making any independent findings regarding the "Rape Victim Counseling Center Notice" test claim (CSM-4426), the Commission's decisions do not hold precedential value. As discussed by the court in *Weiss v. State Board of Equalization*, "Not only does due process permit omission of reasoned administrative opinions but it probably also permits substantial deviations from the principle of stare decisis."[45] An agency may disregard its earlier decision, provided that its action is neither arbitrary nor unreasonable.[46] The above analysis regarding sections 1 and 2 of the test claim statute is neither arbitrary nor unreasonable as the analysis is based on long standing rules of statutory construction as cited in this analysis and established mandates law.[47]

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[43] *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

[44] *Ibid.* See also, *Estate of Griswold*, *supra*, 25 Cal.4th 904, 910-911.

[45] *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 776.

[46] *Id.*, at p. 777 (See also, 72 Ops.Cal.Atty.Gen. 173, 178, fn. 2 (1989).)

[47] *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d at p. 174.

In addition, even if the claimant pled Elections Code sections 12220, 12221, 12222, 12223, 12262, and/or 21001 as part of the test claim, *Statutes 2001, Chapter 348 (AB 632)* still would not mandate a new program or higher level of service. The claimant contends that in light of the "Legislative Blueprint" a new "program" is imposed upon counties because the Legislature used a different methodology to establish Senate and congressional districts as compared to the prior reapportionment.[48] However, regardless of what methodology the Legislature used to establish Senate and congressional districts, the duties and activities of counties remained the same. More specifically, even without the enactment of the test claim statute county elections officials are required by existing law to establish voting precinct boundaries, and print and provide ballots to voters.[49] These preexisting duties in regard to redistricting are acknowledged by the claimant's remark that "the re-districting process has been performed by Los Angeles County for decades… ."[50] Also, although the costs associated with these preexisting duties may have increased, as argued by the claimant, increased costs cannot be equated with a new program or higher level of service.[51]

In addition, the claimant states:

> [W]hile Article 21 of the California Constitution requires the legislature to adjust the boundary lines in conformance with specified standards every year following a national census, it is erroneous to assume that prior standards were employed in implementing the test claim statute.[52]

The claimant's statement appears to suggest that the test claim statute fails to conform with the specified standards of article XXI of the California Constitution. However, the Commission must treat the test claim statute as a valid statute (Cal. Const., art. III, § 3.5). Thus, treating the test claim statute as valid, a change in methodology used by the Legislature to establish Senate and congressional districts does not mandate new program or higher level of service upon the claimant.

Therefore, the Commission finds that sections 1, 2, 3, and 5 of the test claim statute, Statutes 2001, Chapter 348 (AB 632), do not mandate a new program or higher level of service. It is noted that the claimant's state that Commission "staff <u>do not assert</u> that the County had discretion <u>not to follow the senate and congressional district boundaries specified in Sections 1</u>

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[48] Unlike the 1990 redistricting plan, the test claim statute did not follow census tract lines. Instead, the test claim statute followed census blocks which split census tracts in the formation of the Senate and congressional districts.

[49] Elections Code sections 12220 et seq.; and 13000. As added by Statutes 1994, chapter 920, section 2 (SB 1547).

[50] Claimant response to Department of Finance's August 14, 2003 comments, dated September 4, 2003, Declaration of Kathleen D. Connors, p. 1 (Exhibit C to Item 5, July 31, 2009 Commission Hearing).

[51] *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484; *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 735.

[52] Claimant response to the draft staff analysis, *supra*, p.8 (Exhibit F to Item 5, July 31, 2009 Commission Hearing).

and 2 of the test claim statute."[53] To clarify, the finding that *sections 1, 2, 3, and 5 of Statutes 2001, Chapter 348 (AB 632)* do not mandate any activities on counties does not lead to a conclusion that counties are not required to engage in any of the alleged activities. Rather, the finding *only* provides that the *sections 1, 2, 3, and 5 of Statutes 2001, Chapter 348 (AB 632)*, which have been pled by the claimant, do not require these activities.

Section 4 of the test claim statute provides:

> In the event that a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and, as a result, an ambiguity or dispute arises regarding the location of a boundary line, the Secretary of State and the elections official of each county shall rely on the detailed maps prepared by the committees of the legislature pursuant to Section 21001 of the Elections Code to determine the boundary line.

Under the plain meaning of section 4, in cases of ambiguity regarding the location of district boundary lines, resulting from the description of those lines by the test claim statute, county elections officials are required to rely on the detailed maps prepared by the Legislature pursuant to Elections Code section 21001. The maps prepared pursuant to Elections Code section 21001 show the boundaries of any district established by the test claim statute. Therefore, the plain meaning of section 4 of the test claim statute does mandate an activity upon counties.

Thus, the Commission finds only section 4 of the test claim statute mandates an activity upon counties. Pursuant to section 4, counties must rely on maps prepared pursuant to Elections Code section 21001 if an ambiguity arises in regard to district boundary lines. As a result, the remaining discussion will focus on section 4.

The courts have held that legislation mandates a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution when the requirements are new in comparison with the pre-existing scheme and the requirements were intended to provide an enhanced service to the public.[54] To make this determination, section 4 must initially be compared with the legal requirements in effect immediately prior to its enactment.[55]

After the enactment of the test claim statute, section 4 required county elections officials to rely on the detailed maps prepared by the committees of the Legislature pursuant to Elections Code section 21001 to determine the district boundary lines if ambiguities arose due to a census tract or census block not being listed, being listed more than once, or being only partially accounted for. It is necessary to clear any district line ambiguities because county elections officials are required, as a result of pre-existing duties, to establish election precinct boundaries so that the

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[53] Claimant response to the revised draft staff analysis, *supra*, p. 5 (Exhibit I to Item 5, July 31, 2009 Commission Hearing).

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

[55] *Ibid.*

precinct boundaries do not cross the boundary of any Senate, Assembly, Board of Equalization, or congressional district.[56] Also, the number of voters per precinct may not exceed 1,250.[57]

Prior to the enactment of the test claim statute; however, county elections officials were not required to rely on the maps prepared pursuant to Elections Code section 21001 to resolve ambiguities in district boundary lines. Rather, prior law did not specify any source that county elections officials were required to rely on if ambiguities arose in regard to district boundary lines. Thus, the section 4 requirement is new as compared to the pre-existing scheme.

The maps prepared pursuant to Elections Code section 21001 were already used by elections officials for election purposes. Elections Code section 21001, states in relevant part, "The maps shall be provided to … the county elections officials for use in their administrative functions involved in the conduct of elections… ."[58] However, pursuant to Government Code section 17565, "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." Thus, even if county elections officials were relying on the maps prepared pursuant to Elections Code section 21001 to establish election precinct boundaries under prior law, the county elections officials were not required to do so prior to the enactment of the test claim statute.

Section 4 must also be intended to provide an enhanced service to the public. Here, counties are directed to rely on the maps prepared pursuant to Elections Code section 21001 if an ambiguity arises regarding district boundary lines. Requiring county elections officials to rely on these maps helps clear district boundary line ambiguities in a uniform manner, which allows county elections officials to establish election precincts more precisely, ensuring equal representation for voters by preventing vote dilution. Thus, the Commission finds that section 4 of the test claim statute provides a service to the public.

Therefore, the section 4 requirement to rely on the maps prepared pursuant to Elections Code section 21001 if an ambiguity arises in regard to district boundary lines, constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Any potential reimbursable costs for implementation of section 4 of the test claim statute must have occurred between the time of enactment of the test claim statute (September 27, 2001) and the final date at which county elections officials were required to have precinct boundaries established (December 7, 2001).[59]

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[56] Elections Code sections 12220 and 12222, subdivision (a). As added in Statutes 1994, chapter 920, section 2 (SB 1547).

[57] Elections Code section 12223 as amended by Statutes 2001, chapter 904, section 2 (SB 1547).

[58] Elections Code section 21001, as amended in Statutes 2000, chapter 1081, section 23 (SB 1823).

[59] Elections Code section 12262 provides in relevant part, "Jurisdictional boundary changes occurring less than 88 days before an election shall not be effective for purposes of that election." Thus, precinct boundaries must have been established on December 7, 2001 which is 88 days before the March 5, 2002 primary election.

**Issue 3: Does Section 4 of Statutes 2001, chapter 348 (AB 632), impose "costs mandated by the state" on local agencies within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556?**

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim legislation must impose costs mandated by the state.[60] In addition, no statutory exceptions listed in Government Code section 17556 can apply. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The claimant has not alleged any costs to comply with section 4 of the test claim statute. In addition, the Commission finds that section 4 is subject to the statutory exception in Government Code section 17556, subdivision (f).

Government Code section 17556, subdivision (f), provides:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any test claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:
>
> … (f) The statute or executive order imposes duties that are *necessary to implement*, *reasonably within the scope of*, <u>or</u> *expressly included in*, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters. (emphasis added.)

Pursuant to the court's decision in *California School Boards Association*, the language "reasonably within the scope of" is, in effect, severed from subdivision (f).[61] As a result, in order to determine whether subdivision (f) applies, it is necessary to determine if the test claim statute imposes duties that are "necessary to implement" or "expressly included" in a ballot measure.

In its discussion of Government Code section 17556, subdivision (f), the court, in its decision in *California School Boards Association*, concludes that "statutes imposing duties on local governments do not give rise to reimbursable costs if the duties are incidental to the ballot measure mandate and produce de minimis added costs."[62] Deriving its conclusion from the California Supreme Court's decision in *San Diego Unified School Dist* regarding the federal mandate exception of Government Code section 17556, subdivision (c), the court states:

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[60] *Lucia Mar*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[61] *California School Boards Association v. State of California*, *supra*, 171 Cal.App.4th at 1215-1216.

[62] *Id*., at p. 1216.

> The [California Supreme Court] concluded "for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law – and whose costs are, in context, de minimis – should be treated as part and parcel of the underlying federal mandate." [Citation omitted]
>
> There is no reason not to apply this practical holding similarly to ballot measure mandates.[63]

The court subsequently directed the Commission to consider the holding of *San Diego Unified School Dist*. in determining whether costs are reimbursable for ballot measure mandates.[64] Therefore, in determining whether the test claim statute imposes duties that are "necessary to implement" a ballot measure, the Commission must determine whether those duties are "incidental to the ballot measure mandate and produce at most de minimis added costs."

In the claimant's response to the revised draft staff analysis, the claimant addresses this issue with the assumption that the whole of the test claim statute, including sections 1 and 2 of the test claim statute, imposes a state-mandated new program or higher level of service.[65] However, as discussed above on pages 10 through 14 of this analysis, the plain language of sections 1 and 2 of the test claim statute do not impose any mandates on counties. As a result, the claimant's assertions regarding the costs associated with the required use of a split census tract or census block standard, which is predicated on the activities asserted by the claimants above,[66] is irrelevant to the discussion as to whether section 4 of the test claim statute is "necessary to implement" a ballot measure as the term is discussed by the court in *California School Boards Association*.

In June 1980, California voters approved Proposition 6 adding article XXI to the California Constitution. Article XXI provides in relevant part:

> In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts in conformance with the following standards:
>
> (a) Each Member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single-member district.
>
> (b) The population of all districts of a particular type shall be reasonably equal.
>
> (c) Every district shall be contiguous.
>
> (d) Districts of each type shall be numbered consecutively commencing at the northern boundary of the state and ending at the southern boundary.

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[63] *Id*., at p. 1217.

[64] *Ibid*.

[65] Claimant response to the revised draft staff analysis, *supra*, p. 8 (Exhibit I to Item 5, July 31, 2009 Commission Hearing)..

[66] *Id*., at p. 8-11.

(e) The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.[67]

Article XXI, as adopted by voters in 1980, does not "expressly include" language requiring county elections officials to rely on detailed maps made by the committees of the Legislature if ambiguities arise regarding Senate and congressional district boundary lines as required by section 4 of the test claim statute. However, the new program mandated by section 4 of the test claim statute is "necessary to implement" article XXI, as approved by voters in 1980. The Legislature enacted the test claim statute to adjust the boundary lines of the Senate and congressional districts as required by article XXI. Section 4 of the test claim statute requires county elections officials and the Secretary of State, when their *pre-existing duties* necessitate use of the new district boundary lines established by the test claim statute, to rely on detailed maps created by the Legislature that illustrate the boundary lines of every district created in the test claim statute if ambiguities arise resulting from the description of the district boundary lines in the test claim statute. Rather than have county elections officials and/or the Secretary of State use their own methods to clarify ambiguities arising out of the test claim statute's description of district boundary lines, section 4 of the test claim statute ensures preservation of the district lines established by the Legislature in light of the specific standards set forth by subdivisions (a)-(e) of section 1, of article XXI. Thus, reliance on the maps created by the Legislature pursuant to Elections Code section 21001 for clarification purposes is an incidental activity of the redistricting required by article XXI.

In addition, the cost of the activity required by section 4 of the test claim statute is de minimis in context of the redistricting required by article XXI, as section 4 only directs county elections officials to look to a different source if the test claim statute is ambiguous as to a district boundary line. Also, as noted above, the claimant has not alleged any costs to comply with section 4 of the test claim statute.

Although the test claim statute was enacted after the enactment of Proposition 6, pursuant to the plain language of Government Code section 17556, subdivision (f), "This subdivision applies regardless of whether the statute…was enacted or adopted…after the date on which the ballot measure was approved by voters."

Thus, the Commission finds that section 4 of the test claim statute is "necessary to implement" a ballot measure approved by voters, and as a result, pursuant to Government Code section 17556, subdivision (f), section 4 does not impose "costs mandated by the state."

## CONCLUSION

The Commission concludes that chapter 2 (§21100 et seq.) and chapter 5 (§21400 et seq.) of division 21 of the Elections Code, as added by sections 1 and 2 of Statutes 2001, chapter 348 (AB 632), do not mandate any activities upon counties. Sections 3 and 5 of Statutes 2001, chapter 348 (AB 632) also do not mandate any activity on counties. Additionally, the Commission finds that section 4 of Statutes 2001, chapter 348 (AB 632) mandates a new program or higher level of service on counties; however, section 4 does not impose costs

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[67] California Constitution, article 21, section 1, added by initiative, Primary Election (June 3, 1980) commonly known as Proposition 6.

mandated by the state pursuant to Government Code section 17556, subdivision (f). Thus, Statutes 2001, chapter 348 (AB 632) does not constitute a reimbursable state-mandated program within the meaning of article XIII, subdivision (b), section 6 of the California Constitution.