

ITEM 4
TEST CLAIM
PROPOSED DECISION

Statutes 2009, Chapter 2 (SCA 4), adopted June 8, 2010 (Proposition 14);
Elections Code Sections 13, 300.5, 325, 332.5, 334, 337, 359.5, 9083.5, 13102,
13105, 13110, 13206, 13230, 13302, 14105.1, as added or amended by
Statutes 2009, Chapter 1 (SB 6);
Elections Code Sections 8002.5, 8040, 8062, 9083.5, 13105, 13206, 13206.5,
13302, as added or amended by Statute 2012, Chapter 3 (AB 1413);
Secretary of State County Clerk/Registrar of Voters Memoranda Nos. 11005,
effective 1/26/11; 11125, effective 11/23/11; 11126, effective 11/23/11; 12059,
effective 2/10/12.

12-TC-02

Top Two Candidates Open Primary Act
County of Sacramento, Claimant

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Claimant’s Challenge to Rejection of Test Claim Amendment, filed January 21, 2014

Text of Ballot Measure, Proposition 14, June 8, 2010

Special Election, District 36, July 12, 2011

TEST CLAIM NUMBER

Top Two Candidates Open Primary Act

CLAIMANT INFORMATION

Sacramento County
 Name of Local Agency or School District
Julie Valverde
 Claimant Contact
Director of Finance
 Title
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Sacramento, CA 95814
 City, State, Zip
916 874 7248
 Telephone Number
916 874 6454
 Fax Number
valverdej@saccounty.net
 E-Mail Address

CLAIMANT DESIGNATION OF REPRESENTATIVE

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Alice Jarboe
 Claimant Representative Name
Assistant Registrar of Voters
 Title
Sacramento County
 Organization
7000 65th Street, Suite A
 Street Address
Sacramento, CA 95823
 City, State, Zip
916 875 6451
 Telephone Number
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 Fax Number
jarboea@saccounty.net
 E-Mail Address

For CSM Use Only

Filing Date: **RECEIVED**
JUN 11 2013
COMMISSION ON STATE MANDATES

Test Claim #: **12-TC-02**

EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

- Statutes of 2009, Chapter 2 (SCA 4), effective 6/9/2010
 - Statutes of 2009, Chapter 1 (SB6), operative 6/9/2010
 - Section 1 amending EC 13
 - Section 2 adding EC 300.5
 - Section 3 adding EC 325
 - Section 4 adding EC 332.5
 - Section 5 amending EC 334
 - Section 6 amending EC 337
 - Section 7 adding EC 359.5
 - Section 40 adding EC 9083.5
 - Section 45 amending EC 13102
 - Section 46 amending EC 13105
 - Section 48 amending EC 13110
 - Section 49 amending EC 13206
 - Section 52 amending EC 13230
 - Section 54 amending EC 13302
 - Section 56 adding EC 14105.1
 - Statutes of 2012, Chapter 3 (AB1413), effective 1/1/2012
 - Section 12 amending EC 8002.5
 - Section 14 amending EC 8040
 - Section 16 amending EC 8062
 - Section 30 amending EC 9083.5
 - Section 35 amending EC 13105
 - Section 37 amending EC 13206
 - Section 38 adding EC 13206.5
 - Section 43 amending EC 13302
 - Secretary of State's CC/ROV Memorandum #11005, effective 1/26/11
 - Secretary of State's CC/ROV Memorandum #11125, effective 11/23/11
 - Secretary of State's CC/ROV Memorandum #11126, effective 11/23/11
 - Secretary of State's CC/ROV Memorandum #12059, effective 2/10/12
- Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

- 5. Written Narrative:** pages 2 to 5.
- 6. Declarations:** pages 6 to 8.
- 7. Documentation:** pages 9 to 72.

Received
July 3, 2013
Commission on
State Mandates

5. WRITTEN NARRATIVE

The following are the specific sections of statutes or executive orders alleged to contain mandates. These statutes or executive orders caused claimant to first incur costs during the Fiscal Year 2011/2012.

Statutes of 2009, Chapter 2 (SCA 4), effective 6/9/2010

Statutes of 2009, Chapter 1 (SB6), operative 6/9/2010

- Section 1 amending EC 13
- Section 2 adding EC 300.5
- Section 3 adding EC 325
- Section 4 adding EC 332.5
- Section 5 amending EC 334
- Section 6 amending EC 337
- Section 7 adding EC 359.5
- Section 40 adding EC 9083.5
- Section 45 amending EC 13102
- Section 46 amending EC 13105
- Section 48 amending EC 13110
- Section 49 amending EC 13206
- Section 52 amending EC 13230
- Section 54 amending EC 13302
- Section 56 adding EC 14105.1

Statutes of 2012, Chapter 3 (AB1413), effective 1/1/2012

- Section 12 amending EC 8002.5
- Section 14 amending EC 8040
- Section 16 amending EC 8062
- Section 30 amending EC 9083.5
- Section 35 amending EC 13105
- Section 37 amending EC 13206
- Section 38 adding EC 13206.5
- Section 43 amending EC 13302

Secretary of State's CC/ROV Memorandum #11005, effective 1/26/11

Secretary of State's CC/ROV Memorandum #11125, effective 11/23/11

Secretary of State's CC/ROV Memorandum #11126, effective 11/23/11

Secretary of State's CC/ROV Memorandum #12059, effective 2/10/12

Actual and/or estimated costs resulting from these alleged mandates exceed one thousand dollars (\$1,000).

(A) Detailed description of the new activities and costs that arise from the mandate.

Costs were first incurred for the following 13 activities in Fiscal Year 2011/2012:

1. Reproduce and provide to each polling place the Secretary of State created explanation of electoral procedures for party-nominated, voter-nominated and nonpartisan offices, in all specified languages.
2. Post at each polling place, in specified locations and quantities, the Secretary of State created explanation of electoral procedures for party-nominated, voter-nominated and nonpartisan offices.
3. Each ballot and sample ballot will include the wording "Party Preference:" for all voter-nominated candidates.
4. Each ballot and sample ballot will list all candidates for each voter-nominated contest, regardless of party preference or lack of party preference.
5. Each ballot and sample ballot will follow added formatting rules.
6. Each ballot and sample ballot will include new specified information regarding partisan offices, and voter-nominated and nonpartisan offices.
7. Each sample ballot booklet will include authorized party endorsement lists, without cost to the party or central committee
8. Each sample ballot booklet will include specified information regarding partisan offices, and voter-nominated and nonpartisan offices.
9. Each presidential general election ballot will contain new specified language.
10. Each election ballot will contain new specified language.
11. Each ballot, sample ballot, and voter information pamphlet will include specified party abbreviations. Specified party abbreviations will be posted at each polling place and in information mailed to vote-by-mail voters.
12. The election official will collect and report additional specified information from candidates for voter-nominated office.
13. Attend meetings and trainings to ensure uniform implementation of Top Two Candidates Open Primary Act.

(B) Detailed description of existing activities and costs that are modified by the mandate.

Costs were first incurred for the following 6 activities in Fiscal Year 2011/2012:

1. Additional In-Lieu of Filing Fee petition signature verification to comply with elimination of lower signature thresholds for minor party candidates to voter-nominated offices.
2. Voting System Logic and Accuracy testing iterations more complex to verify vote counting machines programming correctly tabulates lengthy voter-nominated contests.
3. Increased length of ballot and sample ballot to accommodate lengthy voter-nominated contests.
4. Increased length of ballot and sample ballot to accommodate lengthy instructions.
5. Modify precinct officer training classes and on-line training programs to include changes from Top Two Candidates Open Primary Act
 - a. Instructions on what documents to post, and where the documents are to be posted
 - b. Information on the new contest designations and who is allowed to vote on the contests

6. Revise polling place operations manual to include changes resulting from Top Two Candidates Open Primary Act
 - a. Written instructions on what is to be posted and where it is to be posted
 - b. Written definition and lists of Party Nominated, Voter Nominated and Nonpartisan contests, including who is eligible to vote on these contests.

(C) Actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

Actual increased costs first incurred by the claimant during the fiscal year for which the claim was filed (FY 2011/2012) in order to implement the alleged mandate are estimated to be \$33,000.

(D) Actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

The actual or increased costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year (2012/2013) immediately following the fiscal year (2011/2012) for which the claim was filed is estimated to be \$15,000.

(E) Statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

The statewide cost estimate of increased costs for all local agencies incurred to implement the alleged mandate during the fiscal year (2012/2013) immediately following the fiscal year (2011/2012) for which the claim was filed is \$726,000.

(F) Identification of all of the following funding sources available for this program:

- (i) **Dedicated state funds:**
Claimant is unaware of any dedicated state funds for this program.
- (ii) **Dedicated federal funds:**
Claimant is unaware of any dedicated federal funds for this program.
- (iii) **Other nonlocal agency funds:**
Claimant is unaware of any other nonlocal agency funds available for this program.
- (iv) **The local agency's general purpose funds:**
Claimant is unaware of any general purpose funds available for this program.

(v) Fee authority to offset costs:

Claimant is unaware at this time of any fee authority to offset costs available for this program

(G) Identification of prior mandate determinations made by the Board of Control or the Commission on State mandates that may be related to the alleged mandate.

Claimant is not aware at this time of any prior mandate determination made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

(H) Identification of a legislative determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

Claimant is not aware at this time of any legislatively determined mandate on this same statute or executive order.

6. DECLARATIONS

Support the written narrative with declarations that:

- (A) Declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

The actual or estimated increased costs first incurred in Fiscal Year 2011/2012 by the claimant to implement the alleged mandate are approximately \$33,000.

- (B) Identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

Claimant is not aware at this time of any local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct or indirect costs.

- (C) Describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

Costs were first incurred for the following 19 activities in Fiscal Year 2011/2012:

1. Reproduce and provide to each polling place the Secretary of State created explanation of electoral procedures for party-nominated, voter-nominated and nonpartisan offices, in all specified languages. (EC 9083.5, Stats of 2009, c.1, §40; EC 9083.5, Stats of 2012, c.3, §30; EC 14105.1, Stats 2009, c. 1, §56; SOS CCROV 11126)
2. Post at each polling place, in specified locations and quantities, the Secretary of State created explanation of electoral procedures for party-nominated, voter-nominated and nonpartisan offices. (EC 9083.5, Stats of 2009, c.1, §40; EC 9083.5, Stats of 2012, c.3, §30; EC 14105.1, Stats 2009, c. 1, §56; SOS CCROV 11126)
3. Each ballot and sample ballot will include the wording "Party Preference:" for all voter-nominated candidates. (EC 8002.5, Stats 2012, c. 3 §12; EC 13105, Stats 2009, c. 1, §46; EC 13105, Stats 2012, c. 3, §35)
4. Each ballot and sample ballot will list all candidates for each voter-nominated contest, regardless of party preference or lack of party preference. (EC 8002.5, Stats 2012, c. 3 §12; EC 13102, Stats 2009, c. 1 §45; EC 13110, Stats 2009, c. 1 §48)
5. Each ballot and sample ballot will follow new formatting rules. (EC 13110; Stats 2009, c. 1, §48; EC 13230, Stats 2009, c. 1 §52; SOS CCROV 11126)
6. Each ballot and sample ballot will include new specified information regarding partisan offices, and voter-nominated and nonpartisan offices. (EC 13206; Stats 2012, c. 3, §38)
7. Each sample ballot booklet will include authorized party endorsement lists, without cost to the party or central committee (EC 13302; Stats 2009, c. 1, §54; EC 13302, Stats 2012, c. 3 §43)

8. Each sample ballot booklet will include specified information per election type regarding partisan offices, and voter-nominated and nonpartisan offices. (SOS CCROV 11005; SOS CCROV 12059)
 9. Each election ballot will contain specified language, per election type. (EC 13206, Stats 2012, c. 3 §37; EC 13206.5, Stats 2012, c. 3 §38; SOS CCROV 11005; SOS CCROV 11126; SOS CCROV 12059)
 10. Each ballot, sample ballot, and sample ballot booklet will include specified party abbreviations. (SOS CCROV 11125, SOS CCROV 12059)
 11. Specified party abbreviations will be posted at each polling place and in information mailed to vote-by-mail voters. (SOS CCROV 11125, SOS CCROV 12059)
 12. The election official will collect and report additional specified information from candidates for voter-nominated office. (EC 8040, Stats 2012, c. 3 §14)
 13. Additional In-Lieu of Filing Fee petition signature verification to comply with elimination of lower signature thresholds for minor party candidates to voter-nominated offices. (EC 8062, Stats 2012, c. 3 §16; SOS CCROV 11126)
 14. Voting System Logic and Accuracy testing iterations more complex to verify vote counting machines programming correctly tabulates lengthy voter-nominated contests correctly. (EC 13110, Stats 2009, c.1 §48)
 15. Increased length of ballot and sample ballot to accommodate lengthy voter-nominated contests. (EC 13110, Stats 2009, c.1 §48)
 16. Increased length of ballot and sample ballot to accommodate lengthy instructions. (EC 13206, Stats 2009, c.1 §49; EC 13206.5 Stats 2012, c.3 §38)
 17. Modify precinct officer training classes and on-line training programs to include information on changes from Top Two Candidates Open Primary Act
 - a. Instructions on what documents to post, and where the documents are to be posted (EC 14105.1, Stats 2009, c.1 §56)
 - b. Information on the new contest designations and who is allowed to vote on the contests (EC 13110, Stats 2009, c.1 §48)
 18. Revise polling place operations manual to include information changes resulting from Top Two Candidates Open Primary Act
 - a. Written instructions on what is to be posted and where it is to be posted (EC 14105.1, Stats 2009, c.1 §56)
 - b. Written definition and lists of Party Nominated, Voter Nominated and Nonpartisan contests, including who is eligible to vote on these contests. (EC 13110, Stats 2009, c.1 §48)
 19. Attend meetings and trainings to ensure uniform implementation of Top Two Candidates Open Primary Act
1. If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Section 17574.

Not applicable

Test Claim Name: Top Two Candidates Open Primary Act
Claimant: Sacramento County
Section # 6 – Declarations

1. Declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

I declare under penalty of perjury under the laws of the State of California, that this information in this declaration is true and complete to the best of my own knowledge, information or belief.

Date: 7-3-13


Julie Valverde, Director of Finance

7. DOCUMENTATION

Support the written narrative with copies of all of the following:

(A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or Statutes of 2009, Chapter 2 (SCA 4), effective 6/9/2010 (attached)

Statutes of 2009, Chapter 1 (SB6), operative 6/9/2010 (attached)

Statutes of 2012, Chapter 3 (AB1413), effective 1/1/2012 (attached)

(B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and Secretary of State's CC/ROV Memorandum #11005, effective 1/26/11 (attached)

Secretary of State's CC/ROV Memorandum #11125, effective 11/23/11 (attached)

Secretary of State's CC/ROV Memorandum #11126, effective 11/23/11 (attached)

Secretary of State's CC/ROV Memorandum #12059, effective 2/10/12 (attached)

(C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and

(D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and

(E) statutes, chapters of original legislatively determined mandate and any amendments.

legislation already enacted by the Legislature to implement this act, are intended to implement an open primary system in California as set forth below.

(b) Top Two Candidate Open Primary. All registered voters otherwise qualified to vote shall be guaranteed the unrestricted right to vote for the candidate of their choice in all state and congressional elections. All candidates for a given state or congressional office shall be listed on a single primary ballot. The top two candidates, as determined by the voters in an open primary, shall advance to a general election in which the winner shall be the candidate receiving the greatest number of votes cast in an open general election.

(c) Open Voter Registration. At the time they register, all voters shall have the freedom to choose whether or not to disclose their party preference. No voter shall be denied the right to vote for the candidate of his or her choice in either a primary or a general election for statewide constitutional office, the State Legislature, or the Congress of the United States based upon his or her disclosure or nondisclosure of party preference. Existing voter registrations, which specify a political party affiliation, shall be deemed to have disclosed that party as the voter's political party preference unless a new affidavit of registration is filed.

(d) Open Candidate Disclosure. At the time they file to run for public office, all candidates shall have the choice to declare a party preference. The preference chosen shall accompany the candidate's name on both the primary and general election ballots. The names of candidates who choose not to declare a party preference shall be accompanied by the designation "No Party Preference" on both the primary and general election ballots. Selection of a party preference by a candidate for state or congressional office shall not constitute or imply endorsement of the candidate by the party designated, and no candidate for that office shall be deemed the official candidate of any party by virtue of his or her selection in the primary.

(e) Freedom of Political Parties. Nothing in this act shall restrict the right of individuals to join or organize into political parties or in any way restrict the right of private association of political parties. Nothing in this measure shall restrict the parties' right to contribute to, endorse, or otherwise support a candidate for state elective or congressional office. Political parties may establish such procedures as they see fit to endorse or support candidates or otherwise participate in all elections, and they may informally "nominate" candidates for election to voter-nominated offices at a party convention or by whatever lawful mechanism they so choose, other than at state-conducted primary elections. Political parties may also adopt such rules as they see fit for the selection of party officials (including central committee members, presidential electors, and party officers). This may include restricting participation in elections for party officials to those who disclose a party preference for that party at the time of registration.

(f) Presidential Primaries. This act makes no change in current law as it relates to presidential primaries. This act conforms to the ruling of the United States Supreme Court in Washington State Grange v. Washington State Republican Party (2008) 128 S.Ct. 1184. Each political party retains the right either to close its presidential primaries to those voters who disclose their party preference for that party at the time of registration or to open its presidential primary to include those voters who register without disclosing a political party preference.

Third— That Section 5 of Article II thereof is amended to read:

SEC. 5. (a) A voter-nomination primary election shall be conducted to select the candidates for congressional and state elective offices in California. All voters may vote at a voter-nominated primary election for any candidate for congressional and state elective office without regard to the political party preference disclosed by the candidate or the voter, provided that the voter is otherwise qualified to vote for candidates for the office in question. The candidates who are the top two vote-getters at a voter-nominated primary election for a congressional or state elective office shall, regardless of party preference, compete in the ensuing general election.

(b) Except as otherwise provided by Section 6, a candidate for a congressional or state elective office may have his or her political party preference, or lack of political party preference, indicated upon the ballot for the office in the manner provided by statute. A political party or party central committee shall not nominate a candidate for any congressional or state elective office at the voter-nominated primary. This subdivision shall not be interpreted to prohibit a political party or party central committee from endorsing, supporting, or opposing any candidate for a congressional or state elective office. A political party or party central committee shall not have the right to have its preferred candidate participate in the general election for a voter-nominated office other than a candidate who is one of the two highest vote-getters at the primary election, as provided in subdivision (a).

(c) The Legislature shall provide for partisan elections for presidential candidates, and political party and party central committees, including an open presidential primary whereby the candidates on the ballot are those



California
LEGISLATIVE INFORMATION

SB-6 Elections: primaries. (2009-2010)

Senate Bill No. 6

CHAPTER 1

An act to amend Sections 13, 334, 337, 2150, 2151, 2152, 2154, 8025, 8062, 8068, 8081, 8121, 8124, 8142, 8148, 8150, 8300, 8550, 8600, 8605, 8805, 8807, 10705, 10706, 12108, 13102, 13105, 13110, 13206, 13207, 13208, 13230, 13300, 13302, 13305, 15451, 15452, 15670, 15671, 19300, and 19301 of, to amend Part 1 of Division 7 of, to add Sections 300.5, 325, 332.5, 338.5, 359.5, 8002.5, 8005, 8141.5, 8606, 9083.5, 9084.5, 13109.5, and 14105.1 to, to add Chapter 0.5 (commencing with Section 6000) to Part 1 of Division 6 of, to amend and renumber Section 6000 of, to repeal and add Section 8125 of, to repeal Sections 8802 and 8806 of, the Elections Code, and to amend Section 88001 of the Government Code, relating to elections.

[Approved by Governor February 20, 2009. Filed Secretary of State
February 20, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 6, Maldonado. Elections: primaries.

Existing provisions of the California Constitution require the Legislature to provide for primary elections for partisan offices, including an open presidential primary election, as specified. The California Constitution also provides that all judicial, school, county, and city offices are nonpartisan offices, and a political party or party central committee is prohibited from endorsing, supporting, or opposing a candidate for these offices.

This measure would permit a voter, at the time of registration, to choose whether or not to disclose a party preference. This measure would also provide that a voter may vote for the candidate of his or her choosing in the primary election, regardless of his or her disclosure or non-disclosure of party preference.

This measure would provide for a "voter-nominated primary election" for each state elective office and congressional office in California, in which a voter may vote at the primary election for any candidate for congressional or state elective office without regard to the political party preference disclosed by either the candidate or the voter. The 2 candidates receiving the 2 highest vote totals for each office at a primary election, regardless of party preference, would then compete for the office at the ensuing general election.

The measure would further provide that a candidate for a congressional or state elective office generally may choose whether to have his or her political party preference indicated upon the ballot for that office in the manner to be provided by statute.

This measure would not change existing law as it relates to presidential primaries.

Because this bill would change the duties of local elections officials, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would provide that it would become operative only if SCA 4 is approved by the voters.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13 of the Elections Code is amended to read:

13. (a) No person shall be considered a legally qualified candidate for any office, for party nomination for a partisan office, or for nomination to participate in the general election for any voter-nominated office, under the laws of this state unless that person has filed a declaration of candidacy or statement of write-in candidacy with the proper official for the particular election or primary, or is entitled to have his or her name placed on a general election ballot by reason of having been nominated at a primary election, or having been selected to fill a vacancy on the general election ballot as provided in Section 8806, or having been selected as an independent candidate pursuant to Section 8304.

(b) Nothing in this section shall be construed as preventing or prohibiting any qualified voter of this state from casting a ballot for any person by writing the name of that person on the ballot, or from having that ballot counted or tabulated, nor shall any provision of this section be construed as preventing or prohibiting any person from standing or campaigning for any elective office by means of a "write-in" campaign. However, nothing in this section shall be construed as an exception to the requirements of Section 15341.

(c) It is the intent of the Legislature, in enacting this section, to enable the Federal Communications Commission to determine who is a "legally qualified candidate" in this state for the purposes of administering Section 315 of Title 47 of the United States Code.

SEC. 2. Section 300.5 is added to the Elections Code, to read:

300.5. "Affiliated with a political party" as used in reference to a voter or to a candidate for a voter-nominated office means the party preference that the voter or candidate has disclosed on his or her affidavit of registration.

SEC. 3. Section 325 is added to the Elections Code, to read:

325. "Independent status" means a voter's indication of "No Party Preference" as provided in Section 2151 and Section 2154.

SEC. 4. Section 332.5 is added to the Elections Code, to read:

332.5. "Nominate" means the selection, at a state-conducted primary election, of candidates who are entitled by law to participate in the general election for that office, but does not mean any other lawful mechanism that a political party may adopt for the purposes of choosing the candidate who is preferred by the party for a nonpartisan or voter nominated office.

SEC. 5. Section 334 of the Elections Code is amended to read:

334. "Nonpartisan office" means an office, except for a voter-nominated office, for which no party may nominate a candidate. Judicial, school, county, and municipal offices are nonpartisan offices.

SEC. 6. Section 337 of the Elections Code is amended to read:

337. "Partisan office" or "party nominated office" means any of the following offices:

- (a) President of the United States, Vice President of the United States, and the delegates therefor.
- (b) Elected member of a party committee.

SEC. 7. Section 359.5 is added to the Elections Code, to read:

359.5. (a) "Voter-nominated office" means a congressional or state elective office for which any candidate may choose to have his or her party preference or lack of party preference indicated upon the ballot. A political party or party central committee shall not nominate a candidate at a state-conducted primary election for a voter-nominated office. The primary conducted for a voter-nominated office does not serve to determine the nominees of a political party but serves to winnow the number of candidates to a final list of two for the general election. The following offices are voter-nominated offices:

- (1) Governor.
- (2) Lieutenant Governor.
- (3) Secretary of State.
- (4) State Treasurer.
- (5) Controller.
- (6) State Insurance Commissioner.
- (7) Member of the Board of Equalization.
- (8) Attorney General.
- (9) State Senator.
- (10) Member of the Assembly.
- (11) United States Senator.
- (12) Member of the United States House of Representatives.

(b) This section does not prohibit a political party or party central committee from endorsing, supporting, or opposing a candidate for a candidate listed in subdivision (a).

SEC. 8. Section 2150 of the Elections Code is amended to read:

2150. (a) The affidavit of registration shall show:

- (1) The facts necessary to establish the affiant as an elector.
- (2) The affiant's name at length, including his or her given name, and a middle name or initial, or if the initial of the given name is customarily used, then the initial and middle name. The affiant's given name may be preceded, at affiant's option, by the designation of Miss, Ms., Mrs., or Mr. A person shall not be denied the right to register because of his or her failure to mark a prefix to the given name and shall be so advised on the voter registration card. This subdivision shall not be construed as requiring the printing of prefixes on an affidavit of registration.
- (3) The affiant's place of residence, residence telephone number, if furnished, and e-mail address, if furnished. No person shall be denied the right to register because of his or her failure to furnish a telephone number or e-mail address, and shall be so advised on the voter registration card.
- (4) The affiant's mailing address, if different from the place of residence.
- (5) The affiant's date of birth to establish that he or she will be at least 18 years of age on or before the date of the next election.
- (6) The state or country of the affiant's birth.
- (7) (A) In the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number.
(B) In the case of any other applicant, other than an applicant to whom subparagraph (C) applies, the last four digits of the applicant's social security number.
(C) If an applicant for voter registration has not been issued a current and valid driver's license or a social security number, the state shall assign the applicant a number that will serve to identify the applicant for voter registration purposes. To the extent that the state has a computerized list in effect under this subdivision and

the list assigns unique identifying numbers to registrants, the number assigned under this subparagraph shall be the unique identifying number assigned under the list.

(8) The affiant's political party preference.

(9) That the affiant is currently not imprisoned or on parole for the conviction of a felony.

(10) A prior registration portion indicating whether the affiant has been registered at another address, under another name, or as preferring another party. If the affiant has been so registered, he or she shall give an additional statement giving that address, name, or party.

(b) The affiant shall certify the content of the affidavit as to its truth and correctness, under penalty of perjury, with the signature of his or her name and the date of signing. If the affiant is unable to write he or she shall sign with a mark or cross.

(c) The affidavit of registration shall also contain a space that would enable the affiant to state his or her ethnicity or race, or both. An affiant may not be denied the ability to register because he or she declines to state his or her ethnicity or race.

(d) If any person, including a deputy registrar, assists the affiant in completing the affidavit, that person shall sign and date the affidavit below the signature of the affiant.

(e) The affidavit of registration shall also contain a space to permit the affiant to apply for permanent vote by mail status.

(f) The Secretary of State may continue to supply existing affidavits of registration to county elections officials prior to printing new or revised forms that reflect the changes made to this section by the act that added this subdivision.

SEC. 9. Section 2151 of the Elections Code is amended to read:

2151. (a) At the time of registering and of transferring registration, each elector may disclose the name of the political party that he or she prefers. The name of that political party shall be stated in the affidavit of registration and the index.

(b) (1) The voter registration card shall inform the affiant that any elector may decline to state a political party preference, but no person shall be entitled to vote the ballot of any political party at any primary election for President of the United States or for a party committee unless he or she has disclosed the name of the party that he or she prefers or unless he or she has declined to disclose a party preference and the political party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to disclose a party preference to vote the ballot of that political party. The voter registration card shall further inform the affiant that any registered voter may vote for any candidate at a primary election for state elective office or congressional office, regardless of the disclosed party preference of the registrant or the candidate seeking that office or the refusal of the registrant or candidate to disclose a party preference. This notice shall be printed in 12 point Times New Roman font.

(2) The voter registration card shall include a listing of all qualified political parties. The voter registration card shall include a listing of all qualified political parties. As part of that listing, the voter registration card shall also contain an option designated "No Party Preference." This option shall be placed at the beginning of the listing of qualified political parties.

(c) No person shall be permitted to vote the ballot of any party or for any delegates to the convention of any party other than the party disclosed as preferred in his or her registration, except as provided by Section 2152 or unless he or she has declined to disclose a party preference and the party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to state a party affiliation to vote the party ballot or for delegates to the party convention.

(d) As of the effective date of the statute that added this subdivision, any voter who previously stated a political party affiliation when registering to vote shall be deemed to have disclosed that same party as his or her a political party preference unless the voter files a new affidavit of registration disclosing a different political party preference or no political party preference. Any voter who previously declined to state a party affiliation shall be deemed to have chosen the "No Party Preference" option unless the voter files a new affidavit of registration disclosing a different political party preference.

SEC. 10. Section 2152 of the Elections Code is amended to read:

2152. Whenever any voter has declined to disclose or has changed his or her party preference prior to the close of registration for an election, he or she may either so disclose or have a change recorded by executing a new affidavit of registration and completing the prior registration portion of the affidavit.

SEC. 11. Section 2154 of the Elections Code is amended to read:

2154. In the event that the county elections official receives an affidavit of registration that does not include portions of the information for which space is provided, the county elections official voters shall apply the following rebuttable presumptions:

(a) If no middle name or initial is shown, it shall be presumed that none exists.

(b) If no party preference is shown, it shall be presumed that the affiant has chosen the "No Party Preference" designation.

(c) If no execution date is shown, it shall be presumed that the affidavit was executed on or before the 15th day prior to the election, provided that (1) the affidavit is received by the county elections official on or before the 15th day prior to the election, or (2) the affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.

(d) If the affiant fails to identify his or her state of birth within the United States, it shall be presumed that the affiant was born in a state or territory of the United States if the birthplace of the affiant is shown as "United States," "U.S.A.," or other recognizable term designating the United States.

SEC. 12. Section 6000 of the Elections Code is amended and renumbered to read:

6000a. This chapter shall be known and may be cited as the "Alquist Open Presidential Primary Act."

SEC. 13. Chapter 0.5 (commencing with Section 6000) is added to Part 1 of Division 6 of the Elections Code, to read:

CHAPTER 0.5. General Provisions

6000. All references to a voter's or candidate's party "registration" or "affiliation" in this part shall refer to the party preference or lack of party preference disclosed by the voter or candidate in accordance with Sections 2151 and 2152 and subdivision (b) of Section 2154.

SEC. 14. The heading of Part 1 (commencing with Section 7000) of Division 7 of the Elections Code is amended to read:

PART 1. GENERAL PROVISIONS

SEC. 15. Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Elections Code is repealed.

SEC. 16. Section 7000 is added to the Elections Code, to read:

7000. All references to a voter's or candidate's party "registration" or "affiliation" in this division shall refer to the party preference or lack of party preference disclosed by the voter or candidate in accordance with Sections 2151 and 2152 and subdivision (b) of Section 2154.

SEC. 17. Section 8002.5 is added to the Elections Code, to read:

8002.5. (a) A candidate for a voter-nominated office may indicate his or her party preference, or lack of party preference, as disclosed upon the candidate's most recent statement of registration, upon his or her declaration of candidacy. If a candidate indicates his or her party preference on his or her declaration of candidacy, it shall appear on the primary and general election ballot in conjunction with his or her name. The candidate's designated party preference on the ballot shall not be changed between the primary and general election. A candidate for voter-nominated office may also choose not to have the party preference disclosed upon the candidate's most recent affidavit of registration indicated upon the ballot.

(b) Regardless of the disclosed party preference of the candidate or the voter, any qualified voter may vote for any candidate for a voter-nominated office if the voter is otherwise entitled to vote for candidates for the office

to be filled. Nothing in Section 2151, 3006, 3007.5, 3205, or 3102 shall be construed to limit the ability of a voter to cast a primary election ballot for any candidate for a voter-nominated office, regardless of the party preference, or lack of party preference, designated by the candidate for inclusion upon the ballot pursuant to this section, provided that the voter is otherwise qualified to cast a ballot for the office at issue.

(c) A candidate designating a party preference pursuant to subdivision (a) shall not be deemed to be the official nominee of the party designated as preferred by the candidate. A candidate's designation of party preference shall not be construed as an endorsement of that candidate by the party designated. The party preference designated by the candidate is shown for the information of the voters only and may in no way limit the options available to voters.

(d) All references to party preference or affiliation shall be omitted from all forms required to be filed by a voter-nominated candidate pursuant to this division in the same manner that such references are omitted from forms required to be filed by nonpartisan candidates pursuant to Section 8002, except that the declaration of candidacy required by Section 8040 shall include space for the candidate to list the party preference disclosed upon the candidate's most recent affidavit of registration, in accordance with subsection (a).

SEC. 18. Section 8005 is added to the Elections Code, to read:

8005. In addition to satisfying the requirements of Sections 9083.5, 9084.5, and 14105.1, the Secretary of State shall conduct public voter education campaigns, using existing resources, for the purpose of publicly disseminating information regarding the roles of the parties in primary elections for party-nominated offices, voter-nominated offices, and nonpartisan offices.

SEC. 19. Section 8025 of the Elections Code is amended to read:

8025. If only one candidate has declared a candidacy for a partisan nomination at the direct primary election for a party qualified to participate at that election, or for nomination at the direct primary for a voter-nominated office, and that candidate dies after the last day prescribed for the delivery of nomination documents to the elections official, as provided in Section 8020, but not less than 83 days before the election, any person qualified under the provisions of Section 8001 may circulate and deliver nomination documents for the office to the elections official up to 5 p.m. on the 74th day prior to the election. In that case, the elections official shall, immediately after receipt of those nomination documents, certify and transmit them to the Secretary of State in the manner specified in this article.

SEC. 20. Section 8062 of the Elections Code is amended to read:

8062. (a) The number of registered voters required to sign a nomination paper for the respective offices are as follows:

- (1) State office or United States Senate, not less than 65 nor more than 100.
- (2) House of Representatives in Congress, State Senate or Assembly, Board of Equalization, or any office voted for in more than one county, and not statewide, not less than 40 nor more than 60.
- (3) Candidacy in a single county or any political subdivision of a county, other than State Senate or Assembly, not less than 20 nor more than 40.
- (4) With respect to a candidate for a political party committee, any political party has less than 50 voters in the state or in the county or district in which the election is to be held, one-tenth the number of voters of the party.
- (5) When there are less than 150 voters in the county or district in which the election is to be held, not less than 10 nor more than 20.

(b) The provisions of this section are mandatory, not directory, and no nomination paper shall be deemed sufficient that does not comply with this section. However, this subdivision shall not be construed to prohibit withdrawal of signatures pursuant to Section 8067. This subdivision also shall not be construed to prohibit a court from validating a signature which was previously rejected upon showing of proof that the voter whose signature is in question is otherwise qualified to sign the nomination paper.

SEC. 21. Section 8068 of the Elections Code is amended to read:

8550. At least 88 days prior to the election, each candidate shall leave with the officer with whom his or her nomination papers are required to be left, a declaration of candidacy which states all of the following:

- (a) The candidate's residence, with street and number, if any.
- (b) That the candidate is a voter in the precinct in which he or she resides.
- (c) The name of the office for which he or she is a candidate.
- (d) That the candidate will not withdraw as a candidate before the election.
- (e) That, if elected, the candidate will qualify for the office.

The name of a candidate shall not be placed on the ballot unless the declaration of candidacy provided for in this section has been properly filed.

SEC. 33. Section 8600 of the Elections Code is amended to read:

8600. Every person who desires to be a write-in candidate and have his or her name as written on the ballot of an election counted for a particular office shall file:

(a) A statement of write-in candidacy that contains the following information:

- (1) Candidate's name.
- (2) Residence address.
- (3) A declaration stating that he or she is a write-in candidate.
- (4) The title of the office for which he or she is running.
- (5) The party nomination which he or she seeks, if running in a partisan primary election.
- (6) The date of the election.

(b) The requisite number of signatures on the nomination papers, if any, required pursuant to Sections 8062, 10220, 10510 or, in the case of a special district not subject to the Uniform District Election Law (Part 4 (commencing with Section 10500) of Division 10), the number of signatures required by the principal act of the district.

SEC. 34. Section 8605 of the Elections Code is amended to read:

8605. No person whose name has been written in upon a ballot for an office at the direct primary may have his or her name placed upon the ballot as a candidate for that office for the ensuing general election unless one of the following is applicable:

(a) At that direct primary he or she received for a partisan office votes equal in number to 1 percent of all votes cast for the office at the last preceding general election at which the office was filled. In the case of an office that has not appeared on the ballot since its creation, the requisite number of votes shall equal 1 percent of the number of all votes cast for the office that had the least number of votes in the most recent general election in the jurisdiction in which the write-in candidate is seeking office.

(b) He or she is an independent nominee for a partisan office pursuant to Part 2 (commencing with Section 8300).

(c) At that direct primary he or she received for a voter-nominated office the highest number of votes cast for that office or the second highest number of votes cast for that office, except as provided by subdivision (b) of Section 8142 or Section 8807.

SEC. 35. Section 8606 is added to the Elections Code, to read:

8606. A person whose name has been written on the ballot as a write-in candidate at the general election for a voter-nominated office shall not be counted.

SEC. 36. Section 8802 of the Elections Code is repealed.

SEC. 37. Section 8805 of the Elections Code is amended to read:

8805. Whenever a candidate for nomination for a nonpartisan or voter-nominated office at a primary election dies on or before the day of the election, and a sufficient number of ballots are marked as being voted for him or her to entitle him or her to nomination if he or she had lived until after the election, a vacancy exists on the general election ballot, which shall be filled in the manner provided in Section 8807 for filling a vacancy caused by the death of a candidate.

SEC. 38. Section 8806 of the Elections Code is repealed.

SEC. 39. Section 8807 of the Elections Code is amended to read:

8807. If the vacancy occurs among candidates chosen at the direct primary to go on the ballot for the succeeding general election for a nonpartisan or voter-nominated office, the name of that candidate receiving at the primary election the next highest number of votes shall go upon the ballot to fill the vacancy.

SEC. 40. Section 9083.5 is added to the Elections Code, to read:

9083.5. (a) If a candidate for nomination or election to a partisan office will appear on the ballot, the Secretary of State shall include in the state ballot pamphlet a written explanation of the electoral procedure for such offices, as follows:

PARTY-NOMINATED/PARTISAN OFFICES

Under the California Constitution, political parties may formally nominate candidates for party-nominated/partisan offices at the primary election. A candidate so nominated will then represent that party as its official candidate for the office in question at the ensuing general election and the ballot will reflect an official designation to that effect. The top vote-getter for each party at the primary election is entitled to participate in the general election. Parties also elect officers of official party committees at a partisan primary.

No voter may vote the ballot of any political party at any primary election unless he or she has disclosed a preference for that party upon registering to vote or unless he or she has declined to disclose a party preference and the political party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to disclose a party preference to vote the ballot of that political party.

(b) If any candidate for nomination or election to a voter-nominated office will appear on the ballot, the Secretary of State shall include in the state ballot pamphlet a written explanation of the electoral procedure for such offices, as follows:

VOTER-NOMINATED OFFICES

Under the California Constitution, political parties are not entitled to formally nominate candidates for voter-nominated offices at the primary election, and a candidate nominated for a voter-nominated office at the primary election is not the official nominee of any party for the office in question at the ensuing general election. A candidate for nomination or election to a voter-nominated office may, however, designate his or her party preference, or lack of party preference, and have that designation reflected on the primary and general election ballot, but the party designation so indicated is selected solely by the candidate and is shown for the information of the voters only. It does not constitute or imply an endorsement of the candidate by the party designated, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party. The parties may have a list of candidates for voter-nominated offices, who have received the official endorsement of the party, printed in the sample ballot.

All voters, regardless of the party for which they have expressed a preference upon registering, or of their refusal to disclose a party preference, may vote for any candidate for a voter-nominated office, provided they meet the other qualifications required to vote for that office. The top two vote-getters at the primary election advance to the general election for the voter-nominated office, and both candidates may have specified the same party preference designation. No party is entitled to have a candidate with its party preference designation participate in the general election unless such candidate is one of the two highest vote-getters at the primary election.

(c) If any candidate for nomination or election to a nonpartisan office, other than judicial office, shall appear on the ballot, the Secretary of State shall include in the state ballot pamphlet a written explanation of the electoral procedure for such offices, as follows:

NONPARTISAN OFFICES

Under the California Constitution, political parties are not entitled to nominate candidates for nonpartisan offices at the primary election, and a candidate nominated for a nonpartisan office at the primary election is not the official nominee of any party for the office in question at the ensuing general election. A candidate for nomination or election to a nonpartisan office may NOT designate his or her party preference, or lack of party preference, on the primary and general election ballot. The top two vote-getters at the primary election advance to the general election for the nonpartisan office.

(d) Posters or other printed materials containing the notices specified in subdivisions (a) to (c), inclusive, shall be included in the precinct supplies pursuant to Section 14105.

SEC. 41. Section 9084.5 is added to the Elections Code, to read:

9084.5. In addition to the materials specified in Section 9084, the ballot pamphlet shall contain a written explanation of the appropriate election procedures for party-nominated, voter-nominated, and nonpartisan offices as required by Section 9083.5.

SEC. 42. Section 10705 of the Elections Code is amended to read:

10705. (a) All candidates shall be listed on one ballot and, except as provided in subdivision (b), if any candidate receives a majority of all votes cast, he or she shall be declared elected, and no special general election shall be held.

(b) If only one candidate qualifies to have his or her name printed on the special general election ballot, that candidate shall be declared elected, and no special general election shall be held.

SEC. 43. Section 10706 of the Elections Code is amended to read:

10706. If no candidate receives a majority of votes cast, the names of the two candidates who receive the highest and second highest number of votes cast at the special primary election shall be placed on the special general election ballot.

SEC. 44. Section 12108 of the Elections Code is amended to read:

12108. In any case where this chapter requires the posting or distribution of a list of the names of precinct board members, or a portion of the list, the officers charged with the duty of posting shall ascertain the name of the political party, if any, for which each precinct board member has expressed a preference, as shown in the affidavit of registration of that person. When the list is posted or distributed, there shall be printed the name of the board member's party preference or an abbreviation of the name to the right of the name, or immediately below the name, of each precinct board member. If a precinct board member has not expressed a preference for a political party, the words "No Party Preference" shall be printed in place of the party name.

SEC. 45. Section 13102 of the Elections Code is amended to read:

13102. (a) All voting shall be by ballot. There shall be provided, at each polling place, at each election at which public officers are to be voted for, but one form of ballot for all candidates for public office, except that, for partisan primary elections, one form of ballot shall be provided for each qualified political party as well as one form of nonpartisan ballot, in accordance with subdivision (b).

(b) At partisan primary elections, each voter not registered disclosing a preference with any one of the political parties participating in the election shall be furnished only a nonpartisan ballot, unless he or she requests a ballot of a political party and that political party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to disclose a party preference to vote the ballot of that political party. The nonpartisan ballot shall contain only the names of all candidates for nonpartisan offices, voter-nominated offices, and measures to be voted for at the primary election. Each voter registered as preferring a political party participating in the election shall be furnished only a ballot for which he or she disclosed a party preference in accordance with Section 2151 or 2152 and the nonpartisan ballot, both of which shall be printed together as one ballot in the form prescribed by Section 13207.

(c) A political party may adopt a party rule in accordance with subdivision (b) that authorizes a person who has declined to disclose a party preference to vote the ballot of that political party at the next ensuing partisan

primary election. The political party shall notify the party chair immediately upon adoption of that party rule. The party chair shall provide written notice of the adoption of that rule to the Secretary of State not later than the 135th day prior to the partisan primary election at which the vote is authorized.

(d) The county elections official shall maintain a record of which political party's ballot was requested pursuant to subdivision (b), or whether a nonpartisan ballot was requested, by each person who declined to disclose a party preference. The record shall be made available to any person or committee who is authorized to receive copies of the printed indexes of registration for primary and general elections pursuant to Section 2184. A record produced pursuant to this subdivision shall be made available in either a printed or electronic format, as requested by the authorized person or committee.

SEC. 46. Section 13105 of the Elections Code is amended to read:

13105. (a) In the case of candidates for a voter-nominated office in a primary election, a general election, or a special election to fill a vacancy in the office of United States Senator, Member of the United States House of Representatives, State Senator, or Member of the Assembly, immediately to the right of and on the same line as the name of the candidate, or immediately below the name if there is not sufficient space to the right of the name, there shall be identified in eight-point roman lowercase type the name of the political party designated by the candidate pursuant to Section 8002.5. The identification shall be in substantially the following form: "My party preference is the _____ Party." If the candidate designates no political party, the phrase "No Party Preference" shall be printed instead of the party preference identification. If the candidate chooses not to have his or her party preference listed on the ballot, the space that would be filled with a party preference designation shall be left blank.

(b) In the case of candidates for President and Vice President, the name of the party shall appear to the right of and equidistant from the pair of names of these candidates.

(c) If for a general election any candidate for President of the United States or Vice President of the United States has received the nomination of any additional party or parties, the name(s) shall be printed to the right of the name of the candidate's own party. Party names of a candidate shall be separated by commas. If a candidate has qualified for the ballot by virtue of an independent nomination, the word "Independent" shall be printed instead of the name of a political party in accordance with the above rules.

SEC. 47. Section 13109.5 is added to the Elections Code, to read:

13109.5. Notwithstanding anything in Section 13109 to the contrary, and to facilitate compliance with Section 13206, the elections official may list the offices specified in subdivision (h) of Section 13109 directly after the offices specified in subdivisions (a) and (b) of Section 13109, when the offices specified in those subsections are on the ballot, or at the end of the ballot in elections at which the offices specified in subdivisions (a) and (b) of Section 13109 are not listed on the ballot.

SEC. 48. Section 13110 of the Elections Code is amended to read:

13110. The group of names of candidates for any partisan office, voter-nominated office, or nonpartisan office shall be the same on the ballots of all voters entitled to vote for candidates for that office, except that in partisan primary elections, the names of candidates for nomination to partisan office shall appear only on the ballots of the political party, the nomination of which they seek, and candidates for election to a political party committee shall appear only on the ballots of the political party for which the candidate seeks election.

SEC. 49. Section 13206 of the Elections Code is amended to read:

13206. (a) On the partisan ballot used in a direct primary election, immediately below the instructions to voters, there shall be a box not less than one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the partisan ballot and shall be set directly above these columns. Within the box shall be printed in 24-point boldface gothic capital type the words "Party-Nominated Offices." Immediately below that phrase within the same box shall be printed, in 8-point boldface gothic type, the following: "Only voters who disclosed a preference upon registering to vote for the same party as the candidate seeking the nomination of any party for the Presidency or election to a party committee may vote for that candidate at the primary election, unless the party has adopted a rule to permit non-party voters to vote in its primary elections."

(b) The same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the ballot and within the box in the same style and point size of type shall be printed "Voter-Nominated and Nonpartisan Offices." Immediately below that phrase within the same box shall be printed, in 8-point boldface gothic type, the following:

"All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office.

Voter-Nominated Offices. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only.

It does not constitute or imply an endorsement of the candidate by the party indicated, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party.

"Nonpartisan Offices. A candidate for a nonpartisan office may not designate a party reference on the ballot."

SEC. 50. Section 13207 of the Elections Code is amended to read:

13207. (a) There shall be printed on the ballot in parallel columns all of the following:

- (1) The respective offices.
- (2) The names of candidates with sufficient blank spaces to allow the voters to write in names not printed on the ballot.
- (3) Whatever measures have been submitted to the voters.

(b) In the case of a ballot which is intended for use in a party primary and which carries both partisan offices, voter-nominated offices, and nonpartisan offices, a vertical solid black line shall divide the columns containing partisan offices, on the left, from the columns containing nonpartisan offices and voter-nominated offices, on the right.

(c) The standard width of columns containing partisan offices, nonpartisan offices, and voter-nominated offices, shall be three inches, but a elections official may vary the width of these columns up to 10 percent more or less than the three-inch standard. However, the column containing presidential and vice presidential candidates may be as wide as four inches.

(d) Any measures that are to be submitted to the voters shall be printed in one or more parallel columns to the right of the columns containing the names of candidates and shall be of sufficient width to contain the title and summary of each measure. To the right of each title and summary shall be printed, on separate lines, the words "Yes" and "No."

SEC. 51. Section 13208 of the Elections Code is amended to read:

13208. (a) In the right-hand margin of each column light vertical lines shall be printed in such a way as to create a voting square after the name of each candidate for partisan office, voter-nominated office, nonpartisan office (except for justice of the Supreme Court or court of appeal), or for chairman of a group of candidates for delegate to a national convention who express no preference for a presidential candidate. In the case of Supreme Court or appellate justices and in the case of measures submitted to the voters, the lines shall be printed so as to create voting squares to the right of the words "Yes" and "No." The voting squares shall be used by the voters to express their choices as provided for in the instruction to voters.

(b) The standard voting square shall be at least three-eighths of an inch square but may be up to one-half inch square. Voting squares for measures may be as tall as is required by the space occupied by the title and summary.

SEC. 52. Section 13230 of the Elections Code is amended to read:

13230. (a) If the county elections official determines that, due to the number of candidates and measures that must be printed on the ballot, the ballot will be larger than may be conveniently handled, the county elections official may provide that a nonpartisan ballot shall be given to each partisan voter, together with his or her partisan ballot, and that the material appearing under the heading "Voter Nominated and Nonpartisan Offices" on partisan ballots, as well as the heading itself, shall be omitted from the partisan ballots.

(b) If the county elections official so provides, the procedure prescribed for the handling and canvassing of ballots shall be modified to the extent necessary to permit the use of two ballots by partisan voters. The county elections official may, in this case, order the second ballot to be printed on paper of a different tint, and assign to those ballots numbers higher than those assigned to the ballots containing partisan offices.

(c) "Partisan voters," for purposes of this section, includes both persons who have disclosed a party preference pursuant to Section 2151 or 2152 and persons who have declined to disclose a party preference, but who have chosen to vote the ballot of a political party as authorized by that party's rules duly noticed to the Secretary of State.

SEC. 53. Section 13300 of the Elections Code is amended to read:

13300. (a) By at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot, placing thereon in each case in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names of all candidates for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election.

(b) The sample ballot shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

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

SEC. 54. Section 13302 of the Elections Code is amended to read:

13302. (a) The county elections official shall forthwith submit the sample ballot of each political party to the chairperson of the county central committee of that party, and shall mail a copy to each candidate for whom nomination papers have been filed in his or her office or whose name has been certified to him or her by the Secretary of State, to the post office address as given in the nomination paper or certification. The county elections official shall post a copy of each sample ballot in a conspicuous place in his or her office.

(b) In connection with any election at which a candidate for a voter-nominated office will appear on the ballot, any qualified political party may submit to the county elections official a list of all candidates for voter-nominated office who will appear on any ballot in the county in question, and who have been endorsed by the party by whatever lawful mechanism the party adopts for endorsing candidates for voter-nominated office. The county elections official shall print any such list that is timely received in the sample ballot. The party chair shall provide a written copy of the list of candidates endorsed or nominated by the party not later than 83 days prior to the election at which the candidate for a voter-nominated office will appear on the ballot.

SEC. 55. Section 13305 of the Elections Code is amended to read:

13305. (a) In each county, the county central committee of each qualified political party may supply to its county elections official, not less than 83 days prior to the direct primary election, a party contributor envelope or a one-page letter, in which both sides may be utilized, to be included in the mailing of the sample ballot to each of the registered voters in the county who have disclosed a preference for that same party on the voter's affidavit of registration. In lieu of supplying the elections official with a sufficient number of copies of the one-page letter, a county central committee may supply the elections official, not less than 83 days before the direct primary election, with the text of the letter and request the elections official to print, or cause to be printed, a sufficient number of copies of the letter to accommodate the mailing. The elections official shall notify the respective county committee of, and the committee shall reimburse the county for, any actual costs incurred by the inclusion or printing, or both. The elections official may, prior to acting pursuant to this subdivision, require the county committee to post a bond to ensure the reimbursement.

(b) Each envelope or letter shall contain a space for the name and address of the contributor, and shall contain language which informs the contributor of the manner in which the money received shall be spent. The language on the envelope or letter shall not contain words critical of any other political party.

(c) All funds received by the return of the party contributor envelopes or in response to the letters shall be kept separate from all other funds and shall be kept in a fund (account) to be established in each county. Any funds which are prohibited under federal law from being used for candidates for federal office shall be further segregated and any portion allocated to candidates shall be disbursed only to candidates for state office.

SEC. 56. Section 14105.1 is added to the Elections Code, to read:

14105.1. In addition to the materials identified in Section 14105, the elections official shall furnish to the precinct officers printed copies of the notices specified in Section 9083.5, as supplied by the Secretary of State. The notices shall be conspicuously posted both inside and outside every polling place.

SEC. 57. Section 15451 of the Elections Code is amended to read:

15451. The nominees for a voter-nominated office shall be determined in accordance with Section 8141.5 and subdivision (b) of Section 8142.

SEC. 58. Section 15452 of the Elections Code is amended to read:

15452. The person who receives a plurality of the votes cast for any office is elected or nominated to that office in any election, except:

- (a) An election for which different provision is made by any city or county charter.
- (b) A municipal election for which different provision is made by the laws under which the city is organized.
- (c) The election of local officials in primary elections as specified in Article 8 (commencing with Section 8140) of Part 1 of Division 8.
- (d) The nomination of candidates for voter-nominated office at the primary election to participate in the general election for that office as specified in Article 8 (commencing with Section 8140) of Part 1 of Division 8.

SEC. 59. Section 15670 of the Elections Code is amended to read:

15670. This article applies only to:

- (a) Candidates for delegates to a national convention for the nomination of party candidates for President and Vice President of the United States.
- (b) Candidates for nomination at the direct primary to offices other than nonpartisan offices or voter-nominated offices.

SEC. 60. Section 15671 of the Elections Code is amended to read:

15671. In case of a tie vote for member of a county central committee, where the office is to be voted for wholly within one county, the election board shall forthwith summon the candidates who have received tie votes to appear before it, at a time and place to be designated by the board, and the board shall at that time and place determine the tie by lot.

SEC. 61. Section 19300 of the Elections Code is amended to read:

19300. A voting machine shall, except at a direct primary election or any election at which a candidate for voter-nominated office is to appear on the ballot, permit the voter to vote for all the candidates of one party or in part for the candidates of one party and in part for the candidates of one or more other parties.

SEC. 62. Section 19301 of the Elections Code is amended to read:

19301. (a) A voting machine shall provide in the general election for grouping under the name of the office to be voted on, all the candidates for the office with the designation of the parties, if any, by which they were respectively nominated or which they designated pursuant to Section 8002.5.

(b) With respect to party-nominated offices, the designation may be by usual or reasonable abbreviation of party names. With respect to voter-nominated offices, the voting machine shall conform to the format specified in subdivision (b) of Section 13105.

SEC. 63. Section 88001 of the Government Code is amended to read:

88001. The ballot pamphlet shall contain all of the following:

- (a) A complete copy of each state measure.
- (b) A copy of the specific constitutional or statutory provision, if any, that would be repealed or revised by each state measure.
- (c) A copy of the arguments and rebuttals for and against each state measure.
- (d) A copy of the analysis of each state measure.
- (e) Tables of contents, indexes, art work, graphics and other materials that the Secretary of State determines will make the ballot pamphlet easier to understand or more useful for the average voter.
- (f) A notice, conspicuously printed on the cover of the ballot pamphlet, indicating that additional copies of the ballot pamphlet will be mailed by the county elections official upon request.
- (g) A written explanation of the judicial retention procedure as required by Section 9083 of the Elections Code.
- (h) The Voter Bill of Rights pursuant to Section 2300 of the Elections Code.
- (i) If the ballot contains an election for the office of United States Senator, information on candidates for United States Senator. A candidate for United States Senator may purchase the space to place a statement in the state ballot pamphlet that does not exceed 250 words. The statement may not make any reference to any opponent of the candidate. The statement shall be submitted in accordance with timeframes and procedures set forth by the Secretary of State for the preparation of the state ballot pamphlet.
- (j) If the ballot contains a question as to the confirmation or retention of a justice of the Supreme Court, information on justices of the Supreme Court who are subject to confirmation or retention.
- (k) If the ballot contains an election for the offices of President and Vice President of the United States, a notice that refers voters to the Secretary of State's Internet Web site for information about candidates for the offices of President and Vice President of the United States.
- (l) A written explanation of the appropriate election procedures for party-nominated, voter-nominated, and nonpartisan offices as required by Section 9083.5 of the Elections Code.

SEC. 64. This measure shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. This measure shall be broadly construed in order to achieve the purposes of the measure above. It is the intent of the Legislature that the provisions of this measure be interpreted or implemented in a manner that facilitates the purposes set forth in this measure.

SEC. 65. If any provision of this measure, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable. The Legislature declares that this measure, and each section, subdivision, sentence, clause, phrase, part, or portion thereof, would have been passed irrespective of the fact that any one or more sections, subdivisions, sentences, clauses, phrases, parts, or portions is found to be invalid. If any provision of this measure is held invalid as applied to any person or circumstance, such invalidity does not affect any application of this measure that can be given effect without the invalid application.

SEC. 66. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 67. This measure shall become operative only if SCA 4 is approved by the voters.



California
LEGISLATIVE INFORMATION

AB-1413 Elections. (2011-2012)

Assembly Bill No. 1413

CHAPTER 3

An act to amend Sections 13, 334, 359.5, 2151, 2154, 2155, 3006, 3007.5, 3205, 7100, 8002.5, 8025, 8040, 8041, 8062, 8068, 8106, 8121, 8124, 8141.5, 8142, 8148, 8300, 8600, 8606, 8803, 8805, 8807, 9083.5, 10704, 10706, 12108, 13105, 13107, 13206, 13207, 13212, 13230, 13300, 13302, 15340, 15402, and 19301 of, to add Section 13206.5 to, and to repeal Sections 325 and 9084.5 of, the Elections Code, and to amend Sections 85312 and 85703 of the Government Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 10, 2012. Filed Secretary of State February 10, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1413, Fong. Elections.

Existing provisions of the California Constitution require a "voter-nominated primary election" for each state elective office and congressional office in California, in which a voter may vote at the primary election for any candidate for congressional or state elective office without regard to the political party preference disclosed by either the candidate or the voter. The candidates receiving the 2 highest vote totals for each office at the primary election, regardless of party preference, compete for the office at the general election. Existing provisions of the Elections Code implement the "voter-nominated primary election" of the California Constitution.

This bill would make technical revisions to provisions of the Elections Code to reflect the "voter-nominated primary election" process. The bill would conform the procedures applicable in case of a tie in the primary election for voter-nominated offices to the existing provisions applicable to specified partisan offices. The bill would impose requirements for forms relating to declaration of candidacy for voter-nominated offices, state ballot pamphlets, and ballots.

Existing law requires every person who desires to be a write-in candidate and have his or her name as written on the ballot of an election counted for a particular office to file a statement of write-in candidacy that contains specified information.

This bill would require that a statement of write-in candidacy for a voter-nominated office also include a certification of the candidate's complete voter registration and party affiliation or preference history for the preceding 10 years, or for as long as he or she has been eligible to vote in the state if less than 10 years. This bill would also provide that a person may not be a write-in candidate at the general election for a voter-nominated office.

Existing law states that a vacancy exists on a general election ballot whenever a candidate for nomination for a nonpartisan or voter-nominated office at a primary election dies on or before the day of the election, and a sufficient number of ballots are marked as being voted for him or her to entitle him or her to nomination if he or she had lived until after the election.

This bill would instead require the name of the candidate for nomination for a voter-nominated office at a primary election to appear on the general election ballot under those circumstances.

Existing law prohibits a vacancy on the general election ballot to be filled except if the elections official ascertained the candidate's death at least 68 days before the date of the ensuing general election.

This bill would prohibit a vacancy on the general election ballot for a voter-nominated office to be filled without exception. This bill would require the name of a candidate who dies but is otherwise entitled to appear on the general election ballot to appear on the ballot and would require the votes cast for the deceased candidate to be counted in determining the results of the election for that office.

The Political Reform Act of 1974 defines and regulates campaign contributions and expenditures, including payments made by a political party for communications with its members.

This bill would make conforming changes to those provisions to reflect the voter-nominated primary election process.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a 2/3 vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13 of the Elections Code is amended to read:

13. (a) A person shall not be considered a legally qualified candidate for an office, for party nomination for a partisan office, or for nomination to participate in the general election for a voter-nominated office, under the laws of this state unless that person has filed a declaration of candidacy or statement of write-in candidacy with the proper official for the particular election or primary, or is entitled to have his or her name placed on a general election ballot by reason of having been nominated at a primary election, or having been selected to fill a vacancy on the general election ballot as provided in Section 8807, or having been selected as an independent candidate pursuant to Section 8304.

(b) Nothing in this section shall be construed as preventing or prohibiting any qualified voter of this state from casting a ballot for a person by writing the name of that person on the ballot, or from having that ballot counted or tabulated, nor shall this section be construed as preventing or prohibiting a person from standing or campaigning for an elective office by means of a "write-in" campaign. However, nothing in this section shall be construed as an exception to the requirements of Section 15341 or to permit a person to be a write-in candidate contrary to Sections 8600 and 8606.

(c) It is the intent of the Legislature, in enacting this section, to enable the Federal Communications Commission to determine who is a "legally qualified candidate" in this state for the purposes of administering Section 315 of Title 47 of the United States Code.

SEC. 2. Section 325 of the Elections Code is repealed.

SEC. 3. Section 334 of the Elections Code is amended to read:

334. "Nonpartisan office" means an office, except for a voter-nominated office, for which no party may nominate a candidate. Judicial, school, county, and municipal offices, including the Superintendent of Public Instruction, are nonpartisan offices.

SEC. 4. Section 359.5 of the Elections Code is amended to read:

359.5. (a) "Voter-nominated office" means a congressional or state elective office for which a candidate may choose to have his or her party preference or lack of party preference indicated upon the ballot. A political party or party central committee shall not nominate a candidate at a state-conducted primary election for a voter-nominated office. The primary conducted for a voter-nominated office does not serve to determine the

nominees of a political party but serves to winnow the candidates for the general election to the candidates receiving the highest or second highest number of votes cast at the primary election. The following offices are voter-nominated offices:

- (1) Governor.
- (2) Lieutenant Governor.
- (3) Secretary of State.
- (4) Controller.
- (5) Treasurer.
- (6) Attorney General.
- (7) Insurance Commissioner.
- (8) Member of the State Board of Equalization.
- (9) United States Senator.
- (10) Member of the United States House of Representatives.
- (11) State Senator.
- (12) Member of the Assembly.

(b) This section does not prohibit a political party or party central committee from endorsing, supporting, or opposing a candidate for an office listed in subdivision (a).

SEC. 5. Section 2151 of the Elections Code is amended to read:

2151. (a) At the time of registering and of transferring registration, an elector may disclose the name of the political party that he or she prefers. The name of that political party shall be stated in the affidavit of registration and the index.

(b) (1) The voter registration card shall inform the affiant that an elector may decline to disclose a political party preference, but a person shall not be entitled to vote the ballot of a political party at a primary election for President of the United States or for a party committee unless he or she has disclosed the name of the party that he or she prefers or unless he or she has declined to disclose a party preference and the political party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to disclose a party preference to vote the ballot of that political party. The voter registration card shall further inform the affiant that a registered voter may vote for any candidate at a primary election for state elective office or congressional office, regardless of the disclosed party preference of the registrant or the candidate seeking that office or the refusal of the registrant or candidate to disclose a party preference.

(2) The voter registration card shall include a listing of all qualified political parties. As part of that listing, the voter registration card shall also contain an option that permits the affiant to decline to disclose a party preference. This option shall be placed at the end of the listing of qualified political parties.

(c) A person shall not be permitted to vote the ballot of a party or for delegates to the convention of a party other than the party disclosed as preferred in his or her registration, except as provided by Section 2152 or unless he or she has declined to disclose a party preference and the party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to disclose a party preference to vote the party ballot or for delegates to the party convention.

(d) As of the effective date of the statute that added this subdivision, any voter who previously stated a political party affiliation when registering to vote shall be deemed to have disclosed that same party as his or her political party preference unless the voter files a new affidavit of registration disclosing a different political party preference or no political party preference. Any voter who previously declined to state a party affiliation shall be deemed to have declined to disclose a party preference unless the voter files a new affidavit of registration disclosing a different political party preference.

(e) The Secretary of State may continue to supply existing affidavits of registration prior to printing new or revised forms that reflect the changes required pursuant to any amendment made to this section.

SEC. 6. Section 2154 of the Elections Code is amended to read:

2154. In the event that the county elections official receives an affidavit of registration that does not include portions of the information for which space is provided, the county elections official shall apply the following rebuttable presumptions:

- (a) If no middle name or initial is shown, it shall be presumed that none exists.
- (b) If no party preference is shown, it shall be presumed that the affiant has declined to disclose a party preference.
- (c) If no execution date is shown, it shall be presumed that the affidavit was executed on or before the 15th day prior to the election, provided that (1) the affidavit is received by the county elections official on or before the 15th day prior to the election, or (2) the affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.
- (d) If the affiant fails to identify his or her state of birth within the United States, it shall be presumed that the affiant was born in a state or territory of the United States if the birthplace of the affiant is shown as "United States," "U.S.A.," or other recognizable term designating the United States.

SEC. 7. Section 2155 of the Elections Code is amended to read:

2155. Upon receipt of a properly executed affidavit of registration or address correction notice or letter pursuant to Section 2119, Article 2 (commencing with Section 2220), or the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), the county elections official shall send the voter a voter notification by nonforwardable, first-class mail, address correction requested. The voter notification shall state the party preference for which the voter has registered in the following format:

Party: (Name of political party)

The voter notification shall be substantially in the following form:

VOTER NOTIFICATION

You are registered to vote. The party preference you chose, if any, is on this card. This card is being sent as a notification of:

1. Your recently completed affidavit of registration.

OR,

2. A change to your registration because of an official notice that you have moved. If your residence address has not changed or if your move is temporary, please call or write to our office immediately.

OR,

3. Your recent registration with a change in party preference. If this change is not correct, please call or write to our office immediately.

You may vote in any election held 15 or more days after the date on this card.

Your name will appear on the index kept at the polls.

Please contact our office if the information shown on the reverse side of this card is incorrect.

(Signature of Voter)

SEC. 8. Section 3006 of the Elections Code is amended to read:

3006. (a) A printed application that is to be distributed to a voter for requesting a vote by mail voter's ballot shall inform the voter that the application for the vote by mail voter's ballot must be received by the elections official not later than seven days prior to the date of the election and shall contain spaces for the following:

- (1) The printed name and residence address of the voter as it appears on the affidavit of registration.

(2) The address to which the ballot is to be mailed.

(3) The voter's signature.

(4) The name and date of the election for which the request is to be made.

(b) (1) The information required by paragraphs (1) and (4) of subdivision (a) may be preprinted on the application. The information required by paragraphs (2) and (3) of subdivision (a) shall be personally affixed by the voter.

(2) An address, as required by paragraph (2) of subdivision (a), may not be the address of a political party, a political campaign headquarters, or a candidate's residence. However, a candidate, his or her spouse, immediate family members, and any other voter who shares the same residence address as the candidate may request that a vote by mail ballot be mailed to the candidate's residence address.

(3) An application that contains preprinted information shall contain a conspicuously printed statement substantially similar to the following: "You have the legal right to mail or deliver this application directly to the local elections official of the county where you reside."

(c) The application shall inform the voter that if he or she has declined to disclose a preference for a political party, the voter may request a vote by mail ballot for a particular political party for the partisan primary election, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote. The application shall contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a checkoff box with a conspicuously printed statement that reads substantially similar to the following: "I have declined to disclose a preference for a qualified political party. However, for this primary election only, I request a vote by mail ballot for the _____ Party." The name of the political party shall be personally affixed by the voter.

(d) The application shall provide the voter with information concerning the procedure for establishing permanent vote by mail voter status, and the basis upon which permanent vote by mail voter status is claimed.

(e) The application shall be attested to by the voter as to the truth and correctness of its content, and shall be signed under penalty of perjury.

SEC. 9. Section 3007.5 of the Elections Code is amended to read:

3007.5. (a) The Secretary of State shall prepare and distribute to appropriate elections officials a uniform electronic application format for a vote by mail voter's ballot that conforms to this section.

(b) The uniform electronic application shall inform the voter that the application for the vote by mail voter's ballot must be received by the elections official not later than seven days prior to the date of the election and shall contain spaces for at least the following information:

(1) The name and residence address of the registered voter as it appears on the affidavit of registration.

(2) The address to which the ballot is to be mailed.

(3) The name and date of the election for which the request is made.

(4) The date of birth of the registered voter.

(c) The uniform electronic application shall inform the voter that if he or she has declined to disclose a preference for a political party, the voter may request a vote by mail ballot for a particular political party for the partisan primary election, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote. The application shall contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall list the parties that have notified the Secretary of State of the adoption of such a rule. The application shall contain a checkoff box with a conspicuously printed statement that reads substantially similar to the following: "I have declined to disclose a preference for a qualified political party. However, for this primary election only, I request a vote by mail ballot for the ____ Party." The name of the political party shall be personally affixed by the voter.

(d) The uniform electronic application shall contain a conspicuously printed statement substantially similar to the following: "Only the registered voter himself or herself may apply for a vote by mail ballot. An application for a vote by mail ballot made by a person other than the registered voter is a criminal offense."

(e) The uniform electronic application shall include a statement substantially similar to the following: "A ballot will not be sent to you if this application is incomplete or inaccurate."

(f) The uniform electronic application format shall not permit the form to be electronically submitted unless all of the information required to complete the application is contained in the appropriate fields.

SEC. 10. Section 3205 of the Elections Code is amended to read:

3205. (a) Vote by mail ballots mailed to, and received from, voters on the permanent vote by mail voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other vote by mail ballots.

(b) Prior to each partisan primary election, county elections officials shall mail to every voter who has declined to disclose a preference for a political party whose name appears on the permanent vote by mail voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request a vote by mail ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. The notice shall also contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a checkoff box with a conspicuously printed statement that reads substantially similar to the following: "I have declined to disclose a preference for a qualified political party. However, for this primary election only, I request a vote by mail ballot for the ____ Party." The name of the political party shall be personally affixed by the voter.

SEC. 11. Section 7100 of the Elections Code is amended to read:

7100. In each year of the general election at which electors of President and Vice President of the United States are to be chosen, the candidate in each congressional district who received the largest number of votes in the primary election among the candidates who disclosed a preference for the Democratic Party shall designate one presidential elector and shall file his or her name and residence and business address with the state chairperson by a date specified by the state chairperson. The candidate for United States Senate who received the largest number of votes in the primary election among the candidates who disclosed a preference for the Democratic Party in each of the last two United States senatorial elections shall designate one presidential elector and shall file his or her name and residence and business address with the state chairperson by a date specified by the state chairperson. In the event there is no candidate for United States Senate or for any particular congressional district who disclosed a preference for the Democratic Party, or if any candidate fails to designate a presidential elector by the date specified by the state chairperson, the state chairperson shall designate one presidential elector for each vacancy. The state chairperson shall file the names and residence and business addresses of all the electors designated pursuant to this section with the Secretary of State by October 1 of the presidential election year.

SEC. 12. Section 8002.5 of the Elections Code is amended to read:

8002.5. (a) A candidate for a voter-nominated office shall indicate one of the following upon his or her declaration of candidacy, which shall be consistent with what appears on the candidate's most recent affidavit of registration:

(1) "Party Preference: _____ (insert the name of the qualified political party as disclosed upon your affidavit of registration)."

(2) "Party Preference: None (if you have declined to disclose a preference for a qualified political party upon your affidavit of registration)."

(b) The selection made by a candidate pursuant to subdivision (a) shall appear on the primary and general election ballot in conjunction with his or her name, and shall not be changed between the primary and general election.

(c) Regardless of the party preference, or lack of party preference, of the candidate or the voter, any qualified voter may vote for any candidate for a voter-nominated office if the voter is otherwise entitled to vote for

candidates for the office to be filled. Nothing in Section 2151, 3006, 3007.5, 3205, or 13102 shall be construed to limit the ability of a voter to cast a primary election ballot for any candidate for a voter-nominated office, regardless of the party preference, or lack of party preference, designated by the candidate for inclusion upon the ballot pursuant to this section, provided that the voter is otherwise qualified to cast a ballot for the office at issue.

(d) A candidate designating a party preference pursuant to subdivision (a) shall not be deemed to be the official nominee of the party designated as preferred by the candidate. A candidate's designation of party preference shall not be construed as an endorsement of that candidate by the party designated. The party preference designated by the candidate is shown for the information of the voters only and may in no way limit the options available to voters.

(e) All references to party preference or affiliation shall be omitted from all forms required to be filed by a voter-nominated candidate pursuant to this division in the same manner that such references are omitted from forms required to be filed by nonpartisan candidates pursuant to Section 8002, except that the declaration of candidacy required by Section 8040 shall include space for the candidate to list the party preference disclosed upon the candidate's most recent affidavit of registration, in accordance with subdivision (a).

SEC. 13. Section 8025 of the Elections Code is amended to read:

8025. If a candidate who has declared a candidacy for a nomination at the direct primary election for a voter-nominated office dies after the last day prescribed for the delivery of nomination documents to the elections official, as provided in Section 8020, but not less than 83 days before the election, any person, regardless of his or her party preference or lack of party preference, may circulate and deliver nomination documents for the office to the elections official up to 5 p.m. on the 74th day prior to the election. In that case, the elections official shall, immediately after receipt of those nomination documents, certify and transmit them to the Secretary of State in the manner specified in this article.

SEC. 14. Section 8040 of the Elections Code is amended to read:

8040. (a) The declaration of candidacy by a candidate shall be substantially as follows:

DECLARATION OF CANDIDACY

I hereby declare myself a candidate for nomination to the office of _____ District Number _____ to be voted for at the primary election to be held _____, 20____, and declare the following to be true:

My name is .

I want my name and occupational designation to appear on the ballot as follows:

Addresses:

Residence

Business

Mailing

Telephone numbers: Day _____ Evening _____

Web site: _____

I meet the statutory and constitutional qualifications for this office (including, but not limited to, citizenship, residency, and party preference, if required).

I am at present an incumbent of the following public office

(if any) _____.

If nominated, I will accept the nomination and not withdraw.

Signature of candidate

A candidate for voter-nominated office shall also complete all of the following:

1. I hereby certify that:

I, _____, solemnly swear (or affirm) that the signatures on this section of the nomination paper were obtained between _____, 20____, and _____, 20____; that I circulated the petition and I witnessed the signatures on this section of the nomination paper being written; and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

My voting residence is _____.

Signed

Subscribed and sworn to before me this _____ day of _____, 20____.

(SEAL)Notary Public (or other official) _____

Examined and certified by me this _____ day of _____, 20____.

Elections Official

WARNING: Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any nomination paper in his or her possession which is entitled to be filed under Section 18202 of the Elections Code.

(c) If the nomination paper is for a partisan office, the nomination paper shall include a statement indicating the party preference of the signer of the nomination paper.

SEC. 16. Section 8062 of the Elections Code is amended to read:

8062. (a) The number of registered voters required to sign a nomination paper for the respective offices are as follows:

- (1) State office or United States Senate, not fewer than 65 nor more than 100.
- (2) House of Representatives in Congress, State Senate or Assembly, State Board of Equalization, or any office voted for in more than one county, and not statewide, not fewer than 40 nor more than 60.
- (3) Candidacy in a single county or any political subdivision of a county, other than State Senate or Assembly, not fewer than 20 nor more than 40.
- (4) With respect to a candidate for a political party committee, if any political party has fewer than 50 voters in the state or in the county or district in which the election is to be held, one-tenth the number of voters of the party.
- (5) If there are fewer than 150 voters in the county or district in which the election is to be held, not fewer than 10 nor more than 20.

(b) The provisions of this section are mandatory, not directory, and no nomination paper shall be deemed sufficient that does not comply with this section. However, this subdivision shall not be construed to prohibit withdrawal of signatures pursuant to Section 8067. This subdivision also shall not be construed to prohibit a court from validating a signature which was previously rejected upon showing of proof that the voter whose signature is in question is otherwise qualified to sign the nomination paper.

SEC. 17. Section 8068 of the Elections Code is amended to read:

8068. Signers shall be voters in the district or political subdivision in which the candidate is to be voted on. With respect to a candidacy for partisan office, signers shall be voters who disclosed a preference, pursuant to Section 2151, for the party, if any, for which the nomination is proposed. With respect to a candidacy for voter-nominated office, signers need not have disclosed a preference for any party.

SEC. 18. Section 8106 of the Elections Code is amended to read:

8106. (a) Notwithstanding any other provision of this article, a candidate may submit a petition containing signatures of registered voters in lieu of a filing fee as follows:

- (1) For the office of California State Assembly, 1,500 signatures.
 - (2) For the office of California State Senate and the United States House of Representatives, 3,000 signatures.
 - (3) For candidates running for statewide office, 10,000 signatures.
 - (4) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he or she seeks nomination is 2,000 or more, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 10 percent of the total of registered voters in the district in which he or she seeks nomination, whichever is less.
 - (5) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he or she seeks nomination is less than 2,000, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 20 percent of the total of registered voters in the district in which he or she seeks nomination, whichever is less.
 - (6) A voter may sign both a candidate's nomination papers and his or her in-lieu-filing-fee petition. However, if signatures appearing on the documents are counted towards both the nomination paper and the in-lieu-filing-fee petition signature requirements, a person may only sign one of the documents.
- (b) The Secretary of State or an elections official shall furnish to each candidate, upon request, and without charge therefor, forms for securing signatures. The number of forms which the elections official shall furnish a candidate shall be a quantity that provides the candidates with spaces for signatures sufficient in number to equal the number of signatures that the candidate is required to secure pursuant to subdivision (a) if the candidate desires that number of forms. However, the elections official, rather than provide the candidate with the number of forms set forth in the preceding sentence, or upon the request of a candidate, may provide the candidate with a master form that may be duplicated by the candidate at the candidate's expense for the purpose of circulating additional petitions. The Secretary of State shall provide the master form. The elections official may provide candidates a form other than the master form provided by the Secretary of State. However, that form shall meet all statutory requirements, and the elections official shall also make available and accept the master form provided by the Secretary of State. All forms shall be made available commencing 45 days before the first day for circulating nomination papers. However, in cases of vacancies for which a special election is authorized or required to be held to fill the vacancy, and where the prescribed nomination period would commence less than 45 days after the creation of the vacancy, the forms shall be made available within five working days after the creation of the vacancy. No other form except the form furnished by the Secretary of State or the elections official or forms duplicated from a master form shall be used to secure signatures. Each petition section shall bear an affidavit signed by the circulator, in substantially the same form as set forth in Section 8041. The substitution of signatures for fees shall be subject to the following provisions:
- (1) Any registered voter may sign an in-lieu-filing-fee petition for any candidate for whom he or she is eligible to vote.
 - (2) If a voter signs more candidates' petitions than there are offices to be filled, the voter's signatures shall be valid only on those petitions which, taken in the order they were filed, do not exceed the number of offices to be filled.
 - (3) In-lieu-filing-fee petitions shall be filed at least 15 days prior to the close of the nomination period. Upon receipt of the minimum number of in-lieu-filing-fee signatures required, or a sufficient combination of signatures and pro rata filing fee, the elections official shall issue nomination papers provisionally. Within 10 days after receipt of a petition, the elections official shall notify the candidate of any deficiency. The candidate shall then, prior to the close of the nomination period, either submit a supplemental petition, or pay a pro rata portion of the filing fee to cover the deficiency.
 - (4) If the petition is circulated for an office in more than one county, the candidate shall submit the signatures to the elections official in the county in which the petition was circulated. The elections official shall, at least two days after verifying the signatures on the petition, notify the Secretary of State of the total number of valid signatures. If the number of signatures is insufficient, the Secretary of State shall notify the candidate and the elections officials of the fact. The candidate may submit the necessary number of valid signatures at any time prior to the close of the period for circulating nomination papers. Each circulator of an in-lieu-filing-fee petition shall be a registered voter of the district or political subdivision in which the candidate is to be voted on. The circulator shall serve within the county in which he or she resides.

(5) Each candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The elections official shall not be required to determine the validity of a greater number of signatures than that required by this section.

(c) For the purposes of this section, the requisite number of signatures shall be computed from the latest registration figures forwarded to the Secretary of State pursuant to Section 2187 prior to the first day on which petitions are available.

(d) All valid signatures obtained pursuant to this section shall be counted toward the number of voters required to sign a nomination paper in accordance with Section 8061 or 8405.

SEC. 19. Section 8121 of the Elections Code is amended to read:

8121. (a) Not less than five days before he or she transmits the certified list of candidates to the county elections officials, as provided in Section 8120, the Secretary of State shall notify each candidate for partisan office and voter-nominated office of the names, addresses, offices, occupations, and party preferences of all other persons who have filed for the same office.

(b) (1) Beginning not less than five days before he or she transmits the certified list of candidates to the county elections officials, as required by Section 8120, the Secretary of State shall post, in a conspicuous place on his or her Internet Web site, the party preference history of each candidate for voter-nominated office for the preceding 10 years, or for as long as he or she has been eligible to vote in the state if less than 10 years. The candidates' party preference history shall be continuously posted until such time as the official canvass is completed for the general or special election at which a candidate is elected to the voter-nominated office sought, except that, in the case of a candidate who participated in the primary election and who was not nominated to participate in the general election, the candidate's party preference history need not continue to be posted following the completion of the official canvass for the primary election in question.

(2) For purposes of this subdivision, "party preference history" also refers to the candidate's history of party registration during the 10 years preceding the effective date of this section.

(3) The Secretary of State shall also conspicuously post on the same Internet Web site as that containing the candidates' party preference history the notice specified by subdivision (b) of Section 9083.5.

SEC. 20. Section 8124 of the Elections Code is amended to read:

8124. The certified list of candidates sent to each county elections official by the Secretary of State shall show all of the following:

(a) The name of each candidate.

(b) The office for which each person is a candidate.

(c) With respect to candidates for partisan offices, the party each person represents.

(d) With respect to candidates for voter-nominated offices, the designation made by the candidate pursuant to Section 8002.5.

(e) If applicable, the ballot designation specified in accordance with Section 13107.

SEC. 21. Section 8141.5 of the Elections Code is amended to read:

8141.5. Except as provided in subdivision (b) of Section 8142, only the candidates for a voter-nominated office who receive the highest or second highest number of votes cast at the primary election shall appear on the ballot as candidates for that office at the ensuing general election. More than one candidate with the same party preference designation may participate in the general election pursuant to this subdivision. Notwithstanding the designation made by the candidate pursuant to Section 8002.5, no candidate for a voter-nominated office shall be deemed to be the official nominee for that office of any political party, and no party is entitled to have a candidate with its party preference designation participate in the general election unless that candidate is one of the candidates receiving the highest or second highest number of votes cast at the primary election.

SEC. 22. Section 8142 of the Elections Code is amended to read:

8142. (a) In the case of a tie vote, nonpartisan candidates receiving the same number of votes shall be candidates at the ensuing general election if they qualify pursuant to Section 8141 whether or not there are more candidates at the general election than prescribed by this article. In no case shall the tie be determined by lot.

(b) In the case of a tie vote among candidates at a primary election for a voter-nominated office, the following applies:

(1) All candidates receiving the highest number of votes cast for any candidate shall be candidates at the ensuing general election whether or not there are more candidates at the general election than prescribed by this article.

(2) Notwithstanding Section 8141.5, if a tie vote among candidates results in more than one primary candidate qualifying for the general election pursuant to subdivision (a), candidates receiving fewer votes shall not be candidates at the general election, even if they receive the second highest number of votes cast.

(3) If only one candidate receives the highest number of votes cast but there is a tie vote among two or more candidates receiving the second highest number of votes cast, each of those second-place candidates shall be a candidate at the ensuing general election along with the candidate receiving the highest number of votes cast, regardless of whether there are more candidates at the general election than prescribed by this article.

(4) In no case shall the tie be determined by lot.

SEC. 23. Section 8148 of the Elections Code is amended to read:

8148. Not less than 68 days before the general election, the Secretary of State shall deliver to the appropriate county elections official a certificate showing:

(a) The name of every person entitled to receive votes within that county at the general election who has received the nomination as a candidate for public office pursuant to this chapter, the designation of the public office for which he or she has been nominated, and, if applicable, the ballot designation specified in accordance with Section 13107.

(b) For each nominee for a partisan office, the name of the party that has nominated him or her.

(c) For each nominee for a voter-nominated office, the designation made by the candidate pursuant to Section 8002.5.

SEC. 24. Section 8300 of the Elections Code is amended to read:

8300. A candidate for a partisan office, including that of presidential elector, may be nominated subsequent to, or by other means than, a primary election pursuant to this chapter. A candidate for nonpartisan office or for voter-nominated office may be nominated subsequent to, or by other means than, a primary election pursuant to this chapter only if a candidate was not nominated or elected at the primary election for that office.

SEC. 25. Section 8600 of the Elections Code is amended to read:

8600. Every person who desires to be a write-in candidate and have his or her name as written on the ballot of an election counted for a particular office shall file:

(a) A statement of write-in candidacy that contains the following information:

(1) Candidate's name.

(2) Residence address.

(3) A declaration stating that he or she is a write-in candidate.

(4) The title of the office for which he or she is running.

(5) The party nomination which he or she seeks, if running in a partisan primary election.

(6) The date of the election.

(7) A certification of the candidate's complete voter registration and party affiliation/preference history for the preceding 10 years, or for as long as he or she has been eligible to vote in the state if less than 10 years, if running for a voter-nominated office.

(8) For any of the offices described in Section 13.5, a statement that the candidate meets the statutory and constitutional requirements for that office as described in that section.

(b) The requisite number of signatures on the nomination papers, if any, required pursuant to Sections 8062, 10220, and 10510, or, in the case of a special district not subject to the Uniform District Election Law (Part 4 (commencing with Section 10500) of Division 10), the number of signatures required by the principal act of the district.

(c) Notwithstanding any other provision of law, a person may not be a write-in candidate at the general election for a voter-nominated office.

SEC. 26. Section 8606 of the Elections Code is amended to read:

8606. Notwithstanding any other provision of law, a person may not be a write-in candidate at the general election for a voter-nominated office.

SEC. 27. Section 8803 of the Elections Code is amended to read:

8803. (a) No vacancy on the ballot for a nonpartisan office at a general election shall be filled except if the candidate dies and that fact has been ascertained by the officer charged with the duty of printing the ballots at least 68 days before the date of the next ensuing general election.

(b) No vacancy on the ballot for a voter-nominated office at a general election shall be filled. If a candidate who is entitled to appear on the general election ballot dies, the name of that candidate shall appear on the general election ballot and any votes cast for that candidate shall be counted in determining the results of the election for that office. If the deceased candidate receives a majority of the votes cast for the office, he or she shall be considered elected to that office and the office shall be considered vacant at the beginning of the term for which the candidate was elected. The vacancy shall be filled in the same manner as if the candidate had died after taking office for that term.

SEC. 28. Section 8805 of the Elections Code is amended to read:

8805. (a) Whenever a candidate for nomination for a nonpartisan office at a primary election dies on or before the day of the election, and a sufficient number of ballots are marked as being voted for him or her to entitle him or her to nomination if he or she had lived until after the election, a vacancy exists on the general election ballot, which shall be filled in the manner provided in Section 8807 for filling a vacancy caused by the death of a candidate.

(b) Whenever a candidate for nomination for a voter-nominated office at a primary election dies on or before the day of the election, and a sufficient number of ballots are marked as being voted for him or her to entitle him or her to nomination if he or she had lived until after the election, the name of the deceased candidate shall appear on the general election ballot and the general election shall proceed in accordance with subdivision (b) of Section 8803.

SEC. 29. Section 8807 of the Elections Code is amended to read:

8807. If the vacancy occurs among candidates chosen at the direct primary to go on the ballot for the succeeding general election for a nonpartisan office, the name of that candidate receiving at the primary election the next highest number of votes shall appear on the ballot to fill the vacancy.

SEC. 30. Section 9083.5 of the Elections Code is amended to read:

9083.5. (a) If a candidate for nomination or election to a partisan office will appear on the ballot, the Secretary of State shall include in the state ballot pamphlet a written explanation of the election procedure for such offices. The explanation shall read substantially similar to the following:

PARTY-NOMINATED/PARTISAN OFFICES

Under the California Constitution, political parties may formally nominate candidates for party-nominated/partisan offices at the primary election. A candidate so nominated will then represent that party as its official candidate for the office in question at the ensuing general election and the ballot will reflect an official designation to that effect. The top votegetter for each party at the primary election is entitled to participate in the general election. Parties also elect officers of official party committees at a partisan primary.

No voter may vote in the primary election of any political party other than the party he or she has disclosed a preference for upon registering to vote. However, a political party may authorize a person who has declined to disclose a party preference to vote in that party's primary election.

(b) If any candidate for nomination or election to a voter-nominated office will appear on the ballot, the Secretary of State shall include in the state ballot pamphlet a written explanation of the election procedure for such offices. The explanation shall read substantially similar to the following:

VOTER-NOMINATED OFFICES

Under the California Constitution, political parties are not entitled to formally nominate candidates for voter-nominated offices at the primary election. A candidate nominated for a voter-nominated office at the primary election is the nominee of the people and not the official nominee of any party at the following general election. A candidate for nomination or election to a voter-nominated office shall have his or her party preference, or lack of party preference, reflected on the primary and general election ballot, but the party preference designation is selected solely by the candidate and is shown for the information of the voters only. It does not constitute or imply an endorsement of the candidate by the party designated, or affiliation between the party and candidate, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party. The parties may list the candidates for voter-nominated offices who have received the official endorsement of the party in the sample ballot.

All voters may vote for any candidate for a voter-nominated office, provided they meet the other qualifications required to vote for that office. The top two votegetters at the primary election advance to the general election for the voter-nominated office, even if both candidates have specified the same party preference designation. No party is entitled to have a candidate with its party preference designation participate in the general election unless such candidate is one of the two highest votegetters at the primary election.

(c) If any candidate for nomination or election to a nonpartisan office, other than judicial office, shall appear on the ballot, the Secretary of State shall include in the state ballot pamphlet a written explanation of the election procedure for such offices. The explanation shall read substantially similar to the following:

NONPARTISAN OFFICES

Under the California Constitution, political parties are not entitled to nominate candidates for nonpartisan offices at the primary election, and a candidate nominated for a nonpartisan office at the primary election is not the official nominee of any party for the office in question at the ensuing general election. A candidate for nomination or election to a nonpartisan office may NOT designate his or her party preference, or lack of party preference, on the primary and general election ballot. The top two votegetters at the primary election advance to the general election for the nonpartisan office.

(d) Posters or other printed materials containing the notices specified in subdivisions (a) to (c), inclusive, shall be included in the precinct supplies pursuant to Section 14105.

SEC. 31. Section 9084.5 of the Elections Code is repealed.

SEC. 32. Section 10704 of the Elections Code is amended to read:

10704. (a) Except as provided in subdivision (b), a special primary election shall be held in the district in which the vacancy occurred on the eighth Tuesday or, if the eighth Tuesday is the day of or the day following a state holiday, the ninth Tuesday preceding the day of the special general election at which the vacancy is to be filled. Candidates at the primary election shall be nominated in the manner set forth in Chapter 1 (commencing with Section 8000) of Part 1 of Division 8, except that nomination papers shall not be circulated more than 63 days before the primary election, shall be left with the county elections official for examination not less than 43 days before the primary election, and shall be filed with the Secretary of State not less than 39 days before the primary election.

(b) A special primary election shall be held in the district in which the vacancy occurred on the ninth Tuesday preceding the day of the special general election at which the vacancy is to be filled if both of the following conditions apply:

(1) The ninth Tuesday preceding the day of the special general election is an established election date pursuant to Section 1000.

(2) A statewide or local election occurring wholly or partially within the same territory in which the vacancy exists is scheduled for the ninth Tuesday preceding the day of the special general election.

(c) Notwithstanding Section 3001, applications for vote by mail voter ballots may be submitted not more than 25 days before the primary election, except that Section 3001 shall apply if the special election or special primary election is consolidated with a statewide election. Applications received by the elections official prior to the 25th day shall not be returned to the sender, but shall be held by the elections official and processed by him or her following the 25th day prior to the election in the same manner as if received at that time.

(d) The sample ballot for a special election shall contain a written explanation of the election procedure for voter-nominated office as specified in subdivision (b) of Section 9083.5. Immediately after the explanation shall be printed the following: "If one candidate receives more than 50% of the votes cast at the special primary election, he or she will be elected to fill the vacancy and no special general election will be held."

(e) On the ballot for a special election, immediately below the instructions to voters, there shall be a box not less than one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ballot and shall be set directly above these columns. Within the box shall be printed the words "Voter-Nominated Office." Immediately below that phrase within the same box shall be printed the following:

"All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated office. The party preference, if any, designated by a candidate is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate."

SEC. 33. Section 10706 of the Elections Code is amended to read:

10706. If no candidate receives a majority of votes cast, the names of the candidates who receive the highest or second highest number of votes cast at the special primary election shall be placed on the special general election ballot. In the case of a tie vote, subdivision (b) of Section 8142 shall apply.

SEC. 34. Section 12108 of the Elections Code is amended to read:

12108. In a case in which this chapter requires the posting or distribution of a list of the names of precinct board members, or a portion of the list, the officers charged with the duty of posting shall ascertain the name of the political party, if any, for which each precinct board member has expressed a preference, as shown in the affidavit of registration of that person. When the list is posted or distributed, there shall be printed the name of the board member's party preference or an abbreviation of the name to the right of the name, or immediately below the name, of each precinct board member. If a precinct board member has not expressed a preference for a political party, the word "None" shall be printed in place of the party name.

SEC. 35. Section 13105 of the Elections Code is amended to read:

13105. (a) In the case of a candidate for a voter-nominated office in a primary election, a general election, or a special election to fill a vacancy in the office of United States Senator, Member of the United States House of Representatives, State Senator, or Member of the Assembly, immediately to the right of and on the same line as the name of the candidate, or immediately below the name if there is not sufficient space to the right of the name, there shall be identified, as specified by the Secretary of State, the designation made by the candidate pursuant to Section 8002.5. The identification shall be in substantially the following form:

(1) In the case of a candidate who designated a political party preference pursuant to Section 8002.5, "Party Preference: _____."

(2) In the case of a candidate who did not state a preference for a political party pursuant to Section 8002.5, "Party Preference: None."

(b) In the case of candidates for President and Vice President, the name of the party shall appear to the right of and equidistant from the pair of names of these candidates and on the same line as the name of the candidate for President, or immediately below the name of the vice presidential candidate if there is not sufficient space to the right of the name.

(c) If for a general election any candidate for President of the United States or Vice President of the United States has received the nomination of any additional party or parties, the name(s) shall be printed to the right of the name of the candidate's own party. Party names of a candidate shall be separated by commas. If a candidate has qualified for the ballot by virtue of an independent nomination, the word "Independent" shall be printed instead of the name of a political party in accordance with the above rules.

SEC. 36. Section 13107 of the Elections Code is amended to read:

13107. (a) With the exception of candidates for Justice of the State Supreme Court or Court of Appeal, immediately under the name of each candidate, and not separated from the name by any line, unless the designation made by the candidate pursuant to Section 8002.5 must be listed immediately below the name of the candidate pursuant to Section 13105, and in that case immediately under the designation, may appear at the option of the candidate only one of the following designations:

(1) Words designating the elective city, county, district, state, or federal office which the candidate holds at the time of filing the nomination documents to which he or she was elected by vote of the people, or to which he or she was appointed, in the case of a superior court judge.

(2) The word "incumbent" if the candidate is a candidate for the same office which he or she holds at the time of filing the nomination papers, and was elected to that office by a vote of the people, or, in the case of a superior court judge, was appointed to that office.

(3) No more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents. For purposes of this section, all California geographical names shall be considered to be one word. Hyphenated words that appear in any generally available standard reference dictionary, published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted, shall be considered as one word. Each part of all other hyphenated words shall be counted as a separate word.

(4) The phrase "appointed incumbent" if the candidate holds an office other than a judicial office by virtue of appointment, and the candidate is a candidate for election to the same office, or, if the candidate is a candidate for election to the same office or to some other office, the word "appointed" and the title of the office. In either instance, the candidate may not use the unmodified word "incumbent" or any words designating the office unmodified by the word "appointed." However, the phrase "appointed incumbent" shall not be required of a candidate who seeks reelection to an office which he or she holds and to which he or she was appointed, as a nominated candidate, in lieu of an election, pursuant to Sections 5326 and 5328 of the Education Code or Section 7228, 7423, 7673, 10229, or 10515 of this code.

(b) Neither the Secretary of State nor any other elections official shall accept a designation of which any of the following would be true:

(1) It would mislead the voter.

(2) It would suggest an evaluation of a candidate, such as outstanding, leading, expert, virtuous, or eminent.

(3) It abbreviates the word "retired" or places it following any word or words which it modifies.

(4) It uses a word or prefix, such as "former" or "ex-," which means a prior status. The only exception is the use of the word "retired."

(5) It uses the name of any political party, whether or not it has qualified for the ballot.

(6) It uses a word or words referring to a racial, religious, or ethnic group.

(7) It refers to any activity prohibited by law.

(c) If, upon checking the nomination documents and the ballot designation worksheet described in Section 13107.3, the elections official finds the designation to be in violation of any of the restrictions set forth in this

section, the elections official shall notify the candidate by registered or certified mail return receipt requested, addressed to the mailing address provided on the candidate's ballot designation worksheet.

(1) The candidate shall, within three days, excluding Saturday, Sunday, and state holidays, from the date he or she receives notice by registered or certified mail, or from the date the candidate receives actual notice of the violation, whichever occurs first, appear before the elections official or, in the case of the Secretary of State, notify the Secretary of State by telephone, and provide a designation that complies with subdivision (a).

(2) In the event the candidate fails to provide a designation that complies with subdivision (a) within the three-day period specified in paragraph (1), no designation shall appear after the candidate's name.

(d) No designation given by a candidate shall be changed by the candidate after the final date for filing nomination documents, except as specifically requested by the elections official as specified in subdivision (c) or as provided in subdivision (e). The elections official shall maintain a copy of the ballot designation worksheet for each candidate that appears on the ballot in the county for the same period of time as applied to nomination documents pursuant to Section 17100.

(e) The designation shall remain the same for all purposes of both primary and general elections, unless the candidate, at least 98 days prior to the general election, requests in writing a different designation which the candidate is entitled to use at the time of the request.

(f) In all cases, the words so used shall be printed in 8-point roman uppercase and lowercase type except that, if the designation selected is so long that it would conflict with the space requirements of Sections 13207 and 13211, the elections official shall use a type size for the designation for each candidate for that office sufficiently smaller to meet these requirements.

(g) Whenever a foreign language translation of a candidate's designation is required under the Voting Rights Act of 1965 (42 U.S.C. Sec. 1971), as amended, to appear on the ballot in addition to the English language version, it shall be as short as possible, as consistent as is practicable with this section, and shall employ abbreviations and initials wherever possible in order to avoid undue length.

SEC. 37. Section 13206 of the Elections Code is amended to read:

13206. (a) On the partisan ballot used in a direct primary election, immediately below the instructions to voters, there shall be a box not less than one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the partisan ballot and shall be set directly above these columns. Within the box shall be printed the words "Party-Nominated Offices." Immediately below that phrase within the same box shall be printed the following: "Only voters who disclosed a preference upon registering to vote for the same party as the candidate seeking the nomination of any party for the Presidency or election to a party committee may vote for that candidate at the primary election, unless the party has adopted a rule to permit non-party voters to vote in its primary elections."

(b) The same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the ballot and within the box in the same style and point size of type shall be printed "Voter-Nominated and Nonpartisan Offices." Immediately below that phrase within the same box shall be printed the following:

"All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot."

SEC. 38. Section 13206.5 is added to the Elections Code, to read:

13206.5. (a) (1) On the ballot used in a statewide general election in each year evenly divisible by the number four, immediately below the instructions to voters, there shall be a box not less than one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ballot and shall be set directly above these columns. Within the box shall be printed the words "Party-Nominated Offices." Immediately below that phrase within the same box shall be printed the following: "The party label accompanying the name of a candidate for party-nominated office on the general election ballot means that the candidate is the official nominee of the party shown."

(2) On the ballot used in a statewide general election in each year evenly divisible by the number four, following the portion of the ballot for party-nominated offices, the same style of box described in paragraph (1) shall appear and within the box in the same style and point size of type shall be printed "Voter-Nominated and Nonpartisan Offices." Immediately below that phrase within the same box shall be printed the following: "All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot."

(b) On the ballot used in a statewide general election in each even-numbered year that is not evenly divisible by the number four, immediately below the instructions to voters, there shall be a box not less than one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ballot and shall be set directly above these columns. Within the box shall be printed the words "Voter-Nominated and Nonpartisan Offices." Immediately below that phrase within the same box shall be printed the following: "All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot."

SEC. 39. Section 13207 of the Elections Code is amended to read:

13207. (a) There shall be printed on the ballot in parallel columns all of the following:

(1) The respective offices.

(2) The names of candidates with sufficient blank spaces to allow the voters to write in names not printed on the ballot, except that no spaces shall be printed for voter-nominated offices at a general election.

(3) Whatever measures have been submitted to the voters.

(b) In the case of a ballot which is intended for use in a party primary and which carries partisan offices, voter-nominated offices, and nonpartisan offices, a vertical solid black line shall divide the columns containing partisan offices, on the left, from the columns containing nonpartisan offices and voter-nominated offices, on the right.

(c) The standard width of columns containing partisan offices, nonpartisan offices, and voter-nominated offices, shall be three inches except that an elections official may vary the width of these columns by up to three-tenths of an inch. The column containing presidential and vice presidential candidates may be as wide as four inches.

(d) A measure that is to be submitted to the voters shall be printed in one or more parallel columns to the right of the columns containing the names of candidates and shall be of sufficient width to contain the title and summary of the measure. To the right of the title and summary shall be printed, on separate lines, the words "Yes" and "No."

SEC. 40. Section 13212 of the Elections Code is amended to read:

13212. Except for a voter-nominated office at a general election, under the designation of each office shall be printed as many blank spaces, defined by light lines or rules at least three-eighths of an inch apart but no more than one-half inch apart, as there are candidates to be nominated or elected to the office.

SEC. 41. Section 13230 of the Elections Code is amended to read:

13230. (a) If the county elections official determines that, due to the number of candidates and measures that must be printed on the ballot, the ballot will be larger than may be conveniently handled, the county elections official may provide that a nonpartisan ballot shall be given to each partisan voter, together with his or her partisan ballot, and that the material appearing under the heading "Voter-Nominated and Nonpartisan Offices" on partisan ballots, as well as the heading itself, shall be omitted from the partisan ballots.

(b) If the county elections official so provides, the procedure prescribed for the handling and canvassing of ballots shall be modified to the extent necessary to permit the use of two ballots by partisan voters. The county elections official may, in this case, order the second ballot to be printed on paper of a different tint, and assign to those ballots numbers higher than those assigned to the ballots containing partisan offices.

(c) "Partisan voters," for purposes of this section, includes both persons who have disclosed a party preference pursuant to Section 2151 or 2152 and persons who have declined to disclose a party preference, but who have chosen to vote the ballot of a political party as authorized by that party's rules duly noticed to the Secretary of State.

SEC. 42. Section 13300 of the Elections Code is amended to read:

13300. (a) By at least 29 days before the partisan primary, each county elections official shall prepare a separate sample ballot for each political party and a separate sample nonpartisan ballot. The county elections official shall place on each ballot, as applicable, in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names of all candidates for whom nomination papers have been duly filed with him or her, or have been certified to him or her by the Secretary of State, to be voted for in his or her county at the partisan primary election.

(b) The sample ballots shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

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

SEC. 43. Section 13302 of the Elections Code is amended to read:

13302. (a) The county elections official shall forthwith submit the sample ballot of each political party to the chairperson of the county central committee of that party, and shall mail a copy to each candidate for whom nomination papers have been filed in his or her office or whose name has been certified to him or her by the Secretary of State, to the post office address given in the nomination paper or certification. The county elections official shall post a copy of each sample ballot in a conspicuous place in his or her office.

(b) In connection with an election at which a candidate for a voter-nominated office will appear on the ballot, a qualified political party may submit to the county elections official a list of all candidates for voter-nominated office who will appear on a ballot in the county in question, and who have been endorsed by the party by whatever lawful mechanism the party adopts for endorsing candidates for voter-nominated office. If a political party timely submits a list to the county elections official pursuant to this subdivision, the county elections official shall print the names of the candidates for voter-nominated office who were endorsed by that political party in the voter information portion of the sample ballot. The party chairperson shall provide a written copy of the list of candidates endorsed by the party not later than 83 days prior to the election at which the candidate for a voter-nominated office will appear on the ballot.

SEC. 44. Section 15340 of the Elections Code is amended to read:

15340. Except for a voter-nominated office at a general election, each voter is entitled to write on the ballot the name of any candidate for any public office, including that of President and Vice President of the United States.

SEC. 45. Section 15402 of the Elections Code is amended to read:

15402. (a) Whenever a candidate whose name appears upon the ballot at any election for an office other than a voter-nominated office dies after the 68th day before the election, the votes cast for the deceased candidate shall be counted in determining the results of the election for the office for which the decedent was a candidate. If the deceased candidate receives a majority of the votes cast for the office, he or she shall be considered elected and the office to which he or she was elected shall be vacant at the beginning of the term for which he or she was elected. The vacancy thus created shall be filled in the same manner as if the candidate had died subsequent to taking office for that term.

(b) Whenever a candidate whose name appears on the ballot at any election for a voter-nominated office dies, the votes cast for the deceased candidate shall be counted in determining the results of the election for the office for which the decedent was a candidate. If the deceased candidate receives a majority of the votes cast for the office at the general election, he or she shall be considered elected and the office to which he or she was elected shall be vacant at the beginning of the term for which he or she was elected. The vacancy thus created shall be filled in the same manner as if the candidate had died subsequent to taking office for that term.

SEC. 46. Section 19301 of the Elections Code is amended to read:

19301. (a) A voting machine shall provide in the general election for grouping under the name of the office to be voted on, all the candidates for the office with the designation of the parties, if any, by which they were respectively nominated or which they designated pursuant to Section 8002.5.

(b) With respect to a party-nominated office, the designation may be by usual or reasonable abbreviation of party names. With respect to a voter-nominated office, the voting machine shall conform to the format specified in subdivision (a) of Section 13105.

SEC. 47. Section 85312 of the Government Code is amended to read:

85312. For purposes of this title, payments for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or expenditures, provided those payments are not made for general public advertising such as broadcasting, billboards, and newspaper advertisements. However, payments made by a political party for communications to a member who is registered as expressing a preference for that party on his or her affidavit of registration pursuant to Sections 2150, 2151, and 2152 of the Elections Code that would otherwise qualify as contributions or expenditures shall be reported in accordance with Article 2 (commencing with Section 84200) of Chapter 4, and Chapter 4.6 (commencing with Section 84600), of this title.

SEC. 48. Section 85703 of the Government Code is amended to read:

85703. (a) Nothing in this act shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with the provisions of Section 85312.

(b) Limitations and prohibitions imposed by a local jurisdiction on payments for a member communication, as defined in subdivision (c), that conflict with Section 85312 and which are thereby prohibited by subdivision (a) include, but are not limited to, any of the following:

(1) Source restrictions on payments for member communications that are not expressly made applicable to member communications by a state statute or by a regulation adopted by the commission pursuant to Section 83112.

(2) Limitations on payments to a political party committee for a member communication that are not expressly made applicable to member communications by a state statute or by a regulation adopted by the commission pursuant to Section 83112.

(3) Limitations on the scope of payments considered directly related to the making of a member communication, including costs associated with the formulation, design, production, and distribution of the communication such as surveys, list acquisition, and consulting fees that are not expressly made applicable to member communications by a state statute or by a regulation adopted by the commission pursuant to Section 83112.

(c) For purposes of this section, "member communication" means a communication, within the meaning of Section 85312, to members, employees, shareholders, or families of members, employees, or shareholders of an organization, including a communication by a political party to a member who is registered as expressing a preference for that party on his or her affidavit of registration pursuant to Sections 2150, 2151, and 2152 of the Elections Code.

SEC. 49. This act shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. This act shall be broadly construed to achieve its purposes. It is the intent of the Legislature that

the provisions of this act be interpreted and implemented in a manner that facilitates the purposes set forth in this act.

SEC. 50. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable. The Legislature declares that this act, and each section, subdivision, sentence, clause, phrase, part, or portion thereof, would have been passed irrespective of the fact that any one or more sections, subdivisions, sentences, clauses, phrases, parts, or portions are found to be invalid. If any provision of this act is held invalid as applied to any person or circumstance, such invalidity does not affect any application of this act that can be given effect without the invalid application.

SEC. 51. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 52. 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 facts constituting the necessity are:

In order to provide for the effective and efficient conduct of the June 5, 2012, statewide primary election, it is necessary that this act take effect immediately.



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

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January 26, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum #11005

TO: All County Clerks/Registrars of Voters

FROM:

Jana M. Lean

Jana M. Lean
Chief, Elections Division

RE: State Special Elections to Fill Vacancies in Voter-Nominated Offices:
Implementing the Top Two Candidates Open Primary Act of 2010

The Secretary of State's office has developed the following directives to ensure county elections officials who conduct special elections to fill legislative or congressional vacancies do so in a uniform fashion that complies with the Top Two Candidates Open Primary Act, which took effect January 1, 2011.

**Special Elections to Fill Vacancies in Voter-Nominated
Offices Under the Top Two Candidates Open Primary Act**

Any special election to fill a legislative or congressional vacancy will be conducted under the new Top Two Candidates Open Primary Act created by the passage of Proposition 14 and Senate Bill 6 (SB 6) (Chapter 1, Statutes of 2009). All of the Elections Code statutes cited within this document took effect January 1, 2011.

I. Documents from Secretary of State (SOS)

The Top Two Candidates Open Primary Act required the SOS to change many of the documents candidates must file in order to run for office. In order to facilitate a uniform implementation of special elections using the new open primary format, the SOS office has revised the necessary candidate filing documents. The new aspects of the forms are highlighted below.

Signatures in-lieu – Prior to the Top Two Candidates Open Primary Act, only a voter of the same political party as a candidate could sign the candidate's nomination paper. Additionally, any voter could sign an in-lieu petition, but only the signature of a voter who was of the same political party could be counted toward the number of voters required to sign a nomination paper. Now anyone, regardless of party preference, can sign a nomination paper. As a result, all signatures on an in-lieu

petition can be counted toward the number of voters required to sign a candidate's nomination paper. (Elec. Code §§ 8061, 8068.)

Declaration of Candidacy – A candidate may indicate his or her party preference, or lack of party preference, upon his or her declaration of candidacy. (Elec. Code § 8002.5.) A new section has been added to require candidates to list their 10-year party preference and voter registration history. (Elec. Code §§ 300.5, 8121.)

Nomination Paper – The number of registered voters who must sign the nomination paper remains the same: 40-60 signatures. (Elec. Code § 8062.) However, any qualified registered voter may sign any candidate's nomination paper, regardless of the voter's or the candidate's party preference or lack of party preference. (Elec. Code § 8068.) Counties do not need to verify the political preferences of the voters who have signed nomination papers. (Elec. Code § 8081.)

The forms themselves, along with the qualifications and requirements for running for office and Special Election Calendars, will be forwarded to any counties that are required to hold special legislative or congressional elections in 2011.

II. Candidates

Prior to the Top Two Candidates Open Primary Act, the law allowed for three types of candidates in a special primary election (and in a special general election if a single candidate did not get a majority of the votes): 1) candidates using the party nomination process, 2) candidates using the write-in process, and 3) candidates using the independent nomination process.

If one candidate did not receive a majority of the votes cast in the special primary election, the top vote-getter from each qualified party and any candidates who qualified using the independent nomination process would move on to the special general election.

Now all candidates running in a special primary election must qualify using either the nomination process or the write-in process. There is no longer an independent nomination process for a special primary election. Also, a candidate from a special primary election will only advance to the special general election if he or she is one of the top two vote-getters, unless there is a tie. There is no general election if one candidate receives a majority of the votes in the primary election. (Elec. Code §§ 10705(a), 10705(b), 10706.)

Additionally, the Top Two Candidates Open Primary Act refers to legislative and congressional offices as "voter-nominated offices"; these offices are no longer referred to as partisan offices. (Elec. Code §§ 337, 359.5.)

A. Nomination Process

Prior to the Top Two Candidates Open Primary Act, candidates using the independent nomination process could run in both the special primary and special general elections.

Now, in the special primary election, no candidate can run under the independent nomination process. (Elec. Code §§ 359.5, 8002.5.) In the special general election, candidates will only be allowed to run under the independent nomination process if no candidate is nominated for this office at the special primary election. (Elec. Code § 8300.)

B. Write-In Candidates

Prior to the Top Two Candidates Open Primary Act, write-in candidates could run in both the special primary and special general elections.

Now, write-in candidates can only run in the special primary election. Only a write-in candidate from the special primary election who is one of the top two vote-getters, is eligible to have his or her name on the ballot in the special general election. (Elec. Code § 8605.) If a person's name is written on a ballot as a write-in candidate in a special general election, the vote cannot be counted. (Elec. Code §§ 8605, 8606.)

III. Language and Layout for Sample Ballot Booklet and Ballot

To facilitate a uniform implementation of special elections using the new open primary format, the SOS office has adopted the following language for county elections officials to use. To assist county elections officials, the SOS office will also provide the multilingual translations of this language.

A. Sample Ballot Booklet

The Top Two Candidates Open Primary Act requires certain information to be provided to voters in the Secretary of State's Official Voter Information Guide (VIG). (Elec. Code § 9083.5(b)) Since there is no VIG for special elections to fill vacancies, county elections officials should provide the following language (taken from Elections Code section 9083.5), on the sample ballot in order to educate voters about the changes in the law:

"VOTER-NOMINATED OFFICES

Under the California Constitution, political parties are not entitled to formally nominate candidates for voter-nominated offices at the primary election, and a candidate nominated for a voter-nominated office at the primary election is not the official nominee of any party for the office in question at the ensuing general election. A candidate for nomination or election to a voter-nominated office may,

however, designate his or her party preference, or lack of party preference, and have that designation reflected on the primary and general election ballot, but the party designation so indicated is selected solely by the candidate and is shown for the information of the voters only. It does not constitute or imply an endorsement of the candidate by the party designated, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party. The parties may have a list of candidates for voter-nominated offices, who have received the official endorsement of the party, printed in the sample ballot.

All voters, regardless of the party for which they have expressed a preference upon registering, or of their refusal to disclose a party preference, may vote for any candidate for a voter-nominated office, provided they meet the other qualifications required to vote for that office. The top two vote-getters at the primary election advance to the general election for the voter-nominated office, and both candidates may have specified the same party preference designation. No party is entitled to have a candidate with its party preference designation participate in the general election unless such candidate is one of the two highest vote-getters at the primary election."

B. Primary Ballot

The Top Two Candidates Open Primary Act requires certain information be provided to voters on the ballot. (Elec. Code § 13206.) Although Elections Code section 13206 seems to contemplate a ballot with partisan, voter-nominated, and nonpartisan offices, the special election ballots will only contain a voter-nominated office. Therefore, to eliminate the potential for confusion, the SOS office is providing the ballot language below for county elections officials to use. It is based on the language of Section 13206(b), but removes the references to "nonpartisan offices" to eliminate the potential for voter confusion since a nonpartisan office will not be on the ballot.

In furtherance of Elections Code section 13206(a), on the ballot, immediately below the instructions to voters, there should be a box not less than one-half inch high enclosed by heavy-ruled line the same as the borderline. The box should be as long as there are columns for the partisan ballot and should be set directly above these columns.

Within the box shall be printed in 24-point boldface gothic capital type the words "Voter-Nominated Offices." Immediately below that phrase within the same box shall be printed, in 8-point boldface gothic type, the following:

"All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated office.

Voter-Nominated Offices. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only.

It does not constitute or imply an endorsement of the candidate by the party indicated, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party."

C. Sample Ballot Booklet and All Ballots

- a. Pursuant to Elections Code sections 8002.5 and 13105(a), the language following the candidates' names should be as follows:
 - i. If a candidate has a political party preference and would like it disclosed: "My party preference is the [insert party] Party."
 - ii. If a candidate has not disclosed a political party preference: "No Party Preference."
 - iii. If a candidate has a political party preference but does not want it listed on the ballot: "My party preference is the Party."
- b. With respect to the ballot layout, there is potentially conflicting language in the Elections Code. The potential for the conflicting language existed prior to the enactment of the Top Two Candidates Open Primary Act and was retained by the Act. If there is not sufficient space next to the candidate's name, Elections Code section 13105 states that the political party identification should be placed "immediately below the name" of the candidate. However, Elections Code section 13107 states that the ballot designation shall be placed "immediately under the name" of the candidate. The potential for conflict will be more likely to occur now, given the new political party identification sentences required by the Top Two Candidates Open Primary Act.

In order to facilitate a uniform implementation of how candidates appear on the ballot, county elections officials should follow a three-line format for all candidates in any special election for legislative or congressional office:

Name of Candidate
Political Party Identification Sentence (e.g., "My party preference is the
Party.")
Ballot Designation

IV. Other Duties

There are a number of other duties that the Top Two Candidates Open Primary Act requires county elections officials to adhere to when conducting a special primary or special general election. Two of the items the Secretary of State's office has identified are:

- A. County elections officials, when posting or distributing a list of the names of precinct board members, must indicate the precinct board members' party preferences or lack of party preferences. (Elec. Code § 12108.)
- B. Any qualified political party may submit to the county elections official a list of all candidates for voter-nominated office who will appear on any ballot in the county in question, and who have been endorsed by the party. The county elections official shall print any such list that is timely received in the sample ballot. (Elec. Code § 13302(b).)

Although this section does not specifically address special elections, given the language of the statute ("In connection with any election at which a candidate for a voter-nominated office will appear on the ballot") and the spirit of the Top Two Candidates Open Primary Act, the SOS office has determined that this subdivision does apply to special elections, despite the shortened time frame.

For purposes of special primary elections, the SOS office has determined that E-43 is the last day for a qualified political party to provide county offices with a list of endorsed candidates. A deadline of E-43 coincides with the close of the nomination period and the last day for candidates to purchase space for candidate statements in the county sample ballot booklets.

With respect to special general elections, given that the timeframes are even more condensed, the SOS office asks that counties work with any interested qualified political parties who wish to submit lists, just as counties work with candidates who wish to purchase space for candidate statements, in determining a last day to submit the lists.

The political parties are not required to pay for the space to print the list.

If you have any questions, please feel free to contact our office at (916) 657-2166.



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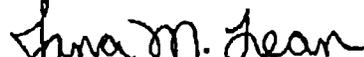
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November 23, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 11125

TO: All County Clerks/Registrars of Voters

FROM:



Jana M. Lean
Chief, Elections Division

RE: Top Two Candidates Open Primary Act of 2010: Candidate Designation of Political Party

While some county elections officials have conducted special elections under the state's Top Two Candidates Open Primary Act that took effect in 2011, the 2012 election cycle will be the first time all county elections officials will conduct an election under the Act.

To ensure this measure is implemented as uniformly as possible across the state next year, the Secretary of State's office is providing clarifying guidance on certain provisions.

This CC/ROV addresses the specific issue of how county elections officials should designate the party preference or lack of party preference for candidates for voter-nominated offices on the ballot pursuant to Elections Code section 13105(a) and in the sample ballot booklet pursuant to Elections Code section 8002.5. As such, it supersedes direction given on this topic in Section III (C) of CC/ROV #11005 issued on January 26, 2011.

Elections Code section 13105(a) addresses how a candidate for a voter-nominated office is permitted to designate his or her political party preference on the ballot and that information is also utilized pursuant to Elections Code section 8002.5.

13105. (a) In the case of candidates for a voter-nominated office in a primary election, a general election, or a special election to fill a vacancy in the office of United States Senator, Member of the United States House of Representatives, State Senator, or Member of the Assembly, immediately to the right of and on the same line as the name of the candidate, or immediately below the name if there is not sufficient space to the right of the name, there shall be identified in eight-point roman lowercase type the name of the political party designated by the candidate pursuant to Section 8002.5. ***The identification shall be in***

substantially the following form: "My party preference is the _____ Party."
 If the candidate designates no political party, the phrase "No Party Preference" shall be printed instead of the party preference identification. If the candidate chooses not to have his or her party preference listed on the ballot, the space that would be filled with a party preference designation shall be left blank.
(Emphasis added)

The length of the phrase "My party preference is the _____ Party" could pose some ballot printing challenges for some county elections officials, which may impact their costs and ability to conduct an election. Furthermore, the direction that an elections official leave the party preference designation blank in cases where a candidate chooses not to have his or her party preference listed on the ballot can be interpreted and implemented in a number of different ways, meaning it would likely be implemented inconsistently across the state.

As highlighted above, the phrase "The identification shall be in substantially the following form" in Elections Code section 13105(a) gives county elections officials some amount of latitude in determining how the party preference of a candidate for a voter-nominated office (disclosed or undisclosed) will appear on the ballot.

To eliminate the potential for longer ballots and increased printing and mailing costs due to implementing Section 13105(a) in accordance with CC/ROV #11005, and to ensure that each candidate's political party designation is provided to voters in a uniform fashion substantially similar to the form prescribed by Elections Code section 13105, the Secretary of State's office is providing the following direction to each county elections official to utilize the following format:

- For a candidate who designated a qualified political party pursuant to Sections 8002.5 and 8040, "Party Preference: _____".
- For a candidate who did not state a preference for a qualified political party pursuant to Sections 8002.5 and 8040, "Party Preference: None".
- For a candidate who chooses not to have his or her stated qualified party preference listed on the ballot, "Party Preference: Not Given".

There may be cases where using even the above listed shorter candidate political party designations will not solve ballot printing and cost challenges.

In such rare cases where limitations in voting systems and/or ballot layout capacity necessitates abbreviating qualified political party names where a candidate is permitted to express a preference as identified above, the Secretary of State's office is providing the following direction to each county elections official:

- Utilize the following list of approved abbreviations:

DEM – Democratic
REP – Republican
AI – American Independent
GRN – Green
LIB – Libertarian
PF – Peace and Freedom
Not Given – Not Given (this designation should not be abbreviated)

Should a county utilize the abbreviation option, it must provide a list of the abbreviations to voters in the sample ballot booklet, in postings at the polling places, and in information mailed to vote-by-mail voters.

- Utilize political party abbreviations for each candidate in a particular contest and throughout the entire ballot on a countywide basis, even though only one candidate may require the use of an abbreviation.

The Legislature is contemplating amendments to Section 13105 and other related sections of the law that may cause or require the Secretary of State to revisit the direction provided in this CC/ROV. However, until such time that occurs, the Secretary of State recommends that county elections officials adhere to the direction provided above.

If you have any questions, please feel free to contact our office at (916) 657-2166.
Thank you.



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November 23, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 11126

TO: All County Clerks/Registrars of Voters

FROM: Jana M. Lean
 Jana M. Lean
 Chief, Elections Division

RE: Top Two Candidates Open Primary Act of 2010: Implementation Guidelines

While some county elections officials have conducted special elections under the state's Top Two Candidates Open Primary Act that took effect in 2011, the 2012 election cycle will be the first time all county elections officials will conduct an election under the Act.

The Secretary of State's office has developed the following direction to ensure that all county elections officials conduct the upcoming statewide elections in a uniform fashion that complies with the Top Two Candidates Open Primary Act.

**Statewide Elections for Voter-Nominated Offices
 Under the Top Two Candidates Open Primary Act**

I. Introduction

The Top Two Candidates Open Primary Act was created and implemented by the June 2010 passage of Proposition 14 and by Senate Bill 6 (SB 6) (Chapter 1, Statutes of 2009).

Except for the office of U.S. President and county central committee offices, offices that used to be known as "partisan offices" (e.g., state constitutional offices, congressional, and state legislative offices) are now known as "voter-nominated" offices. (Elec. Code §§ 337, 359.5.) What used to be known as a "political party affiliation" is now known as a "political party preference."

The June 5, 2012, Presidential Primary Election and the November 6, 2012, General Election will be conducted under the Top Two Candidates Open Primary Act, as it pertains to voter-nominated offices.

All of the Elections Code statutes cited within this document took effect January 1, 2011.

II. Documents from Secretary of State (SOS) for Voter-Nominated Offices

The Top Two Candidates Open Primary Act required the SOS to change many of the documents candidates must file in order to run for voter-nominated offices. In order to facilitate a uniform implementation of the upcoming statewide primary election using the new open primary format, the SOS office has revised the necessary candidate filing documents. The new aspects of the forms are highlighted below.

Signatures in-lieu – Prior to the Top Two Candidates Open Primary Act, only a voter of the same political party as a candidate could sign the candidate's nomination paper. Additionally, any voter could sign an in-lieu petition, but only the signature of a voter who was of the same political party could be counted toward the number of voters required to sign a nomination paper. Now any registered voter, regardless of party preference, can sign a nomination paper. As a result, all signatures on an in-lieu petition can be counted toward the number of voters required to sign a candidate's nomination paper. (Elec. Code §§ 8061, 8068.)

Declaration of Candidacy – A candidate may indicate his or her party preference, or lack of party preference, upon his or her declaration of candidacy. (Elec. Code § 8002.5.) A new section has been added to require candidates to list their 10-year party preference and voter registration history. (Elec. Code §§ 300.5, 8121.)

Nomination Paper – The number of registered voters who must sign the nomination paper remains the same and applies to all candidates. For United States Senator, 65-100 signatures are required, and for United States Representative in Congress, State Senator, and Member of the State Assembly, 40-60 signatures are required. (Elec. Code § 8062.) Any registered voter may sign any candidate's nomination paper, regardless of the voter's or the candidate's party preference or lack of party preference. (Elec. Code § 8068.) Counties do not need to verify the political preferences of the voters who have signed nomination papers. (Elec. Code § 8081.)

The forms themselves, along with the qualifications and requirements for running for voter-nominated office, have been forwarded to all the counties. Additionally, the qualifications and requirements are posted on our website at www.sos.ca.gov/elections/2012-elections/qualifications.htm.

III. Candidates for Voter-Nominated Offices

Prior to the Top Two Candidates Open Primary Act, the law allowed for three types of candidates: 1) candidates using the party nomination process (primary only), 2)

candidates using the write-in process (both primary and general), and 3) candidates using the independent nomination process (general only).

After the primary election, the top voter-getter from each qualified political party would move on to the general election, as would any write-in candidates who received votes equal in number to 1 percent of all votes cast for the specific office at the last preceding general election at which that office was filled.

At the general election, voters could cast ballots for candidates from the above two categories, as well as any candidates who qualified by using the write-in process or the independent nomination process.

Under the Top Two Candidates Open Primary Act, although the law still allows for three types of candidates, there have been the following changes: 1) candidates using the voter nomination process (primary only), 2) candidates using the write-in process (primary only), and 3) candidates using the independent nomination process (general only, and only in a specific circumstance).

Accordingly, at the primary election, all candidates running for a voter-nominated office must qualify using either the voter nomination process or the write-in process. A candidate from the primary election, including a write-in candidate, will only advance to the general election if he or she is one of the top two vote-getters (Elec. Code §§ 8141.5, 8605.)

At the general election, if a person's name is written on a ballot as a write-in candidate, the vote will not be counted. (Elec. Code § 8606.) Furthermore candidates will only be allowed to run for a voter-nominated office using the independent nomination process if no candidate is nominated for that voter-nominated office at the primary election. (Elec. Code § 8300.)

IV. Language and Layout for Ballot

To facilitate the uniform implementation of elections using the new open primary format, the SOS office has adopted the following language for county elections officials to use. To assist county elections officials, the SOS office will also provide the translation of this language.

A. Primary Ballot

The Top Two Candidates Open Primary Act requires certain information be provided to voters on the ballot. (Elec. Code § 13206.)

Pursuant to Section 13206(a), on the partisan ballot, immediately below the instructions to voters, there should be a box not less than one-half inch high enclosed by heavy-ruled line the same as the borderline. The box shall be as long as there

are columns for the partisan ballot and shall be set directly above these columns. Within the box shall be printed in 24-point boldface gothic capital type the words "Party-Nominated Offices." Immediately below that phrase within the same box shall be printed, in 8-point boldface gothic type, the following:

"Only voters who disclosed a preference upon registering to vote for the same party as the candidate seeking the nomination of any party for the Presidency or election to a party committee may vote for that candidate at the primary election, unless the party has adopted a rule to permit non-party voters to vote in its primary elections."

Although Section 13206 seems to contemplate a ballot with partisan, voter-nominated, and nonpartisan offices, the June 5, 2012, Presidential Primary Election ballot will not contain a nonpartisan office. Therefore, to eliminate the potential for confusion, the SOS office is providing the ballot language below for county elections officials to use. It is based on the language of Section 13206(b), but removes the references to "nonpartisan offices" to eliminate the potential for voter confusion since there will not be a nonpartisan office on the ballot.

The same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the ballot and within the box in the same style and point size of type shall be printed "Voter-Nominated Offices." Immediately below that phrase within the same box shall be printed, in 8-point boldface gothic type, the following:

"All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated office.

Voter-Nominated Offices. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only.

It does not constitute or imply an endorsement of the candidate by the party indicated, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party."

B. Sample Ballot Booklet and All Ballots

- a. Pursuant to Elections Code sections 8002.5 and 13105(a), and the direction set forth in CC/ROV #11125, the language following the candidates' names should be as follows:

- i. For a candidate who designated a qualified political party pursuant to Sections 8002.5 and 8040, "Party Preference: _____".
 - ii. For a candidate who did not state a preference for a qualified political party pursuant to Sections 8002.5 and 8040, "Party Preference: None".
 - iii. For a candidate who chooses not to have his or her stated qualified party preference listed on the ballot, "Party Preference: Not Given".
- b. With respect to the ballot layout, there is potentially conflicting language in the Elections Code. The potential for the conflicting language existed prior to the enactment of the Top Two Candidates Open Primary Act and was retained by the Act. If there is not sufficient space next to the candidate's name, Elections Code section 13105 states that the political party identification should be placed "immediately below the name" of the candidate. However, Elections Code section 13107 states that the ballot designation shall be placed "immediately under the name" of the candidate. The potential for conflict will be more likely to occur now, given the new political party identification sentences required by the Top Two Candidates Open Primary Act.

In order to facilitate a uniform implementation of how candidates appear on the ballot, county elections officials should follow a three-line format for all candidates in any election for congressional or state legislative office:

Name of Candidate
Political Party Identification Sentence (e.g., "Party Preference: _____.")
Ballot Designation

V. Other Duties

There are a number of other duties that the Top Two Candidates Open Primary Act requires county elections officials to adhere to when conducting a primary or general election. Those items the Secretary of State's office has identified are:

- A. County elections officials, when posting or distributing a list of the names of precinct board members, must indicate the precinct board members' party preferences or lack of party preferences. (Elec. Code § 12108.)
- B. Any qualified political party may submit to the county elections official a list of all candidates for voter-nominated office who will appear on any ballot in the county in question, and who have been endorsed by the party. The county elections official shall print any such list that is timely received in the sample ballot. (Elec. Code § 13302(b).)

The political parties are not required to pay for the space to print the list.

- C. County elections officials must furnish, as a part of the precinct supplies, printed copies of notices supplied by the Secretary of State's office; the notices must be conspicuously posted both inside and outside every polling place. (Elec. Code § 14105.1.) The notices, specified in Elections Code section 9083.5, are a written explanation of the electoral process for party-nominated and voter-nominated offices.

The Legislature is contemplating amendments to the Top Two Candidates Open Primary Act of 2010 law that may cause or require the Secretary of State to revisit the direction provided in this CC/ROV. However, until such time that occurs, the Secretary of State recommends that county elections officials adhere to the direction provided above.

If you have any questions, please feel free to contact our office at (916) 657-2166.
Thank you.

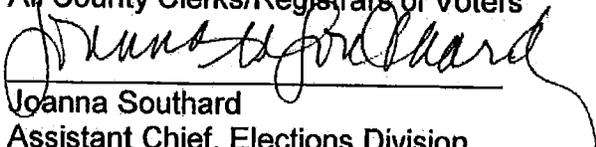


DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

February 10, 2012

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 12059

TO: All County Clerks/Registrars of Voters
 FROM: 
 Joanna Southard
 Assistant Chief, Elections Division
 RE: Top Two Candidates Open Primary Act of 2010: UPDATED
 Implementation Guidelines

While some county elections officials have conducted special elections under the state's Top Two Candidates Open Primary Act, the 2012 election cycle will be the first time all county elections officials will conduct an election under the Act.

The Secretary of State's office has developed the following **updated** direction to ensure that all county elections officials conduct the upcoming statewide elections in a uniform fashion that complies with the Top Two Candidates Open Primary Act.

Top Two Candidates Open Primary Act was amended by Assembly Bill 1413 (AB 1413), which was signed into law on February 10, 2012, and took effect immediately (Chapter 3, Statutes of 2012.) As a result, this CC/ROV amends and supersedes all direction given in CC/ROV #11125 and CC/ROV #11126, both dated November 23, 2011.

**Statewide Elections for Voter-Nominated Offices
 Under the Top Two Candidates Open Primary Act**

I. Introduction

The Top Two Candidates Open Primary Act was approved by the voters in June 2010 and the implementation of the Act was directed by the approval of SB 6 (Chapter 1, Statutes of 2009), and AB 1413 (Chapter 3, Statutes of 2012).

Except for the office of U.S. President and county central committee offices, offices that used to be known as "partisan offices" (e.g., state constitutional offices, congressional, and state legislative offices) are now known as "voter-nominated" offices. (Elec. Code

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§§ 337, 359.5.) What used to be known as a "political party affiliation" is now known as a "political party preference."

The June 5, 2012, Presidential Primary Election and the November 6, 2012, General Election will be conducted under the Top Two Candidates Open Primary Act, as it pertains to voter-nominated offices.

II. Documents from Secretary of State (SOS) for Voter-Nominated Offices

The Top Two Candidates Open Primary Act required the SOS to change many of the documents candidates must file in order to run for voter-nominated offices. To facilitate a uniform implementation of the upcoming statewide primary election using the new open primary format, the SOS office has revised the necessary candidate filing documents. The new aspects of the forms are highlighted below.

Signatures in-lieu – Prior to the Top Two Candidates Open Primary Act, only a voter of the same political party as a candidate could sign the candidate's nomination paper. Additionally, any voter could sign an in-lieu petition, but only the signature of a voter who was of the same political party could be counted toward the number of voters required to sign a nomination paper. Now any registered voter, regardless of party preference, can sign a nomination paper. As a result, all signatures on an in-lieu petition can be counted toward the number of voters required to sign a candidate's nomination paper. (Elec. Code §§ 8061, 8068.)

AB 1413's effect on signatures in-lieu: None.

Declaration of Candidacy – A candidate may indicate his or her party preference, or lack of party preference, upon his or her Declaration of Candidacy. (Elec. Code § 8002.5.) A new section has been added to require candidates to list their 10-year party preference and voter registration history. (Elec. Code §§ 300.5, 8121.)

AB 1413's effect on Declaration of Candidacy: Requires candidates to provide their party preference or lack of party preference consistent with the preference stated on their voter registration card. Removed the option for a candidate who disclosed a party preference on their voter registration card to withhold that information from the ballot.

Nomination Paper – The number of registered voters who must sign the nomination paper remains the same and applies to all candidates. For United States Senator, 65-100 signatures are required, and for United States Representative in Congress, State Senator, and Member of the State Assembly, 40-60 signatures are required. (Elec. Code § 8062.) Any registered voter may sign any candidate's nomination paper, regardless of the voter's or the candidate's party preference or lack of party

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preference. (Elec. Code § 8068.) Counties do not need to verify the political preferences of the voters who have signed nomination papers. (Elec. Code § 8081.)

AB 1413's effect on nomination papers: None.

The forms, along with the qualifications and requirements for running for voter-nominated office, were forwarded to all county elections offices in November 2011. The newly revised Declaration of Candidacy, as well as the newly revised Statement of Write-In Candidacy and the Ballot Designation Worksheet, all which comply with AB 1413, have been forwarded to all county elections offices. Additionally, the qualifications and requirements are posted on our website at www.sos.ca.gov/elections/2012-elections/qualifications.htm.

III. Candidates for Voter-Nominated Offices

Nothing in this section has changed as a result of AB 1413.

Prior to the Top Two Candidates Open Primary Act, the law allowed for three types of candidates:

- 1) candidates using the party nomination process (primary only),
- 2) candidates using the write-in process (both primary and general), and
- 3) candidates using the independent nomination process (general only).

After the primary election, the top voter-getter from each qualified political party would move on to the general election, as would any write-in candidates who received votes equal in number to 1 percent of all votes cast for the specific office at the last preceding general election at which that office was filled.

At the general election, voters could cast ballots for candidates from the above two categories, as well as any candidates who qualified by using the write-in process or the independent nomination process.

Under the Top Two Candidates Open Primary Act, although the law still allows for three types of candidates, there have been the following changes:

- 1) candidates using the voter nomination process (primary only),
- 2) candidates using the write-in process (primary only), and
- 3) candidates using the independent nomination process (general only, and only in a specific circumstance).

Accordingly, at the primary election, all candidates running for a voter-nominated office must qualify using either the voter-nomination process or the write-in process. A candidate from the primary election, including a write-in candidate, will only advance to

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the general election if he or she is one of the top two vote-getters (Elec. Code §§ 8141.5, 8605.)

At the general election, if a person's name is written on a ballot as a write-in candidate, the vote will not be counted. (Elec. Code § 8606.) Furthermore candidates will only be allowed to run for a voter-nominated office using the independent nomination process if no candidate is nominated for that voter-nominated office at the primary election. (Elec. Code § 8300.)

IV. Language and Layout for Ballot

As a result of AB 1413, there have been changes to this section:

The Top Two Candidates Open Primary Act and AB 1413 require certain information be provided to voters on the ballot. (Elec. Code §§ 13206, 13206.5.) To assist county elections officials, the SOS office will provide the translations of the required language.

A. Primary Ballot

1. Pursuant to Section 13206(a), on the partisan ballot, immediately below the instructions to voters, there should be a box not less than one-half inch high enclosed by heavy-ruled line the same as the borderline. The box shall be as long as there are columns for the partisan ballot and shall be set directly above these columns. Within the box shall be printed the words "Party-Nominated Offices." Immediately below that phrase within the same box shall be printed the following:

"Only voters who disclosed a preference upon registering to vote for the same party as the candidate seeking the nomination of any party for the Presidency or election to a party committee may vote for that candidate at the primary election, unless the party has adopted a rule to permit non-party voters to vote in its primary elections."

Pursuant to Section 13206(b), the same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the ballot and within the box in the same style and point size of type shall be printed "Voter-Nominated and Nonpartisan Offices." Immediately below that phrase within the same box shall be printed the following:

"All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not

imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot."

2. For county elections officials who want to create two ballot types – a partisan ballot and a nonpartisan ballot, Elections Code section 13230(a) requires that on the partisan ballot, the material appearing under the heading "Voter-Nominated and Nonpartisan Offices," as well as the heading itself, shall be omitted.
3. Based upon the direction provided in CC/ROV # 12035 dated January 23, 2012, relating to the printing of ballots for the Americans Elect Party, there is no need to print ballots for voters who have disclosed a preference for the Americans Elect Party.

B. General Ballot

1. Pursuant to Section 13206.5(a)(1), on the ballot used in this upcoming statewide general election, immediately below the instructions to voters, there shall be a box not less than one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ballot and shall be set directly above these columns. Within the box shall be printed the words "Party-Nominated Offices." Immediately below that phrase within the same box shall be printed the following:

"The party label accompanying the name of a candidate for party-nominated office on the general election ballot means that the candidate is the official nominee of the party shown."

Pursuant to Section 13206.5(a)(2), the same style of box described in subdivision (a)(1) shall also appear and within the box in the same style and point size of type shall be printed "Voter-Nominated and Nonpartisan Offices." Immediately below that phrase within the same box shall be printed the following:

"All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot."

2. Pursuant to Elections Codes sections 13207 and 13212, no write-in spaces shall be printed for voter-nominated offices at a general election.

C. Sample Ballot Booklet and Ballots

1. Pursuant to Elections Code sections 8002.5 and 13105(a), for candidates for voter-nominated offices, the language following the candidates' names should be as follows:
 - a. For a candidate who designated a qualified political party on his or her affidavit of registration and pursuant to Sections 8002.5 and 8040, "Party Preference: _____".
 - b. For a candidate who declined to disclose a preference for a qualified political party on his or her affidavit of registration and pursuant to Sections 8002.5 and 8040, "Party Preference: None".

The above-described designations made by the candidates shall appear on both the primary and general election ballots and shall not be changed between the primary and general elections.

2. There may be cases where using the above-listed candidate political party designations will not solve ballot printing and cost challenges.

In such rare cases where limitations in voting systems and/or ballot layout capacity necessitates abbreviating qualified political party names where a candidate is permitted to express a preference as identified above, the Secretary of State's office is providing the following direction to each county elections official:

- a. Utilize the following list of approved abbreviations:

DEM – Democratic
 REP – Republican
 AI – American Independent
 AE – Americans Elect
 GRN – Green
 LIB – Libertarian
 PF – Peace and Freedom

Should a county utilize the abbreviation option, it must provide a list of the abbreviations to voters in the sample ballot booklet, in postings at the polling places, and in information mailed to vote-by-mail voters.

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- b. Utilize political party abbreviations for each candidate in a particular contest and throughout the entire ballot on a countywide basis, even though only one candidate may require the use of an abbreviation.
3. With respect to the ballot layout for voter-nominated offices, if there is not sufficient space next to the candidate's name, Elections Code section 13105 states that the political party designation should be placed "immediately below the name" of the candidate. Elections Code section 13107 states that if the political party designation is placed below the candidate's name, the ballot designation shall be placed immediately under the political party designation, otherwise, the ballot designation shall be placed immediately under the candidate's name.
4. Pursuant to Elections Code section 13105(b), for candidates for President and Vice President, the name of the party shall appear to the right of and equidistant from the pair of names, "and on the same line as the name of the candidate for President, or immediately below the name of the vice presidential candidate if there is not sufficient space to the right of the name."

V. Other Duties

There are a number of other duties that the Top Two Candidates Open Primary Act requires county elections officials to adhere to when conducting a primary or general election. Those items the Secretary of State's office has identified are:

- A. As a result of AB 1413, the following information has changed:

County elections officials, when posting or distributing a list of the names of precinct board members, must indicate the precinct board members' political party preferences. If a precinct board member has not expressed a preference for a political party, the word "None" shall be printed in place of a party name. (Elec. Code § 12108.)

- B. As a result of AB 1413, the language of the statute changed slightly, but there is not a change in the effect:

A qualified political party may submit to the county elections official a list of all candidates for voter-nominated office who will appear on a ballot in the county in question, and who have been endorsed by the party. The county elections official shall print the names of the candidates for voter-nominated office who were endorsed by that political party in the voter information portion of the sample ballot. The party chair must provide written copy of the list of candidates endorsed by the party to the elections official no later than E-83. (Elec. Code § 13302(b).)

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The political parties are not required to pay for the space to print the list.

County elections officials are required to print the names of the candidates for voter-nominated office who were endorsed by any of the seven qualified state political parties when those names are provided to the county elections official by the party chair. There is no requirement that, or ability for, a county elections official to print endorsements made by county central committees.

C. Nothing in this section has changed as a result of AB 1413:

County elections officials must furnish, as a part of the precinct supplies, printed copies of notices supplied by the Secretary of State's office; the notices must be conspicuously posted both inside and outside every polling place. (Elec. Code § 14105.1.) The notices, specified in Elections Code section 9083.5, are a written explanation of the election process for party-nominated, voter-nominated, and nonpartisan offices.

If you have any questions, please feel free to contact our office at (916) 657-2166.

Thank you.

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

County of Sacramento
Print or Type Name of Authorized Local Agency
or School District Official

Director of Finance
Print or Type Title

Julie Valverde
Signature of Authorized Local Agency or
School District Official

5/24/2013
Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*



Received
August 30, 2013
Commission on
State Mandates

August 30, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the test claim entitled "Top Two Candidates Open Primary Act" (12-TC-02), submitted by the County of Sacramento (claimant) to determine whether costs attributable by the claimant to statutes cited in the test claim and certain executive orders, issued by the Secretary of State's Office, resulted in reimbursable state mandated costs.

The claimant cites three statutes that impose the alleged mandate, which are:

- 1) Chapter 2 of the Statutes of 2009 (SCA4). This Senate Constitutional Amendment was the measure that put the "Top Two Candidates Open Primary Act" before the voters.
- 2) Chapter 1 of the Statutes of 2009 (SB 6). This Senate Bill, according to the Senate Floor analysis (attachment A), implements SCA 4, the "Top Two Candidates Open Primary Act."
- 3) Chapter 3 of the Statutes of 2012 (AB 1413). As stated in the Assembly Bill analysis of AB 1413 (attachment B), "At the same time that it passed SCA 4, the Legislature also approved and the Governor signed SB 6 (Maldonado), Chapter 1, Statutes of 2009. SB 6 made various changes to state statute that became effective upon the approval of Proposition 14 by the voters. This bill (AB 1413) makes numerous technical and substantive changes to the Elections Code to provide for more effective and efficient implementation of California's top two primary election system."

These three statutes were necessary to either put the ballot measure before the voters or to implement the ballot measure once it was approved by the voters. Specifically, the voters approved Proposition 14, the Top Two Candidates Open Primary Act, in the June 8, 2010 election.

In addition to these statutes, the claimant contends that four Secretary of State's "County Clerk/Registrars of Voters Memorandums" also impose the alleged mandate. These memorandums are:

1. County Clerk/Registrar of Voters (CC/ROV) Memorandum #11005, dated January 1, 2011, which states "The Secretary of State's office has developed the following directives to ensure county elections officials who conduct special elections to fill legislative or congressional vacancies do so in a uniform fashion that complies with the Top Two Candidates Open Primary Act, which took effect January 1, 2011."
2. CC/ROV Memorandum #11125, dated November 23, 2011, which states "While some county elections officials have conducted special elections under the state's Top Two Candidates Open Primary Act that took effect in 2011, the 2012 election cycle will be the first time all county elections officials will conduct an election under the Act. To ensure this measure is implemented as uniformly as possible across the state next year, the Secretary of State's office is providing clarifying guidance on certain provisions."
3. CC/ROV Memorandum #11126, dated November 23, 2011, which states "While some county elections officials have conducted special elections under the state's Top Two Candidates Open Primary Act that took effect in 2011, the 2012 election cycle will be the first time all county elections officials will conduct an election under the Act. The Secretary of State's office has developed the following direction to ensure that all county elections officials conduct the upcoming statewide elections in a uniform fashion that complies with the Top Two Candidates Open Primary Act."
4. CC/ROV Memorandum #12059, dated February 10, 2012, which states "While some county elections officials have conducted special elections under the state's Top Two Candidates Open Primary Act, the 2012 election cycle will be the first time all county elections officials will conduct an election under the Act. The Secretary of State's office has developed the following **updated** direction to ensure that all county elections officials conduct the upcoming statewide elections in a uniform fashion that complies with the Top Two Candidates Open Primary Act."

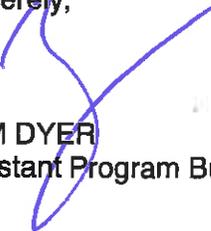
These four memorandums were considered necessary by the Secretary of State's office to implement the ballot measure once it was approved by the voters.

Finance is of the opinion that the Commission on State Mandates (Commission) should deny the test claim, in its entirety, based upon Government Code section 17556 (f) which finds that no state mandate exists if "The statute or executive order imposes duties that are necessary to implement, or are 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."

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list." If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Pr


TOM DYER
Assistant Program Budget Manager

ENCLOSURE

SENATE RULES COMMITTEE	SB 6
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 6
Author: Maldonado (R), et al
Amended: 2/19/08
Vote: 21

WITHOUT REFERENCE TO COMMITTEE OR FILE

SUBJECT : Elections: open primary

SOURCE : Author

DIGEST : This bill implements SCA 4 (Maldonado) the Top-Two Candidates Open Primary Act.

ANALYSIS : The California Constitution currently provides that a political party that participated in a primary election for a partisan office has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party's candidates.

SB 6 implements the statutory implementing language of SCA 4 as follows:

1. Permits voters to register as indicating "no party preference" in a manner similar to the current option of declining to state a party preference. Provides for various mechanisms to inform voters of this option and the ramifications thereof including notices on

CONTINUED

affidavits of registration, in the ballot pamphlet, ballots themselves, and at polling places.

2. Requires voters to indicate a party preference when registering in order to vote in primary elections for a party's Presidential nominee and for party officers (county central committees), unless the party in question otherwise permits unaffiliated voters to do so (similar to current law permitting "DTS" participation in partisan primaries at the discretion of the parties).
3. Provides that "independent" candidates must appear on the primary ballot and must be one of the two candidates who receive the greatest number of votes to appear on the general election ballot.
4. Repeals the provision of law prohibiting an "independent" candidate from being a member of a political party in the 13 months prior to a general election.
5. Prohibits candidates from switching their party preference between the primary and general elections.
6. Provides that any voters may sign a candidate's nomination papers for state or Congressional office.
7. Requires the Secretary of State to post on her website each affected candidates' party preference history for the 10 years preceding each relevant election.
8. Repeals the provision of law permitting party central committees to appoint a replacement candidate if their party's nominee dies prior to the general election.
9. Provides that in a special election to fill a legislative or congressional vacancy that if no candidate receives a majority of all votes cast in the special primary that the two candidates who receive the greatest number of votes shall appear on the special general ballot regardless of party affiliation.
(Current law provides that if a special general election is necessary then the top "vote-getter" from each party represented in the special primary appears on the

special general ballot).

10.Requires county elections officials to print lists of party endorsed candidates if parties provide them.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

DLW:do 2/19/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

CONCURRENCE IN SENATE AMENDMENTS

AB 1413 (Fong)

As Amended January 5, 2012

2/3 vote. Urgency

 |ASSEMBLY: | | (May 19, 2011) |SENATE: |36-0 |(January 19, 2012) |

 (vote not relevant)

 |COMMITTEE VOTE: |7-0 |(January 26, 2012) |RECOMMENDATION: |concur |

 Original Committee Reference: E. & R.

SUMMARY : Makes numerous substantive and technical changes to state election law to implement the top two primary election system.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Conform the procedure for presidential electors to be chosen by the Democratic Party to the top two primary system. Establish a procedure for the chairperson of the Democratic Party to appoint an elector if the candidate who is entitled to appoint that elector fails to do so.
- 2) Require that the option for a voter to decline to disclose a party preference be placed at the end of the listing of qualified political parties on the voter registration card. Permit the Secretary of State (SOS) to exhaust the existing supply of voter registration cards.
- 3) Permit candidate filing for a voter-nominated office to re-open if any candidate who filed nomination papers at the primary election for that office dies after the deadline for delivery of nomination documents, but not less than 83 days before the election.
- 4) Modify the format of nomination documents to conform to the top two primary system. Require a candidate for voter-nominated

office to include a certification of his or her party preference history for the previous 10 years on his or her nomination papers.

- 5) Provide that if a candidate for voter-nominated office dies prior to the primary election, and that deceased candidate is one of the top two vote getters in the primary election, the name of that deceased candidate shall appear on the ballot at the general election. Provide that if a candidate for voter-nominated office who is entitled to appear on the general election ballot dies, the name of that candidate nonetheless shall appear on the general election ballot.
- 6) Provide that if a candidate for voter-nominated office who is deceased receives a majority of votes cast for the office at the general election, a vacancy shall exist in the office to which he or she was elected. Provide that this vacancy shall be filled in the same manner as if the candidate had died subsequent to taking office.
- 7) Shorten and clarify the explanation of the election procedure for partisan office, voter-nominated office, and nonpartisan office that appears in the state ballot pamphlet. Require an explanation of the election procedure for voter-nominated office to be included in the sample ballot at any special election held to fill a vacancy in the Legislature or in Congress.
- 8) Modify the manner in which the party preference designation for a candidate for voter-nominated office will appear on the ballot, pursuant to the following:
 - a) If the candidate has declared a preference for a qualified political party on his or her most recently filed affidavit of registration, the designation appears in the following manner: "Party Preference: _____ (name of the qualified political party)."
 - b) If the candidate has not declared a preference for a qualified political party on his or her most recently filed affidavit of registration, the designation appears in the following manner: "Party Preference: None."
- 9) Provide flexibility to counties in the placement on the ballot of the party affiliation of Presidential candidates. Eliminate type-size and typeface requirements for instructions that must be

printed on the ballot. Clarify and shorten the instructions that appear on the ballot, and require specified instructions to be printed on the ballot at general elections.

- 10) Provide that spaces for write-in votes will not be printed on the ballot for voter-nominated offices at the general election.
- 11) Conform provisions of the Political Reform Act (PRA) that regulate payments made by a political party for communications with its members to the top two primary election process.
- 12) Make various technical and non-substantive changes.
- 13) Add an urgency clause, allowing this bill to take effect immediately upon enactment.

AS PASSED BY THE ASSEMBLY , this bill made minor and technical changes to the PRA.

FISCAL EFFECT : According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS : In February 2009, the Legislature approved SCA 4 (Maldonado), Res. Chapter 2, Statutes of 2009, which was enacted by the voters as Proposition 14 on the June 2010 statewide primary election ballot. Proposition 14 implemented a top two primary election system in California for most elective state and federal offices. At primary elections, voters are able to vote for any candidate, regardless of party, and the candidates receiving the two highest vote totals, regardless of party, advance to the general election.

At the same time that it passed SCA 4, the Legislature also approved and the Governor signed SB 6 (Maldonado), Chapter 1, Statutes of 2009. SB 6 made various changes to state statute that became effective upon the approval of Proposition 14 by the voters. This bill makes numerous technical and substantive changes to the Elections Code to provide for more effective and efficient implementation of California's top two primary election system.

This bill was substantially amended in the Senate and the Assembly-approved provisions of this bill were deleted. As a result, this bill was re-referred to the Assembly Elections & Redistricting Committee pursuant to Assembly Rule 77.2, and the committee subsequently recommended that the Assembly concur in the

Senate amendments to this bill.

Please see the policy committee analysis for a full discussion of this bill.

Analysis Prepared by : Ethan Jones / E. & R. / (916) 319-2094
Enclosure A

DECLARATION OF MICHAEL BYRNE
DEPARTMENT OF FINANCE
CLAIM NO. 12-TC-02

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

8/30/2012

at Sacramento, CA

Michael Byrne

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On September 3, 2013, I served the:

Department of Finance Comments

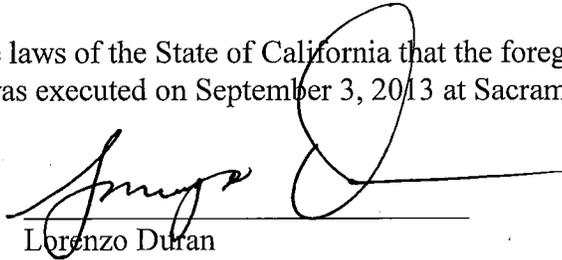
Top Two Candidates Open Primary Act, 12-TC-02

Statutes 2009, Chapter 2 (SCA 4); Statutes 2009, Chapter 1 (SB 6); Statutes 2012, Chapter 3 (AB 1413)

Secretary of State's CC/ROV Memorandums #11005, #11125, #11126, and #12059
County of Sacramento, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 3, 2013 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Commission on State Mandates

Original List Date: 7/3/2013
Last Updated: 9/3/2013
List Print Date: 09/03/2013
Claim Number: 12-TC-02
Issue: Top Two Candidates Open Primary Act

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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Voter Registration and Elections Department
Jill LaVine, Registrar of Voters



Divisions
Campaign Services
Precincts
Registration
Voter Services
Voter Systems and Technology

County of Sacramento

RECEIVED
October 28, 2013
COMMISSION ON
STATE MANDATES

October 28, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

RE: Claimant's Rebuttal Comments
Top Two Candidates Open Primary Act (12-TC-02)

Dear Ms. Halsey,

The County of Sacramento respectfully submits this response to the Department of Finance's letter dated August 30, 2013 in opposition to the Top Two Candidates Open Primary Act test claim. The Claimant's response clearly shows state mandated costs to counties resulting from the cited statutes and executive orders.

State Constitutional Amendment 4 (Chapter 2 of the Statutes of 2009 - SCA 4) was a very plainly worded, voter-approved proposition (Proposition 14). Proposition 14 established the minimum requirements for the conduct of certain election activities to be performed by counties. The Legislature enacted statutes and the Secretary of State promulgated executive orders that impose new and higher levels of service related to election activities which are neither contained in, nor required to implement, Proposition 14. These statutes and executive orders are, therefore, reimbursable mandates.

The Legislative statutes (Chapter 1 of Statutes of 2009 – SB6 and Chapter 3 of Statutes of 2012 – AB1413) impose the following new and higher levels of services:

SB 6 added, and AB 1413 amended, Elections Code Section 8002.5 to require that a candidate's party preference must match what appears on his or her most recent affidavit of registration. This requirement is reinforced by CCROV #12059. While Proposition 14 specifically allowed candidates to have their party preference indicated on the ballot, it did not require that preference to match their actual party registration. Therefore, this requirement is not necessary to implement Proposition 14. This

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requirement imposes costs for staff time to verify that the two match, and if they don't, to explain the requirement to the candidate and give the candidate the opportunity to change their filing or their affidavit of registration. Furthermore, AB 1413 requires specified language to appear on the declaration of candidacy (EC Section 8040), and further requires certain references to be omitted from all forms required to be filed by a voter-nominated candidate. These requirements increase costs related to redesigning and reprinting those forms and instructions as well as staff training on these new requirements.

AB 1413 amended Elections Code 8040 to include new candidate certifications in the candidate's declaration of candidacy. This additional certification is not contained in Proposition 14 and is not required for its implementation. This new certification results in a higher level of service to candidates from the county staff, added cost for training on new procedures and added processing time.

SB 6 and AB1413 amended Election Code 8062 changing the number of nomination signatures required for certain political parties and candidates for political party committees.

SB 6 amended Elections Code Section 8068 to allow voters of any party affiliation to sign a candidate's nomination forms. While this makes sense to do in the wake of Proposition 14, it is not necessary for its implementation. This change resulted in changes to counties' Election Management Systems (EMS). Any change to the EMS results in costs for training staff.

AB 1413 amended Elections Code Section 8106 to delete the permission for candidates who are registered with a minor party (one whose members comprised less than 5% of the statewide electorate) to submit fewer signatures for petitions-in-lieu of a filing fee. This change has nothing to do with Proposition 14, and is clearly not necessary to its implementation. This amendment requires minor party candidates who choose to file these signatures to file multiples more signatures. This results in much higher costs for elections departments, since they must verify these signatures. This is a higher level of service to these candidates at the expense of the county.

SB 6 amended Elections Code Section 8300 to apply the provisions of all of Chapter 1 of Part 2 of Division 8 (beginning with Section 8300) of the Elections Code to any candidate for voter-nominated offices. Without this change, none of the provisions of this part would apply. Therefore, all costs related to independent nominations are reimbursable, unless they are related to non-partisan candidates for partisan (non-voter-nominated) offices. Nothing in Proposition 14 referred to the independent nomination process.

AB 1413 further amended Elections Code Section 8300 to allow even partisan candidates for partisan offices to use the independent nomination process. Therefore, all costs related to independent nominations of partisan candidates for partisan offices are reimbursable. Nothing in Proposition 14 referred to the independent nomination process.

SB 6 added and AB 1413 amended Elections Code Section 9083.5(d) to require counties to include posters or other material containing specified information in their precinct supplies. Proposition 14 does not require any voter education. This mandate results in significant ongoing costs to print these materials, and also results in increased staff time for preparing precinct supply kits. The preparation of supply kits is a major pre-election undertaking, and each new requirement, such as this one, makes the

process more complicated and time-consuming. CCROV #11126 reinforced this requirement. CCROV #11005 instructed counties to provide the same information from the posters in the sample ballot booklets for special elections, despite there being no requirement to do so in statute. This mandate increases the cost of printing sample ballot booklets for special elections, as well as the costs of preparing those documents (such as layout, formatting, and proofing).

SB 6 amended Elections Code Section 13105 to require, among other things, certain wording related to a candidate's party preference to appear in certain places on the ballot and printed in a certain font size. Proposition 14 does provide for a candidate's ability to have their party preference indicated on the ballot. However, the requirement imposed here by the Legislature is by no means the least burdensome method of doing so. Specifically, requiring a certain font size and lengthy wording imposes costs well beyond the minimum requirement of Proposition 14. These requirements result in increased costs for preparation and printing of ballots. CCROV #11005 made this mandate even more expensive by mandating a "three-line format" for all candidates, instead of allowing counties to choose whether to place certain text beside a candidate's name or beneath it.

AB 1413 further amended EC Section 13105 to require counties to print the above mentioned language "as specified by the Secretary of State." The Secretary of State made these specifications in CCROV #12059. These combined statutory and administrative requirements were still not the least burdensome method of implementing Proposition 14. Furthermore, CCROV #12059 implemented a new requirement that counties either use the more space-demanding format or else provide certain materials to voters in sample ballot booklets, in posting at polling places, AND in information mailed to vote-by-mail voters. This requirement was entirely new and imposes clear costs on counties. While on its face providing a "choice" to counties, it in fact requires either one unnecessarily costly scheme or else a scheme that imposes unnecessary costs another way.

SB 6 amended EC Section 13110 to include political party committee candidates on ballots. These candidates, which have nothing to do with the law changes made by Proposition 14, impose printing and ballot-related costs on counties.

SB 6 and AB 1413 amended Elections Code Section 13206 to require a significant amount of explanatory text in a certain font size to appear near the top of the first page of primary ballots and, in the case of partisan primary ballots, also over the columns of the nonpartisan portion of the ballot. Nothing in Proposition 14 requires voter education. This requirement for a higher level of service to voters results in increased costs for printing ballots. Ballots must be longer (such as 19 inches instead of 17 inches) or more pages (such as two sheets instead of one sheet). The requirement also increases staff costs for ballot layout and associated tasks (such as formatting, proofing, and page validation).

Using space on official ballots for voter education is particularly expensive due to the extraordinarily strict requirements related to official ballot paper quality, type, thickness, and ink quality, in addition to the cost related to obtaining and maintaining state certification as an official ballot printer. This mandate was reinforced and slightly altered by CCROV #11005 and by CCROV #11126. However CCROV #11126 required counties to include extra blank space between parts of the text, space not required by statute. This requirement exceeds the mandate in statute and increases ballot costs even more.

AB 1413 added Elections Code Section 13206.5, which requires certain information to be printed at the top of the ballot used in a statewide general election in years evenly divisible by four. These requirements are entirely new and involve considerable ballot space to print. They also require significant formatting changes, since they require boxes of a certain height, with certain sized lines, to be placed in specified areas on the ballot. These requirements were reinforced by CCROV #12059. Proposition 14 did not require any voter education, much less printed material on the ballots themselves.

SB6 amended section Elections Code 13230 to require counties to apply specific headings on official ballots not previously required. This requirement is not necessary to implement Proposition 14. This requirement makes printing official ballots and sample ballot booklets more expensive by increasing the length and number of pages for each ballot. It also increases staff costs to ensure compliance with the specific ballot layout requirements and associated validation tasks.

SB 6 and AB 1413 amended Elections Code Section 13302 to require counties to print in the sample ballot booklets, on behalf of any political parties, the list of candidates endorsed by that party. This requirement is not necessary to implement Proposition 14. This requirement makes printing sample ballot booklets much more expensive by increasing the number of pages that must be included. It also increases staff costs because counties must verify the information submitted to ensure it complies with all requirements, including that only endorsements of candidates for voter-nominated offices are submitted and included in the sample ballot booklet. Staff also must type the lists submitted (usually received by fax or as a PDF attachment) and format the pages for the sample ballot booklets. This mandate was reinforced by CCROV #11126, which also prohibited counties from charging the parties for the space to print the lists. AB 1413 amended EC Section 13302 to make it more inflexible by specifying exactly where in the sample ballot booklets counties must print the information. CCROV #12059 reinforced this mandate and reiterated the prohibition against charging the parties for the space to print the lists.

SB 6 added Elections Code Section 14105.1, which requires precinct officers to post newly mandated materials in certain locations at polling places. Voter education is not required by Proposition 14. This requirement results in increased costs to change poll worker training materials and training procedures. This requirement is reinforced by CCROV #11126.

The Secretary of State's executive orders (CCROVs 11005, 11125, 11126, and 12059) impose the following new and higher levels of service:

CCROV #11105, dated January 26, 2011, gave counties various "directives" to ensure county officials implement Proposition 14 "in a uniform fashion," specifically related to special elections to fill legislative or congressional vacancies. Counties were instructed to provide the same information from the posters required in EC9083.5(d) in the sample ballot booklets for special elections, despite there being no requirement to do so in statute. This mandate increases the cost of printing sample ballot booklets for special elections, as well as the costs of preparing those documents (such as layout, formatting, and proofing).

CCROV #11005 mandated that counties apply certain provisions of SB 6 to special elections, despite the statute not so specifying. CCROV #11005 further specified the late date of E-43 as the day by which party chairpersons must provide the list of endorsed candidates, despite statute clearly indicating

that the date is E-83. This enormous difference in time results in costs to the county for such tasks as employee overtime to prepare the list, rush printing costs and increased shipping charges. This compressed deadline affects counties' ability to effectively comply with other federal regulations. CCROV #11005 also reinforced the mandate in EC 13105 from SB6 requiring a "three-line format" for all candidates, instead of allowing counties to choose whether to place certain text beside a candidate's name or beneath it. The CCROV also restates the requirement that political parties are not required to pay for the space to print their candidate endorsement lists, a mandate to counties added to statute by SB6. These requirements are not necessary to implement Proposition 14.

CCROV #11125, dated November 23, 2011, was issued to "ensure [Proposition 14] is implemented as uniformly as possible." Uniformity is a mandate by definition, since in its absence counties would be allowed to determine their own efficacious methods. CCROV #11125 states that it "supersedes direction given" in CCROV #11005. CCROV #11125 calls out the fact that statute "gives county elections officials some amount of latitude" in how to list candidates' party preferences on the ballot. The memo then states its intent to ensure uniformity, thus defining its intent as a mandate. The memo mandates specific phrases that counties must use to designate candidates' party preferences, and mandate specific abbreviations that must be used if a county must abbreviate the party names. It further mandates that if a county abbreviates even one candidate's party preference, it must do so for all candidates on all ballots throughout the county. All of these require a higher level of service to voters and candidates. These requirements cost money in staff training, ballot layout, candidate education, printing costs, and voter education. All of these requirements were reinforced and applied to more elections (not just special elections) by CCROV #11126.

CCROV #11126, dated November 23, 2011, was issued "to ensure that all county elections officials conduct the upcoming statewide elections in a uniform fashion." Statewide uniformity is a state goal, not a county goal, and it is a mandate by definition. This CCROV required counties to include extra blank space between parts of the text, space not required by statute. This requirement exceeds the mandate in statute and increases ballot costs even more. CCROV #11126 also restates the requirement that political parties are not required to pay for the space to print their candidate endorsement lists, a mandate to counties added to statute by SB6.

CCROV #12059, dated February 10, 2012, was issued "to ensure that all county elections officials conduct the upcoming statewide elections in a uniform fashion." The Secretary of State issued it on the same day that AB 1413 was signed into law. CCROV #12059 reinforced the requirement yet again that political parties are not required to pay for the space to print their candidate endorsement lists and reiterated the prohibition against charging the parties for the space to print the lists. Additionally, CCROV #12059 restates that EC8002.5 which requires a candidates' party preference match what appears on his or her most recent affidavit of registration. Proposition 14 did not require party preference to match the candidates' actual party registration and, therefore, the requirement is not necessary to implement Proposition 14. The Secretary of State presented in CCROV #12059 specifications that counties either use the more space-demanding format or else provide certain materials to voters in sample ballot booklets, in posting at polling places, AND in information mailed to vote-by-mail voters. This requirement was entirely new and imposes clear costs on counties. While on its face providing a "choice" to counties, it in fact requires either one unnecessarily costly scheme or else a scheme that imposes unnecessary costs another way.

These requirements were reinforced by CCROV #12059 further reinforced EC 13206.5 which requires certain information to be printed at the top of the ballot used in a statewide general election in years evenly divisible by four. These requirements are entirely new and involve considerable ballot space to print. They also require significant formatting changes, since they require boxes of a certain height, with certain sized lines, to be placed in specified areas on the ballot. Proposition 14 did not require any voter education, much less printed material on the ballots themselves.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please feel free to contact me directly at (916) 875-6255.

Sincerely,



Alice Jarboe, Claimant Representative
Assistant Registrar of Voters
Sacramento County

cc: Julie Valverde, Sacramento County Auditor/Controller

Attachments: (previously submitted – listed here for reference only)

- Chapter 1 of Statutes of 2009 – SB6
- Chapter 3 of Statutes of 2012 – AB1413
- Secretary of State CCROV #11005
- Secretary of State CCROV #11125
- Secretary of State CCROV #11126
- Secretary of State CCROV #12059

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 October 29, 2013, I served the:

Claimant Rebuttal Comments

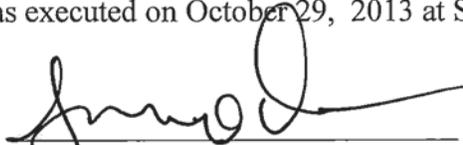
Top Two Candidates Open Primary Act, 12-TC-02

Statutes 2009, Chapter 2 (SCA 4); Statutes 2009, Chapter 1 (SB 6); Statutes 2012, Chapter 3 (AB 1413)

Secretary of State's CC/ROV Memorandums #11005, #11125, #11126, and #12059
County of Sacramento, 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 October 29, 2013 at Sacramento, California.



Lorenzo R. Duran Jr.

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

Commission on State Mandates

Original List Date: 7/3/2013
Last Updated: 10/29/2013
List Print Date: 10/29/2013
Claim Number: 12-TC-02
Issue: Top Two Candidates Open Primary Act

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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COMMISSION ON STATE MANDATES

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May 19, 2014

Ms. Alice Jarboe
Assistant Registrar of Voters
County of Sacramento
7000 65th Street, Suite A
Sacramento, CA 95823-2315

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

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Top Two Candidates Open Primary Act, 12-TC-02
Elections Code Sections 13 et al.,
Statutes 2009, Chapter 2 (SCA 4); Statutes 2009, Chapter 1 (SB 6);
Statutes 2012, Chapter 3 (AB 1413)
Secretary of State's CC/ROV Memorandums #11005, #11125, #11126, and #12059
County of Sacramento, Claimant

Dear Ms. Jarboe:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **June 9, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, July 25, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final proposed decision will be issued on or about July 11, 2014. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Matthew Jones at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

Statutes 2009, Chapter 2 (SCA 4), adopted June 8, 2010 (Proposition 14);
Elections Code Sections 13, 300.5, 325, 332.5, 334, 337, 359.5, 9083.5, 13102,
13105, 13110, 13206, 13230, 13302, 14105.1, as added or amended by
Statutes 2009, Chapter 1 (SB 6);
Elections Code Sections 8002.5, 8040, 8062, 9083.5, 13105, 13206, 13206.5,
13302, as added or amended by Statute 2012, Chapter 3 (AB 1413);
Secretary of State County Clerk/Registrar of Voters Memoranda Nos. 11005,
effective 1/26/11; 11125, effective 11/23/11; 11126, effective 11/23/11; 12059,
effective 2/10/12.

12-TC-02

Top Two Candidates Open Primary Act

County of Sacramento, Claimant

EXECUTIVE SUMMARY

Overview

On June 8, 2010, California voters approved Proposition 14, otherwise known as the Top Two Candidates Open Primary Act. This test claim alleges reimbursable state-mandated costs arising from amendments to the State Constitution (i.e. Proposition 14) and the Elections Code and subsequent implementing executive orders to provide for a “top-two” primary election system for all statewide and congressional offices. Proposition 14 eliminated partisan primary elections for most offices, and established, for all congressional and state offices, a voter-nominated primary election system, in which voters are entitled to vote for any candidate, regardless of the party preference designated by the candidate or the voter, and the top two candidates for each office advance to the general election, regardless of their party preference or lack of party preference. The amended Elections Code provisions and implementing executive orders pled in this claim provided more specific requirements and procedures for the implementation of Proposition 14.

The County of Sacramento (County) alleges, chiefly, that the Proposition 14 and the test claim statutes and executive orders result in increased costs and new activities to implement a single nonpartisan ballot. Specifically, the inclusion of the names of all candidates, the increased number of candidates, and the addition of specified instructions and explanation to voters, result in a longer ballot that is more expensive to produce. In addition, the County alleges that a number of notice requirements associated with the changes to primary elections, as well as a number of candidate eligibility requirements, will result in additional activities and costs related to training county personnel, and updating policies and procedures.

Staff finds, in each case, that either the test claim statutes pled do not impose any new mandated activities; or that the duties imposed by the test claim statutes do not result in costs mandated by the state because they either are expressly included in or necessary to implement the voter-approved ballot measure, Proposition 14 (June 8, 2010, Statewide Primary Election), or are incidental to the ballot measure mandate and produce at most de minimis added costs, pursuant to Government Code section 17556(f). Thus, the test claim statutes and alleged executive orders do not result in a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Procedural History

The County of Sacramento filed this test claim on June 11, 2013.¹ The Department of Finance (Finance) filed comments on the test claim on August 30, 2013.² On October 28, 2013, the County filed rebuttal comments.³ On May 19, 2014, Commission staff issued a draft proposed decision.

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. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.⁴

Claims

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

Subject	Description	Staff Recommendation
Statutes 2009, chapter 2 (SCA 4)/Proposition 4	SCA 4 put before the voters a proposed amendment to article II of the California Constitution, providing for a top-two candidates open primary for all congressional and state elected offices. SCA 4 was approved by the	Deny- Gov. Code §17556(f) provides that the Commission “shall not find” costs mandated by the state if

¹ Exhibit A, Test Claim.

² Exhibit B, Finance Comments on Test Claim.

³ Exhibit C, Claimant Rebuttal Comments.

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

	voters as Proposition 14 on June 8, 2010.	a statute or executive order “imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.” Here, Proposition 14 was adopted exactly as written in SCA 4. Therefore, all requirements of SCA 4 are expressly included in a ballot measure approved by the voters in a statewide election, and the Commission shall not find costs mandated by the state, within the meaning of article XIII B, section 6, pursuant to Gov. Code §17556(f).
Elections Code sections 13, 300.5, 325, 332.5, 334, 337, 359.5, as added or amended by Statutes 2009, chapter 1 (SB 6).	Section 13, as amended, states that no person shall be considered a legally qualified candidate in a general election unless that person has filed a declaration of candidacy or statement of write-in candidacy, or has been nominated at a primary election, or has been selected to fill a vacancy on the general election ballot, or has been selected as an independent candidate. Sections 300.5, 325, 332.5, 334, 337, and 359.5 define the terms “affiliated with a political party,” “independent status,” “nominate,” “nonpartisan office,” “partisan office” or “party nominated office,” and “voter-nominated office.”	Deny – The plain language of sections 13, 300.5, 325, 332.5, 334, 337, and 359.5 do not impose any new mandated activities on local government.
Elections Code section 13230, as amended by Statutes 2009, chapter 1 (SB 6).	Section 13230 was amended to provide that if the county elections official determines that the number of candidates and measures that must be printed will result in a ballot that is too large to be conveniently handled, and decides to separate the nonpartisan and partisan portions of the ballot, the voter instructions described under	Deny – This section, as amended, is permissive in nature, not mandatory, and does not impose any new activities.

	section 13206 pertaining to voter-nominated and nonpartisan offices may be omitted from the partisan ballots.	
Elections Code section 8002.5, as amended by Statutes 2012, chapter 3 (SB 1413).	Section 8002.5, as amended, provides that a candidate for a voter-nominated office shall either indicate a party preference, or indicate no party preference, “which shall be consistent with what appears on the candidate’s most recent affidavit of registration.”	Deny – This section does not impose any activities or tasks on local government.
Elections Code section 8040, as amended by Statutes 2012, chapter 3 (SB 1413).	Section 8040, as amended, omits from the Declaration of Candidacy filed by each candidate the initial declaration of party affiliation, and also requires that candidates for voter-nominated offices certify their voter registration history and their disclosed party preference.	Deny – This section does not impose any activities or tasks on local government.
Elections Code 8062, as amended by Statutes 2012, chapter 3 (SB 1413).	Section 8062, as amended, changes the word “less than,” as it pertains to the number of signatures needed to nominate a person for a primary election, to “fewer than,” and adds the word “State” before “Board of Equalization.”	Deny – The amendments to this section do not impose any activities or tasks on local government.
Reorganization of the ballot pursuant to Elections Code sections 13102 and 13110, as amended by Stats. 2009, ch. 1 (SB 6).	The test claim statutes require counties to provide the names of candidates for voter-nominated offices on the ballots of all voters, but to provide the names of presidential and party committee candidates only on the ballots of partisan voters.	Deny – the activities and costs required by these sections are necessary to implement the top two primary system and the change to voter-nominated offices for all congressional and state elective offices approved by the voters in Proposition 14.
Addition of party preference designation and use of three lines for each candidate’s entry, pursuant to Elections Code section 13105, as amended by	Section 13105 requires counties to include each candidate’s party preference designation in both the primary and the general election ballots, using the party preference designation phrases, as specified in the amended code section and in CC/ROV #11125 and CC/ROV #12059. CC/ROV #11005 applies this requirement to special primary elections containing voter-nominated offices, and CC/ROV #11005, and the later orders, require the use of three	Deny – the requirement to include each candidate’s party preference in the primary election ballot (and special primary) is necessary to implement the plain language requirements of Proposition 14. The

<p>Statutes 2009, chapter 1 (SB 6), Statutes 2012, chapter 3 (AB 1413); CC/ROV #11005; CC/ROV #11125; CC/ROV #12059.</p>	<p>consecutive lines for each candidate’s name, party preference designation, and ballot designation.</p>	<p>requirements to use specified party preference designation phrases, and to print each candidate’s entry on three consecutive lines in the ballot, is incidental to the implementation of Proposition 14 and produces at most de minimis added costs.</p>
<p>Receipt and printing of party endorsements pursuant to Elections Code section 13302, as amended by Stats. 2009, ch. 1 (SB 6); Stats. 2012, ch. 3 (AB 1413); CC/ROV #11005.</p>	<p>Section 13302 requires counties to receive and print in the voter information section of the sample ballot a list of endorsements, if timely received, from a qualified political party. CC/ROV #11005 applies this section also to special elections, with “shortened time frame[s].”</p>	<p>Deny – the requirement to receive and print a list of party endorsements is intended to implement and is incidental to Proposition 14, and produces at most de minimis added costs.</p>
<p>Additional instructions in the ballot, and posters furnished to precincts and posted conspicuously at polling places, pursuant to sections 13206, 13206.5, 9083.5, and 14105.1, as added or amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413); CC/ROV #11005; CC/ROV #11126; CC/ROV #12059.</p>	<p>Sections 13206 and 13206.5 provide for additional instructions to be added to the ballots for primary and general elections, including special instructions for a presidential election cycle. Sections 9083.5 and 14105.1 provide for posters to be furnished to precincts and posted at polling places explaining the changes to primary elections. CC/ROV #11005 provides for the text specified in section 9083.5 to be provided in the ballot for special elections, because there would be no voter information guide. CC/ROV #11126 provides for omitting the language in section 13206(b) pertaining to nonpartisan offices for the June 2012 primary election. And CC/ROV #12059 restates and explains the minor technical amendments made to sections 13206, 13206.5, 9083.5, and 14105.1 by Statutes 2012, chapter 3 (AB 1413).</p>	<p>Deny – The requirements to include additional instructions and voter information called for by these sections and executive orders are intended to implement and incidental to Proposition 14, and produce at most de minimis added costs, in context of the Top Two Primary program. Similarly, furnishing the posters required to precincts (i.e. delivering the copies of the posters provided to the county by the state) is incidental to Proposition 14 and</p>

		produces at most de minimis added costs, in context of the Top Two Primary program.
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Analysis

A. Statutes 2009, chapter 2 was adopted by the voters as Proposition 14 in a statewide election, and therefore does not impose a state-mandated local program.

Senate Constitutional Amendment 4 (Stats. 2009, ch. 2) was filed with the Secretary of State on February 19, 2009, and put before the voters as Proposition 14 at the June 8, 2010 Statewide Primary Election.⁵ Government Code section 17556(f) provides that the Commission “shall not find” costs mandated by the state if a statute or executive order “imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.” Here, Proposition 14 was adopted exactly as written in Statutes 2009, chapter 2 (SCA 4). Therefore, all requirements of SCA 4 are expressly included in a ballot measure approved by the voters in a statewide election, and the Commission shall not find costs mandated by the state, within the meaning of article XIII B, section 6, pursuant to Government Code section 17556(f).

Based on the foregoing, staff finds that Statutes 2009, chapter 2 (SCA 4) does not result in a reimbursable state-mandated program and is denied.

B. Many of the code sections, as amended by the test claim statutes, and the executive orders pled do not require counties to perform any new activities.

1. Elections Code section 13, as amended by Statutes 2009, chapter 1 and Statutes 2012, chapter 3.

As amended, section 13 clarifies that a person shall not be legally qualified for nomination or to participate in the general election for a *voter-nominated office* unless that person has filed a declaration of candidacy, or was nominated at a primary election. The amendment to section 13 is technical in nature, and is required to conform to the change from a party-nomination to a voter-nomination for congressional and state offices.⁶ Moreover, the plain language does not mandate any activities or tasks; it is definitional in nature.

Based on the foregoing, staff finds that section 13 does not impose any state-mandated activities on counties.

2. Elections Code sections 300.5, 325, 332.5, 334, 337, and 359.5, as added or amended by Statutes 2009, chapter 1 and Statutes 2012, chapter 3.

Sections 300.5, 325, 332.5, 334, 337, and 359.5, as added or amended by Statutes 2009, chapter 1 (SB 6), and Statutes 2012, chapter 3 (AB 1413), define the terms “affiliated with a political party,” “independent status,” “nominate,” “nonpartisan office,” “partisan office” or “party-nominated office,” and “voter-nominated office.” Nothing in the plain language of sections

⁵ See Exhibit A, Test Claim, at p. 10; Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

⁶ Statutes 2009, chapter 1 (SB 6); Statutes 2012, chapter 3 (AB 1413).

300.5, 325, 332.5, 334, 337, or 359.5 imposes any activities or costs on local government. The additions and amendments to the Elections Code are definitional in nature.

Based on the foregoing, staff finds that sections 300.5, 325, 332.5, 334, 337, and 359.5, as added or amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413) do not impose any state-mandated activities on counties.

3. Section 13230, as amended by Statutes 2009, chapter 1.

As amended by Statutes 2009, chapter 1,⁷ section 13230 provides that if the county elections official determines that a ballot will be larger than may be conveniently handled, and chooses to separate the partisan and nonpartisan ballots, the explanatory text for voter-nominated offices shall be omitted from the separate partisan ballots.⁸ And, amended section 13230 provides that “partisan voters” includes “both persons who have disclosed a party preference pursuant to Section 2151 or 2152 and persons who have declined to disclose a party preference, but who have chosen to vote the ballot of a political party as authorized by that party’s rules duly noticed to the Secretary of State.”⁹

None of the amendments to section 13230 imposes a mandate. The amended definition of “partisan voter” is merely clarifying of the law as enacted by the voters in Proposition 14, and in any event does not impose any new activities or tasks on counties. More importantly, the county elections official is not *mandated* to provide separate ballots, but *may* provide separate ballots if he or she determines that a single ballot would be “larger than may be conveniently handled.”¹⁰ That determination is a local discretionary decision, and there is no requirement that the county elections official provide for separate ballots even if such a determination is made.¹¹ Moreover, the provision that a county elections official may provide for separate partisan and nonpartisan ballots is found also in prior law,¹² and is therefore not new.

Based on the foregoing, staff finds that section 13230, as amended by Statutes 2009, chapter 1, does not impose any new state-mandated activities on counties.

4. Sections 8002.5 and 8040, as amended by Statutes 2012, chapter 3.

The prior version of section 8002.5, as amended by Statutes 2009, chapter 1, was not pled in this test claim.¹³ Statutes 2012, chapter 3, amended section 8002.5 to *require* a candidate to indicate either a party preference or no party preference in the candidate’s declaration of candidacy,

⁷ The amendment to section 13230 made by Statutes 2012, chapter 3 (AB 1413) was not properly pled, and the Commission does not have jurisdiction over that amendment.

⁸ Elections Code section 13230(a) (Stats. 2009, ch. 1 (SB 6)) [emphasis added].

⁹ Elections Code section 13230(c) (Stats. 2009, ch. 1 (SB 6)) [emphasis added].

¹⁰ Elections Code section 13230(a) (Stats. 2009, ch. 1 (SB 6)).

¹¹ See Government Code section 14 [“‘Shall’ is mandatory and ‘may’ is permissive.”].

¹² See Elections Code section 13230 (Stats. 2000, ch. 898 (SB 28)).

¹³ See Exhibit A, Test Claim, at p. 1.

“which shall be consistent with what appears on the candidate’s most recent affidavit of registration,” and “shall not be changed between the primary and general election.”¹⁴

Section 8040, which provides for the Declaration of Candidacy form, was also amended by Statutes 2012, chapter 3 to eliminate the reference to party affiliation, in accordance with the implementation of a voter-nominated primary election system, and to require candidates to certify their political party preference history for 10 years prior to the year in which the declaration is made.¹⁵

The Statutes 2012, chapter 3 amendments to sections 8002.5 and 8040 therefore consist of (1) a requirement that candidates indicate a party preference or no party preference, and that the statement of party preference be consistent with the candidate’s most recent affidavit of registration; (2) a directive that a candidate’s party preference shall not be changed between the primary and general election; and (3) an amendment to the language of the Declaration of Candidacy form.

The plain language of section 8002.5 is directed to the candidate; the plain language does not require anything of local government. Similarly, the plain language of amended section 8040 does not impose any new mandated activities on local government. Any changes required to the Declaration of Candidacy form have been implemented by the Secretary of State and provided to the counties, and nothing in the plain language of amended section 8040 requires counties to perform any activities.

Based on the foregoing, staff finds that sections 8002.5 and 8040, as amended by Statutes 2012, chapter 3 do not impose any mandated activities on counties.

5. Section 8062, as amended by Statutes 2012, chapter 3; the portion of County Clerk/Registrar of Voters (CC/ROV) Memorandum #11126 pertaining to nomination petitions.

Section 8062 provides the number of registered voters required to sign a nomination paper for a candidate for a primary election for specified offices. Statutes 2012, chapter 3 amended section 8062 to change the words “less than” to “fewer than” in several paragraphs, and to add the word “State” before “Board of Equalization.”¹⁶ Statutes 2009, chapter 1 made a few prior substantive changes to section 8062, but those amendments are not properly pled in this test claim.¹⁷ CC/ROV #11126 cites to Elections Code sections 8061 and 8068 (not pled), and provides that signatures of all voters must be counted toward a nomination petition, where prior law provided that only voters of the same party as the candidate would be counted.

The changes to section 8062 are technical, not substantive, and do not impose any new activities or requirements on counties. Moreover, the requirements of CC/ROV #11126 merely restated the law as amended, including the effect of amended section 8068, which was not pled in this test claim.

¹⁴ Elections Code section 8002.5 (as amended, Stats. 2012, ch. 3 (AB 1413)).

¹⁵ Elections Code section 8040 (Stats. 2012, ch. 3 (AB 1413)).

¹⁶ Elections Code section 8062 (Stats. 2012, ch. 3 (AB 1413)).

¹⁷ Exhibit A, Test Claim, at p. 1.

Based on the foregoing, staff finds that section 8062, as amended by Statutes 2012, chapter 3 and that portion of CC/ROV #11126 pertaining to nomination petitions, do not impose any mandated activities on counties.

C. Some of the test claim statutes and executive orders alleged require counties to perform new some activities, but the required activities do not impose costs mandated by the state because they are necessary to implement Proposition 14 or are intended to implement and incidental to Proposition 14 and impose at most de minimus added costs in the scope of the Top Two Primary program.

The remaining test claim statutes and executive orders pled (Elec. Code §§ 9083.5, 13102, 13105, 13110, 13206, 13206.5, and 14105.1 as added or amended by Stats. 2009, ch. 1, and Stats. 2012, ch. 3; Secretary of State’s Memoranda CC/ROV# 11005, 11125, 11126, and 12059), as explained below, require counties to perform some new activities. However, the costs of these activities are not mandated by the state pursuant to Government Code section 17556(f).

1. The courts have interpreted the “necessary to implement” clause of Government Code section 17556(f) to preclude a finding of cost mandated by the state if the activities or costs: would be required “even in the absence of” the test claim statute; in a situation in which the state has no “true choice” as to the manner of implementation; and, if duties imposed by the statute or executive order are incidental to the ballot measure and produce at most *de minimis* added costs.

Section 17556(f) states that the Commission “shall not find costs mandated by the state” if, after a hearing, the Commission finds that “[t]he statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.”¹⁸ The courts have analyzed the “necessary to implement” language of section 17556(f), pertaining to ballot measure mandates, in the same manner as section 17556(c),¹⁹ which proscribes a finding of costs mandated by the state if the state statute or executive order “imposes a requirement that is mandated by a *federal* law or regulation.”²⁰

Two early court of appeal decisions in which underlying *federal* law was at issue in a test claim analysis are *Hayes v. Commission on State Mandates*²¹ and *County of Los Angeles v. Commission on State Mandates (County of Los Angeles II)*.²² In *Hayes*, the court held:

When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies’ taxing and spending limitations. This should be true even though the state has adopted an implementing statute or

¹⁸ Government Code section 17556(f) (Stats. 2010, ch. 719 (SB 856)).

¹⁹ *California School Boards Association v. State of California (CSBA I)* (2009) 171 Cal.App.4th 1183, at p. 1214 [“[T]here is no difference in the effect” of sections 17556(c) and 17556(f).].

²⁰ Government Code section 17556(c) (Stats. 2010, ch. 719 (SB 856)).

²¹ (1992) 11 Cal.App.4th 1564.

²² (1995) 32 Cal.App.4th 805.

regulation pursuant to the federal mandate *so long as the state had no “true choice” in the manner of implementation of the federal mandate.*²³

In *County of Los Angeles II*, the test claim statute at issue required counties to provide for indigent defendants “investigators, experts, and others for the preparation or presentation of the defense.”²⁴ The court found that these requirements were not state mandated, but were required by the Sixth Amendment to the United States Constitution, and therefore “even in the absence of [the test claim statute], appellant and other counties would be responsible for providing ancillary services under the constitutional guarantees of due process.”²⁵

Then, the California Supreme Court, relying in part on *County of Los Angeles II*, analyzed Government Code section 17556(c) in *San Diego Unified School District v. Commission on State Mandates*, (*San Diego Unified*),²⁶ and the Third District Court of Appeal later applied that analysis to section 17556(f) in *California School Boards Association v. State of California (CSBA I)* with respect to activities required by the state that exceed the requirements of a ballot measure mandate.²⁷ In *San Diego Unified*, the Court found that the requirements of the Education Code that “merely implement[ed]” federal due process requirements were adopted to implement a federal mandate, and nonreimbursable pursuant to Government Code section 17556(c). However, with respect to those requirements “attributable to hearing procedures that *exceed* federal due process requirements,”²⁸ the Court reasoned that “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.”²⁹ The activities that “exceeded” the plain language of federal law, but that the Court found to be “incidental” to the federal mandate were listed in a footnote, and included adopting rules and regulations, preparing and sending notices to parents, and maintaining records pertaining to students under threat of expulsion.³⁰

The Third District Court of Appeal then reasoned in *CSBA I* that “there is no difference in the effect” of sections 17556(c) and 17556(f). The court determined that “the ‘necessary to implement’ language of [section 17556(f)] is consistent with article XIII B, section 6 because it denies reimbursement only to the extent that costs imposed by a statute are necessary to implement the ballot measure.”³¹ In addition, the court in *CSBA I* stated: “We also conclude that

²³ *Hayes, supra*, 11 Cal.App.4th, at pp. 1592-1594 (Emphasis added.).

²⁴ 32 Cal.App.4th at p. 812, fn. 3 [quoting Penal Code section 987.9].

²⁵ *Id.*, at p. 815.

²⁶ (2004) 33 Cal.4th 859.

²⁷ (2009) 171 Cal.App.4th 1183.

²⁸ *Ibid* [emphasis in original].

²⁹ *Id.*, at p. 890.

³⁰ *Id.*, at p. 873, fn. 11 [citing Education Code section 48918]; 890.

³¹ *Id.*, at p. 1213.

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 at most de minimis added costs.”³²

Therefore, based on the holdings of *Hayes*,³³ *County of Los Angeles II*,³⁴ *San Diego Unified*,³⁵ and *CSBA I*,³⁶ two possible tests for the exception to reimbursable costs under section 17556(f) arise, either of which will proscribe a finding of costs mandated by the state within the meaning of section 17514; first, section 17556(f) proscribes reimbursement if costs imposed by a statute are *necessary to implement* a relevant ballot measure, defined to mean activities or costs that would be required or compelled “even in the absence of” the test claim statute, or a situation in which the state has no “true choice” as to the manner of implementation; and second, there can be no reimbursement under section 17556(f) if duties imposed by the statute or executive order are *incidental to the ballot measure* and produce at most *de minimis added costs*. This includes “specific statutory procedures to comply with the general federal mandate, [which] reasonably articulated various incidental procedural protections,” so long as those specific procedures or incidental protections “viewed singly or cumulatively, [] did not significantly increase the cost of compliance with the federal mandate.”³⁷

2. Government Code section 17556(f) applies here.

Here, as discussed in more detail below, the activities required by the remaining test claim statutes and alleged executive orders address the amendments to the form and content of ballots and sample ballots, and require additional information be provided to educate voters about the new top two primary system and voter-nominated offices. Although some of the activities required to be performed may exceed the plain language of Proposition 14, they are necessary to implement Proposition 14, or are incidental to the ballot measure mandate producing at most de minimis added costs, and are, therefore, not eligible for reimbursement within the meaning of article XIII B, section 6 and Government Code section 17556(f).

- a) *Prior court decisions and the Proposition 14 findings and declarations approved by the voters support the finding that the required activities imposed by the test claim statutes and executive orders are necessary to implement Proposition 14 or are intended to implement, are incidental and de minimus in cost in the context of the Top Two Primary program.*

Under existing California law, avoidance of electoral confusion is an expected feature of the ballots to be prepared by counties. The courts have held that the title and summary prepared by the Attorney General “must reasonably inform the voter of the character and real purpose of the proposed measure.”³⁸ In addition, the Government Code requires the Attorney General to

³² *Id.*, at p. 1216.

³³ (1992) 11 Cal.App.4th 1564.

³⁴ (1995) 32 Cal.App.4th 805.

³⁵ 33 Cal.4th 859, at pp. 889-890.

³⁶ 171 Cal.App.4th 1183, at pp. 1212-1217.

³⁷ *CSBA*, *supra*, at p. 1217 [citing *San Diego Unified*, *supra*, 33 Cal4th at pp. 889-890].

³⁸ *Lungren v. Superior Court* (1996) 48 Cal.App.4th 435, at p. 440 [citing *Tinsley v. Superior Court* (1980) 150 Cal.App.3d 90].

prepare a title and summary of each measure,³⁹ which the Elections Code states “must be true and impartial, and not argumentative or likely to create prejudice for or against the measure.”⁴⁰ The goal “is to avoid misleading the public with inaccurate information.”⁴¹

In 2008, the United States Supreme Court heard the *Washington State Grange* case, in which the voters in the State of Washington eliminated their partisan primary system (wherein candidates are endorsed by and expressly affiliated with a political party) and enacted a top-two primary system (wherein party preferences on the primary election ballots are chosen by the candidates, and do not reflect the endorsement or support of the party named), similar to that enacted by Proposition 14 in California. The Washington State Republican Party argued that the new primary system violated its associational rights under the First Amendment, by usurping its right to nominate its own candidates and forcing it to associate with candidates it did not endorse.⁴² The Court characterized the early facial challenge as “sheer speculation,” stating that “[i]t depends upon the belief that voters can be ‘mised’ by party labels.” However, the Court further held that “[o]f course, it is *possible* that voters will misinterpret the candidates’ party-preference designations as reflecting endorsement by the parties...” but “because I–872 has never been implemented, we do not even have ballots indicating how party preference will be displayed.”⁴³ The Court held that “[i]t stands to reason that whether voters will be confused by the party-preference designations will depend in significant part on the form of the ballot,” and that the inquiry must turn on “whether the ballot could conceivably be printed in such a way as to eliminate the possibility of widespread voter confusion and with it the perceived threat to the First Amendment.”⁴⁴ Specifically, the Court suggested:

[T]he ballots might note preference in the form of a candidate statement that emphasizes the candidate's personal determination rather than the party's acceptance of the candidate, such as “my party preference is the Republican Party.” Additionally, the State could decide to educate the public about the new primary ballots through advertising or explanatory materials mailed to voters along with their ballots.⁴⁵

The Court concluded that “there are a variety of ways in which the State could implement [its top-two primary] that would eliminate any real threat of voter confusion,” and thus upheld the law against the facial challenge on the basis of impairment of the parties’ associational rights.⁴⁶

³⁹ Government Code section 88002; Elections Code section 9002; 9050; 9051 (Stats. 1994, ch. 920 (SB 1547)).

⁴⁰ Elections Code section 9051 (Stats. 1994, ch. 920 (SB 1547)).

⁴¹ *Lungren, supra*, 48 Cal.App.4th at p. 440 [citing *Amador Valley Joint Union High School District v. State Board of Equalization*, (1978) 22 Cal.3d 208].

⁴² *Washington State Grange v. Washington State Republican Party* (2008) 552 U.S. 442, at p. 448.

⁴³ *Id.*, at p. 455.

⁴⁴ *Id.*, at p. 456.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

Accordingly, the subdivision (f) of the findings and declarations for Proposition 14 states, in part, that “[t]his act conforms to the ruling of the United States Supreme Court in *Washington State Grange v. Washington State Republican Party* (2008) 128 S.Ct. 1184.”⁴⁷ Proposition 14 eliminated partisan primary elections for all congressional and state offices, and required that:

- All candidates for a particular office be listed on a unified *primary* election or *special primary* election ballot;⁴⁸
- Voters of any party preference be permitted to vote for any candidate and have that vote counted; that candidates be permitted to select their party preference at the time they file their candidacy;
- Each candidate’s designated party preference be included in the ballot for both primary and general election ballots;
- Parties be permitted to informally nominate candidates for voter-nominated office, but no longer have an automatic right to have their chosen candidate appear on the ballot for the general election; and
- Only the top two “vote-getters” for any voter-nominated office advance to the general election, irrespective of those two candidates’ stated party preferences.

Finally, Proposition 14 made no changes to presidential primary elections, and retained party committee offices as partisan-nominated, and thus requires the Legislature to continue to provide for separate ballots for those offices.

b) *Activities Pertaining to the Reorganization of Ballots: Elections Code sections 13102 and 13110, as amended by Statutes 2009, chapter 1 (SB 6).*

Before the adoption of Proposition 14, existing law required the county elections official or county clerk to “provide ballots for any elections within his or her jurisdiction, and...cause to be printed on them the name of every candidate whose name has been certified to or filed with the proper officer pursuant to law, and who, therefore, is entitled to a place on the appropriate ballot.”⁴⁹ Prior section 13110 required that the group of names appearing on the ballot shall be the same for all voters entitled to vote for candidates for that office.⁵⁰ Prior section 13102 required separate ballots for *partisan* primary elections for each qualified political party, to be printed together with the nonpartisan ballot, if possible,⁵¹ and provided that voters would receive a partisan ballot only if registered with the particular political party whose ballot they requested, or if the party whose ballot was requested adopted a rule permitting nonparty voters to vote that

⁴⁷ Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

⁴⁸ All candidates are already required to be listed on a *general* election ballot under pre-existing law.

⁴⁹ Elections Code section 13000 (Stats. 1994, ch. 920 (SB 1547)).

⁵⁰ Elections Code section 13110 (Stats. 1994, ch. 920 (SB 1547)).

⁵¹ Elections Code section 13230 (Stats. 2000, ch. 898 (SB 28)).

ballot.⁵² The names of candidates appearing on each of the separate partisan primary ballots were those that were duly nominated by registered party voters.⁵³

Statutes 2009, chapter 1 amended Elections Code section 13102 to change all “party affiliation” language to “party preference,”⁵⁴ and sections 13102 and 13110 were amended to provide for a unified nonpartisan primary ballot, containing the names of all candidates for voter-nominated offices and nonpartisan offices.⁵⁵ The County alleges increased costs, based on “[e]ach ballot and sample ballot will [now] list all candidates for each voter-nominated contest, regardless of party preference or lack of party preference,” and “[i]ncreased length of ballot and sample ballot to accommodate lengthy voter-nominated contests.”⁵⁶ However, the County’s allegations do not describe a new activity or task imposed on counties, and no new activity is found in the plain language of sections 13102 and 13110, as amended; the same offices and candidates previously included in primary election ballots are now required to be included in the nonpartisan ballot provided to all voters. Even if the reorganization of ballots imposes additional costs on counties, increased costs alone do not amount to a new program or higher level of service.⁵⁷

Moreover, any costs resulting from the “increased length of ballot [*sic*]” are imposed by the voter-enacted ballot measure, Proposition 14, and are not mandated by the state. The Proposition 14 findings and declarations approved by the voters expressly call for a “single primary ballot,”⁵⁸ and the plain language of article II, section 5, as amended, provides that “[a]ll voters may vote at a voter-nominated primary election for any candidate for congressional and state elective office without regard to the political party preference disclosed by the candidate or the voter.”⁵⁹

Therefore, the tests described above to determine when duties imposed by a test claim statute are “necessary to implement” a ballot measure both apply to this situation. Because the California Constitution, as amended by Proposition 14, calls for all voters to be permitted to vote for any candidate, except presidential or party committee candidates, counties would be required, “even in the absence of,”⁶⁰ the test claim statutes, to provide the list of candidates for voter-nominated office to all voters (i.e., to include voter-nominated offices in the nonpartisan ballot). In addition, the amendments made to sections 13102 and 13110 were a matter of “no true choice”⁶¹ for the Legislature; the Proposition 14 findings and declarations called for a “single primary ballot,” as noted above, but also stated that “[t]his act makes no change in current law as it

⁵² Elections Code section 13102 (Stats. 2007, ch. 515 (AB 1734)).

⁵³ Elections Code sections 8062; 13000 (Stats. 1994, ch. 920 (SB 1547)).

⁵⁴ Elections Code sections 13102; 13105 (as amended by Stats. 2009, ch. 1 (SB 6)).

⁵⁵ Elections Code sections 13102; 13110 (as amended by Stats. 2009, ch. 1 (SB 6)).

⁵⁶ Exhibit A, Test Claim, at pp. 6-7.

⁵⁷ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830.

⁵⁸ Exhibit X, Text of Ballot Measure, Proposition 14.

⁵⁹ California Constitution, article II, section 5 (as amended by Proposition 14, June 8, 2010).

⁶⁰ *County of Los Angeles II, supra*, (1995) 32 Cal.App.4th 805.

⁶¹ *Hayes, supra*, 11 Cal.App.4th, at pp. 1592-1594.

relates to presidential primaries...” and “[p]olitical parties may also adopt such rules as they see fit for the selection of party officials...”⁶² Therefore, the amendments to sections 13102 (adding “voter-nominated” offices to the nonpartisan ballot provided to all voters) and 13110 (providing for political party committee and presidential candidates to remain on a separate partisan ballot) implemented Proposition 14 as a matter of “no true choice.”

Based on the foregoing, the requirements of sections 13102 and 13110 to include all candidates for voter-nominated offices in the nonpartisan ballot provided to all voters, and to include political party candidates only in the partisan ballots provided to voters registered as disclosing a preference for that party, are necessary to implement the plain language requirements of Proposition 14, and therefore do not impose costs mandated by the state.

- c) Activities Pertaining to the Form and Content of Candidates’ Ballot Entries: Elections Code section 13105, as amended by Statutes 2009, chapter 1 and Statutes 2012, chapter 3; and portions of Secretary of State’s Memoranda CC/ROV #11005, CC/ROV #11125, and CC/ROV #12059.

In conjunction with placing Proposition 14 before the voters, the Legislature enacted Statutes 2009, chapter 1, which expressly stated that it would become operative only if Proposition 14 were adopted by the voters.⁶³ Statutes 2009, chapter 1 amended Elections Code section 13105 to provide that in *both the primary and general election ballots*, each candidate for voter-nominated office would have his or her party preference indicated in the ballot, with the words “My party preference is the _____ Party,” or the words “No Party Preference.” If a candidate chose not to have his or her party preference listed in the ballot, the space for party preference would be left blank.⁶⁴

Secretary of State’s Memorandum CC/ROV #11005, issued January 26, 2011, restated and clarified the requirements of amended sections 13105 and 13107 (not pled) as applied to *special elections*, and required that counties print the name, party preference, and ballot designation of each candidate on three lines in the ballot.⁶⁵ CC/ROV #11125, issued November 23, 2011, provided for shortening the party preference designation phrases required to be printed in the ballot, from a full sentence (“My party preference is the...”) to “Party Preference: _____.” CC/ROV #11125 also provided for party name abbreviations to be used to aid in solving “ballot printing and cost challenges.”⁶⁶ On February 10, 2012, the Legislature enacted Statutes 2012, chapter 3 as an urgency measure, which amended section 13105 to adopt the shortened party preference designation phrases called for by CC/ROV #11125, and to eliminate the option for a candidate for voter-nominated office to withhold a registered party preference (section 8002.5, discussed above, was similarly amended).⁶⁷ CC/ROV #12059, issued on the same day that Statutes 2012, chapter 3 (AB 1413) took effect, restated the shortened party preference

⁶² Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

⁶³ Statutes 2009, chapter 1 (SB 6) section 67.

⁶⁴ Elections Code section 13105 (as amended by Stats. 2009, ch. 1 (SB 6)).

⁶⁵ Exhibit A, Test Claim, at pp. 52-55.

⁶⁶ Exhibit A, Test Claim, at p. 57.

⁶⁷ Elections Code section 13105 (Stats. 2012, ch. 3 (AB 1413)).

designation phrases, this time omitting the option “Party Preference: Not Given,” in accordance with the amendment to section 13105, and restated the requirements of the earlier orders to print the required candidate information on three consecutive lines and to utilize the party name abbreviations.⁶⁸

Thus, the plain language of the above-described statutes and executive orders requires counties to perform the following new activities:

- Identify in the ballot, for voter-nominated offices in a *primary election*, including a *special primary election*, the political party designated by the candidate pursuant to section 8002.5;⁶⁹
- Identify each candidate’s name, party preference, and ballot designation on three consecutive lines in the ballot.⁷⁰
- Beginning November 23, 2011, utilize approved party name abbreviations, as necessary.⁷¹
- With regard to indication of party preference:
 - For the period between July 1, 2011 and November 23, 2011,⁷² identify each candidate’s party preference in *both the primary and general election ballots, including special elections*, with the words “My party preference is the _____ Party,” “No Party Preference,” or “My party preference is the _____ Party,” with the space left blank;⁷³
 - For the period between November 23, 2011 and February 10, 2012,⁷⁴ identify each candidate’s party preference in *both the primary and general election ballots* with the words “Party Preference: _____,” “Party Preference: None,” or “Party Preference: Not Given;”⁷⁵ and

⁶⁸ Exhibit A, Test Claim, at pp. 70-71.

⁶⁹ Elections Code section 13105 (Stats. 2009, ch. 1 (SB 6)).

⁷⁰ Secretary of State’s Memorandum CC/ROV #11005, issued January 26, 2011.

⁷¹ Secretary of State’s Memorandum CC/ROV #11125, issued November 23, 2011.

⁷² The potential period of reimbursement begins July 1, 2011, based on the filing date of the test claim. As of November 23, 2011, CC/ROV #11125 required counties to use the shortened “Party Preference: _____.” The Commission takes official notice that at least one special election was held within between July 1, 2011 and November 23, 2011 in which candidates for a voter-nominated office appeared on the ballot. (See Exhibit X, Special Election, Congressional District 36, July 12, 2011.).

⁷³ Elections Code section 13105 (Stats. 2009, ch. 1 (SB 6)); CC/ROV #11005, issued January 26, 2011.

⁷⁴ The Commission is unaware of any special elections between November 23, 2011 and February 10, 2012 in which a voter-nominated candidate appeared on the ballot.

⁷⁵ Secretary of State’s Memorandum CC/ROV #11125, issued November 23, 2011.

- Beginning February 10, 2012, identify each candidate's party preference in *both the primary and general election ballots* with the words "Party Preference: _____," or "Party Preference: None;"⁷⁶

However, these activities are necessary to implement Proposition 14 or are incidental to the ballot measure mandate and produce at most de minimis added costs, and are, therefore, not reimbursable pursuant to Government Code section 17556(f).

- i) *The requirement to identify each candidate's party preference designation in primary and special primary ballots is necessary to implement Proposition 14.*

The requirement of section 13105 to add each candidate's party preference designation to the *primary election* ballot,⁷⁷ and that portion of CC/ROV #11005 that requires counties to include each candidate's party preference in a *special primary election* ballot,⁷⁸ are necessary to implement the plain language requirements of Proposition 14. Prior to Proposition 14, counties were required to prepare separate primary ballots for each qualified political party for any election containing "partisan offices."⁷⁹ Now, pursuant to Proposition 14 and amendments to sections 13102 and 13110, all candidates for congressional and state offices are included in the nonpartisan ballot given to all voters, irrespective of their party preference or affiliation. Therefore some indication on the ballot of party preference attributed to each candidate is required. Moreover, article II, section 5 expressly provides, as amended, that "a candidate for a congressional or state elective office *may have his or her political party preference, or lack of political party preference, indicated upon the ballot* for the office in the manner provided by statute."⁸⁰ Accordingly, section 13105 (requiring party preference to be included in both primary and general election ballots) gives effect to the express requirements of the California Constitution, as amended by Proposition 14, and in accordance with the express language of the Proposition 14 findings and declarations, which provide evidence of the voters intent. And likewise that portion of CC/ROV #11005 that requires each candidate's party preference to be indicated in a special primary ballot also gives effect to the express requirements of Proposition 14. Therefore, the requirement to include each candidate's party preference designation in primary and special primary ballots is both a matter of "no true choice,"⁸¹ and would be required "even in the absence of"⁸² the test claim statute (section 13105) and executive order (CC/ROV#11005).

Based on the foregoing, the portion of section 13105, as amended by Statutes 2009, chapter 1, and Statutes 2012, chapter 3, and that portion of CC/ROV #11005, which require party

⁷⁶ Elections Code section 13105 (as amended by Stats. 2012, ch. 3 (AB 1413) effective February 10, 2012).

⁷⁷ Elections Code section 13105 (Stats. 2009, ch. 1 (SB 6)).

⁷⁸ CC/ROV #11005, found at Exhibit A, Test Claim, at p. 54.

⁷⁹ Former Elections Code section 13102 (Stats. 2007, ch. 515 (AB 1734)).

⁸⁰ California Constitution, article II, section 5 (as amended by Proposition 14, June 8, 2010).

⁸¹ See *Hayes, supra*, 11 Cal.App.4th 1564, at p. 1593.

⁸² County of Los Angeles, *supra*, 32 Cal.App.4th 805, at p.815.

preferences to be indicated in a *primary* or *special primary* election ballot, do not impose costs mandated by the state pursuant to Government Code section 17556(f).

- ii) *The requirement to identify each candidate's party preference in primary and general election ballots with specified party preference language is incidental to the implementation of Proposition 14 and produces at most de minimis added costs in the context of the Top Two Primary.*

The remaining requirements of section 13105, as amended by Statutes 2009, chapter 1 (SB 6), as interpreted by CC/ROV #11005 and CC/ROV #11125, and as subsequently amended by Statutes 2012, chapter 3 (AB 1413) and restated by CC/ROV #12059, to identify each candidate's party preference in *both the primary and general election ballots with specified party preference language* (the language varies with subsequent amendments and based on interpretation in the Secretary of State's Memoranda, as noted above) are incidental to the ballot measure mandate and produce at most de minimis added costs, pursuant to *San Diego Unified, supra*, and *CSBA I, supra*.⁸³ In addition, the requirements of the alleged executive orders to print each candidate's name, party preference designation, and ballot designation in a "three-line format" is incidental to the ballot measure mandate and produces at most de minimis added costs.

In *Washington State Grange, supra*, the United States Supreme Court recognized that a top-two primary system imposed by direct voter enactment may lead to voter confusion, and may give rise to a constitutional challenge on the basis of an impairment of the political parties' associational rights under the First Amendment.⁸⁴ Helpfully, the Court suggested remedial measures that might be implemented to avoid such challenge: "the ballots might note preference in the form of a candidate statement that emphasizes the candidate's personal determination rather than the party's acceptance of the candidate, such as 'my party preference is the Republican Party.'"⁸⁵ Accordingly, the state has implemented the Court's suggestions in Elections Code section 13105, as amended by Statutes 2009, chapter 1 and Statutes 2012, chapter 3, and as interpreted by the Secretary of State in CC/ROV #11005, CC/ROV #11125, and CC/ROV #12059. Section 13105, as noted above, requires counties to include in both the primary and general election ballots a party preference designation "in substantially the following form: 'My party preference is the _____ Party.'"⁸⁶ Later interpretations of that section, pursuant to CC/ROV #11125,⁸⁷ followed by a statutory amendment effected by Statutes 2012, chapter 3, shortened the party preference designation, as described above, to simply "Party Preference: _____."⁸⁸ But the requirement to print in the ballot something more than merely the name of a party preferred by the candidate remains. As noted above, the Proposition 14 findings and declarations section (a) expressly invokes Statutes 2009, chapter 1 (SB 6),⁸⁹ and

⁸³ *San Diego Unified*, 33 Cal.4th at p. 873, fn. 11; *CSBA I*, 171 Cal.App.4th 1183, at p. 1214.

⁸⁴ *Washington State Grange v. Washington State Republican Party* (2008) 552 U.S. 442

⁸⁵ *Id.*, at p. 456.

⁸⁶ Elections Code section 13105 (as amended, Stats. 2009, ch. 1 (SB 6)).

⁸⁷ See Exhibit A, Test Claim, at p. 57.

⁸⁸ Elections Code section 13105 (as amended, Stats. 2012, ch. 3 (AB 1413)).

⁸⁹ Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

findings and declarations section (f) expressly states that the act “conforms to the ruling in *Washington State Grange*”.⁹⁰ The amendments to section 13105, and the later Secretary of State interpretations of that section, along with the statutory “clean-up” of Statutes 2012, chapter 3,⁹¹ are therefore intended to implement Proposition 14 in a manner that does not lead to a confusing or misleading ballot.

Existing law required that counties produce ballots for every election; and the plain language of Proposition 14 and Elections Code sections 13102 and 13110 require including all voter-nominated offices in a single nonpartisan primary ballot. The plain language of amended section 13105, requiring including each candidate's party preference in the primary ballot (in addition to the general election ballot, which was already required), is also shown above to be required by the plain language of Proposition 14. Moreover, because a general election now includes only two candidates for each office, rather than a candidate from each participating qualified political party, there may be a cost savings inherent in the Top Two Candidates Open Primary Act, related to the form and content of general election ballots. In that context, the asserted new requirement to print a short phrase or sentence identifying each candidate's party preference, and to do so on three lines, is significantly less costly and burdensome than the notice and recordkeeping activities denied by the California Supreme Court in *San Diego Unified*, and therefore the activities are incidental to the ballot measure mandate and produce at most de minimis added costs.

Based on the foregoing, the Commission finds that the requirements of section 13105, as amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413), as well as those portions of CC/ROV #11005, CC/ROV #11125, and CC/ROV #12059 which pertain to the party preference designation phrases required for each candidate's entry on the ballot do not impose costs mandated by the state pursuant to Government Code section 17556(f).

d) Requirements Pertaining to the Receipt and Printing of Party Endorsements in the Sample Ballot: Elections Code section 13302, as amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413); and portions of Secretary of State's Memoranda CC/ROV #11005, CC/ROV #12059 are incidental to the implementation of Proposition 14 and produce at most de minimus costs in the context of the Top Two Primary.

Elections Code section 13302, as amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413), as well as portions of CC/ROV #11005 and CC/ROV #12059, require counties to receive and print in the voter information portion of the sample ballot, for any election, including a special election, a list of party endorsements timely submitted by a qualified political party. In addition, CC/ROV #11005 interprets section 13302 to require counties to treat as timely, for purposes of special elections, a list of endorsements received from a qualified political party not later than 43 days prior to a *special primary* election, and to “work with any

⁹⁰ Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

⁹¹ See Statutes 2012, chapter 3 (AB 1413) ["This bill would make technical revisions to provisions of the Elections Code to reflect the 'voter-nominated primary election process.'"].

interested qualified political parties who wish to submit lists” of endorsements for a *special general* election.⁹²

Pursuant to and after Proposition 14, all candidates for voter-nominated office are included on a single primary ballot, and the general election ballot contains the names only of the two candidates for each office who received the highest vote totals in the primary election, regardless of those candidates' party preference. Partisan elections are still provided for presidential and party committee candidates, but political parties no longer have the right to nominate a candidate for voter-nominated office, and the candidates appearing on the ballot for voter-nominated office need not be nominated only by members of the party for which the candidate states a preference.⁹³ However, section (e) of the findings and declarations for Proposition 14 states as follows:

Freedom of Political Parties. Nothing in this measure shall restrict the parties’ right to contribute to, endorse, or otherwise support a candidate for state elective or congressional office. Political parties may establish such procedures as they see fit to endorse or support candidates or otherwise participate in all elections, and they may informally “nominate” candidates for election to voter-nominated offices at a party convention or by whatever lawful mechanism they so choose, other than at state-conducted primary elections.⁹⁴

In *San Diego Unified School Dist.*, the California Supreme court determined that statutory procedures designed to make the underlying federal due process rights enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the due process rights, did not significantly increase the cost of compliance with the underlying federal mandate. Thus, for purposes of article XIII B, section 6, the excess activities were considered part and parcel of the federal mandate and not reimbursable under Government Code section 17556(c).⁹⁵ The court in *CSBA* directed the Commission to apply that same analysis to Government Code section 17556(f) and statutes that implement underlying ballot measure mandates.⁹⁶

Applying that analysis here, section 13302, as amended, and that portion of CC/ROV #11005 pertaining to printing a list of endorsements in the ballot for special elections,⁹⁷ constitute “specific statutory procedures” which are “designed to...set forth procedural details that were not expressly articulated”⁹⁸ in the ballot measure, in order to provide for political parties to continue to express their endorsements and to “informally nominate” candidates. The requirements of

⁹² Exhibit A, Test Claim, at pp. 52-5 [emphasis added].

⁹³ California Constitution, article II, section 5 (as amended by Proposition 14, June 8, 2010).

⁹⁴ Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

⁹⁵ *San Diego Unified*, *supra*, 33 Cal.4th at p. 889.

⁹⁶ *CSBA*, *supra*, 171 Cal.App.4th at p. 1216.

⁹⁷ Exhibit A, Test Claim, at p. 55.

⁹⁸ *San Diego Unified*, *supra*, 33 Cal.4th, at p. 889.

section 13302 are intended to implement Proposition 14,⁹⁹ and provide for a statutory procedure to allow parties to continue to participate, and to express their approval of certain candidates.

And, as compared with the prior law requirement to print separate ballots for each qualified political party (as many as seven separate ballots required for the 2012 presidential election [See Exhibit A, Test Claim, at p. 72.]), and to include the names of each party's winning candidates in the general election ballot,¹⁰⁰ preparing a *single* primary ballot for all voter-nominated offices, and printing *only the names of the top two* "vote getters" in the general election ballot likely presents a cost savings to the counties. In that context, the additional requirement to receive and print a list of endorsements from qualified political parties produces at most de minimis added costs. Moreover, the requirement imposed by CC/ROV #11005, to treat a list of endorsements as timely received if provided by a qualified political party not later than 43 days prior to a special election, is also incidental to the implementation of Proposition 14 and produces at most de minimis added costs in the context of the Top Two Primary mandated by the voters.

Therefore, the requirements of section 13302, as amended by the test claim statutes, and of CC/ROV #11005, to receive and print in the ballot, if timely, a list of endorsements from a qualified political party, do not impose costs mandated by the state pursuant to Government Code section 17556(f).

- e) Requirements to Educate Voters About Proposition 14 with Instructions and Voter Information Provided in the Ballot and Posted at Polling Places: Elections Code sections 9083.5, 14105.1, 13302, 13206, and 13206.5, as added or amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413); and portions of Secretary of State's Memoranda CC/ROV #11005, CC/ROV #11126, CC/ROV #12059 are incidental to the implementation of Proposition 14 and produce at most de minimus costs in the context of the Top Two Primary.

Elections Code sections 9083.5, 14105.1, 13206, and 13206.5, as added or amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413), as well as portions of CC/ROV #11005, CC/ROV #11126, and CC/ROV #12059, require counties to include certain instructions and explanatory text in the ballots and sample ballots for primary elections, general elections and special primary and general elections, respectively, and to furnish to precincts and post at polling places a poster informing voters of the changes to the election laws.

In *Washington State Grange, supra*, the Court recognized that a top two candidates open primary could give rise to widespread voter confusion, especially with respect to the diminished role of the political parties, and thus lead to a successful constitutional challenge to the law, asserting impairment of the political parties' associational rights under the First Amendment. The Court held that "[i]t stands to reason that whether voters will be confused by the party-preference

⁹⁹ Proposition 14 expressly states that "[t]his act, along with legislation already enacted by the Legislature to implement this act, are intended to implement an open primary system in California as set forth below." Accordingly, Statutes 2009, chapter 1 (SB 6) states that "[t]his measure shall become operative only if SCA 4 [Proposition 14] is approved by the voters."

¹⁰⁰ See former California Constitution, article II, section 5 (as amended by Stats. 2004, Res. C. 103 (SCA 18) (Proposition 60, approved November 2, 2004)) [providing that a qualified political party participating in the primary election has the right to participate in the general election].

designations will depend in significant part on the form of the ballot,”¹⁰¹ but because the State of Washington had yet to implement its voter-enacted top two primary system, a facial constitutional challenge based on possible voter confusion was premature. Specifically, the Court suggested:

[T]he ballots might note preference in the form of a candidate statement that emphasizes the candidate's personal determination rather than the party's acceptance of the candidate, such as “my party preference is the Republican Party.” Additionally, the State could decide to educate the public about the new primary ballots through advertising or explanatory materials mailed to voters along with their ballots.¹⁰²

Here, the Top Two Candidates Open Primary Act has been implemented in a manner that includes both of the innovations that the Court suggested would help weather any challenge asserting impairment of the parties’ First Amendment associational rights. Specifically, the requirements of sections 9083.5 and 14105.1 to furnish the notices and post the notices inside and outside each polling place, and of sections 13206 and 13206.5 and CC/ROV #11005 to include additional explanation in primary, general, and special election ballots, involve notice and information to the voters which operate to “educate the public about the new primary ballots.”¹⁰³ The explanatory text specified in amended section 13206 and added section 13206.5, and in CC/ROV #11005 (all of which are substantially similar), whether posted at polling places or printed in the ballot, draws heavily from the text of Proposition 14 itself,¹⁰⁴ and the information is provided to voters in order to avoid misleading or confusing the voters. Based on the state law requirement to “avoid misleading the public with inaccurate information,”¹⁰⁵ and the statement in the text of Proposition 14 that the act conforms to the ruling of *Washington State Grange*, additional instructions and voter information as required by sections 9083.5, 14105.1, 13206, and 13206.5 provide helpful information to voters regarding the changes to the primary system.

However, the Court in *Washington State Grange* suggested some options for the State of Washington to implement its top-two primary in a manner that avoided further litigation; the Court did not demand all of the stated measures. Moreover, the Court was not specific as to exactly what extent and scope of “advertising or explanatory materials” would be necessary to vindicate the First Amendment rights of the political parties.

Therefore, the activities required by added sections 9083.5 and 14105.1, to furnish to precinct officers the notices specified in section 9083.5, and to conspicuously post the notices at each polling place; as well as those required by added and amended sections 13206.5 and 13206, and by CC/ROV #11005, to include additional instructions and explanatory text in primary, general,

¹⁰¹ *Id.*, at p. 456.

¹⁰² *Ibid.*

¹⁰³ *Washington State Grange, supra*, (2008) 552 U.S. 442, at p. 456.

¹⁰⁴ See Exhibit X, Text of Ballot Measure, Proposition 14.

¹⁰⁵ *Lungren, supra*, 48 Cal.App.4th at p. 440 [citing *Amador Valley Joint Union High School District v. State Board of Equalization*, (1978) 22 Cal.3d 208].

and special election ballots, are adopted to implement Proposition 14, but may not be strictly necessary to implement a top two candidates open primary consistently with Proposition 14 within the meaning of Government Code section 17556(f).

Nevertheless, Government Code section 17556(f) still applies; the requirements of sections 9083.5 and 14105.1 to furnish the notice specified in section 9083.5 to precinct officers along with the precinct supplies identified in section 14105,¹⁰⁶ and to conspicuously post the notice inside and outside each polling place; and the requirements of sections 13206 and 13206.5,¹⁰⁷ and a portion of CC/ROV #11005,¹⁰⁸ to include similar explanatory information in the ballots for primary, general, and special elections, constitute “specific statutory procedures” which are “designed to...set forth...details that were not expressly articulated”¹⁰⁹ in Proposition 14, or in *Washington State Grange, supra*. And when “viewed singly or cumulatively, [those activities] did not significantly increase the cost of compliance...”¹¹⁰ This conclusion is reached by examining the extent of voter instructions printed in the ballot under prior and existing law, and the preexisting duties of county elections officials with respect to precinct supplies.

Under prior law, section 14105, as amended by Statutes 2003, chapter 810, provides for a long list of precinct supplies that a county elections official must already furnish.¹¹¹ The new requirements to furnish to precinct officers printed copies of the notices specified in section 9083.5, *as supplied by the Secretary of State*, and to ensure that those notices are conspicuously posted inside and outside each polling place, do not significantly increase the cost of compliance with Proposition 14 and the costs of conducting elections pursuant to the Elections Code. In other words, these activities are “incidental” to Proposition 14 and “produce at most de minimis added costs.”¹¹² As noted above, these are the only requirements of the plain language of sections 908.5 and 14105.1.

Similarly, existing section 13204, as amended by Statutes 2007, chapter 508 (AB 1243), (not pled in this test claim) provided for several pages of instructions in the ballots of all voters,¹¹³ and existing section 13205 provided four paragraphs of *additional* instructions to be included in the ballot during presidential election cycles.¹¹⁴ In context of the instructions already required pursuant to sections 13204 and 13205, the additional text required pursuant to sections 13206 and 13206.5, and CC/ROV #11005 (for special elections) produces at most de minimis added

¹⁰⁶ Elections Code section 14105.1 (added, Stats. 2009, ch. 1 (SB 6)).

¹⁰⁷ Elections Code section 13206 (amended, Stats. 2009, ch. 1 (SB 6); Stats. 2012, ch. 3 (AB 1413)); Elections Code section 13206.5 (added, Stats. 2012, ch. 3 (AB 1413)).

¹⁰⁸ Exhibit A, Test Claim, at pp. 52-53.

¹⁰⁹ *San Diego Unified, supra*, 33 Cal.4th at p. 889.

¹¹⁰ *Ibid.*

¹¹¹ Elections Code section 14105 (Stats. 1994, ch. 920 (SB 1547); Stats. 2003, ch. 425 (AB 177); Stats. 2003, ch. 810 (AB 1679)) [emphasis added].

¹¹² *CSBA, supra*, 171 Cal.App.4th 1183, at p. 1216.

¹¹³ Elections Code section 13204 (Stats. 2007, ch. 508 (AB 1243)).

¹¹⁴ Elections Code section 13205 (Stats. 1994, ch. 920 (SB 1547)).

costs, and these sections do not impose costs mandated by the state within the meaning of article XIII B, section 6.

Based on the foregoing, the requirements of Elections Code sections 9083.5, 14105.1, 13302, 13206, and 13206.5, as added or amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413), and portions of Secretary of State's Memoranda CC/ROV #11005, CC/ROV #11126, CC/ROV #12059 related to the instructions and explanatory information for the voters do not impose costs mandated by the state pursuant to Government Code section 17556(f).

Conclusion

Based on the foregoing, staff finds that the test claim statutes and executive orders alleged either do not require any new activities of local government, do not impose a new program or higher level of service on local government, or impose duties that are necessary to implement the ballot measure, or are incidental to the ballot measure and produce at most de minimis added costs. Therefore, the test claim statutes and executive orders do not impose a reimbursable new program or higher level of service with the meaning of article XIII B, section 6 of the California Constitution.

Staff Recommendation

Therefore, staff recommends that the Commission adopt the proposed decision to deny this test claim.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the decision following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Statutes 2009, Chapter 2 (SCA 4), adopted June 8, 2010 (Proposition 14);

Elections Code Sections 13, 300.5, 325, 332.5, 334, 337, 359.5, 9083.5, 13102, 13105, 13110, 13206, 13230, 13302, 14105.1, as added or amended by Statutes 2009, Chapter 1 (SB 6);

Elections Code Sections 8002.5, 8040, 8062, 9083.5, 13105, 13206, 13206.5, 13302, as added or amended by Statute 2012, Chapter 3 (AB 1413);

Secretary of State County Clerk/Registrar of Voters Memoranda Nos. 11005, effective 1/26/11; 11125, effective 11/23/11; 11126, effective 11/23/11; 12059, effective 2/10/12.

Filed on June 11, 2013

By County of Sacramento, Claimant.

Case No.: 12-TC-02

Top Two Candidates Open Primary Act

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

(Adopted July 25, 2014)

DRAFT PROPOSED DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on July 25, 2014. [Witness list will be included in the final 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/deny] the test claim at the hearing by a vote of [vote count will be included in the final decision].

Summary of the Findings

This test claim alleges reimbursable state-mandated activities arising from amendments to the State Constitution and the Elections Code and the executive orders issued to implement those amendments to provide for a “top-two” primary election system for all statewide and congressional offices. The Commission finds in each case that either the test claim statutes pled do not impose any new mandated activities; or that the duties imposed by the test claim statutes do not result in costs mandated by the state because they either are expressly included in or necessary to implement the voter-approved ballot measure, Proposition 14 (June 8, 2010,

Statewide Primary Election), or are incidental to the ballot measure mandate and produce at most de minimis added costs, pursuant to Government Code section 17556(f). Thus, the test claim statutes and alleged executive orders do not result in a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

COMMISSION FINDINGS

I. Chronology

- 06/11/2013 The County of Sacramento (County) filed this test claim.¹¹⁵
- 07/03/2013 Commission staff issued a Notice of Complete Test Claim Filing and Schedule for Comments.
- 08/02/2013 The Department of Finance (Finance) requested an extension of time to file comments, which was approved for good cause.
- 08/30/2013 Finance submitted comments on the test claim.¹¹⁶
- 09/26/2013 The County of Sacramento requested an extension of time to file rebuttal comments, which was approved for good cause.
- 10/28/2013 The County of Sacramento submitted rebuttal comments,¹¹⁷ along with a proposed amendment to the test claim filing.¹¹⁸
- 11/04/2013 Commission staff informed the County that the proposed amendment was not timely, and therefore must be rejected.¹¹⁹
- 05/19/2014 Commission staff issued a draft proposed statement of decision on the test claim.

II. Background

The Secretary of State of California is the chief elections officer of the state,¹²⁰ and has the authority and the duty to ensure that the election laws are enforced, and that elections are conducted in an orderly manner.¹²¹ Article II of the California Constitution addresses voting, initiatives, and elections. Prior to the adoption of Proposition 14, and the enactment of the test claim statutes, Article II required the Legislature to provide for partisan primary elections for

¹¹⁵ Exhibit A, Test Claim.

¹¹⁶ Exhibit B, Finance Comments on Test Claim, dated August 30, 2013.

¹¹⁷ Exhibit C, Claimant Rebuttal Comments.

¹¹⁸ Exhibit X, Proposed Test Claim Amendment Filing, dated October 28, 2013.

¹¹⁹ Exhibit X, Notice of Rejected Proposed Test Claim Amendment, dated November 4, 2013.

¹²⁰ Elections Code section 10 (Stats. 1994, ch. 920 (SB 1547)).

¹²¹ Government Code section 12172.5 (Stats. 1975, ch. 1119; Stats. 1977, ch. 1205; Stats. 1978, ch. 847; Stats. 1994, ch. 923 (SB 1546); Stats. 2006, ch. 588 (AB 3059); Stats. 2011, ch. 118 (AB 1412); Stats. 2012, ch. 162 (SB 1171)).

most elective offices.¹²² All “expenses authorized and necessarily incurred in the preparation for, and conduct of, elections,” are and were required to be paid from county treasuries.¹²³

Under prior law, during each primary election cycle, including special primary elections, counties prepared ballots and sample ballots for each qualified party, including the names of *all candidates* affiliated with *each qualified political party* for whom nomination papers had been duly filed.¹²⁴ The partisan primary election process required the preparation of as many as seven partisan ballots for each primary election,¹²⁵ and a nonpartisan ballot. Each partisan primary ballot was intended to be printed together with the nonpartisan ballot as a single ballot.¹²⁶ However, if the county elections official determined that the ballot would be too large to be conveniently handled, the county was permitted to provide for the nonpartisan ballot to be printed separately and provided alongside the partisan ballot to each party-affiliated voter.¹²⁷ A voter not registered as intending to affiliate with any of the participating political parties would receive only a nonpartisan sample ballot.¹²⁸ The sample ballot materials were mailed to each voter, as appropriate to their registered party affiliation, or lack of party affiliation, between 10 and 40 days prior to the election.¹²⁹ On the day of the primary election, voters registered as affiliated with a participating political party received the ballot prepared by the county for their party, which could be printed together with the nonpartisan ballot, or separately from the nonpartisan ballot, if the county elections official determines that a single ballot booklet would be too large to be conveniently handled.¹³⁰ Voters with no registered party affiliation would receive only a ballot for nonpartisan offices and ballot measures put before the voters, except that parties could adopt a rule allowing voters with no party affiliation to receive their party’s ballot, and thus be treated as partisan voters.¹³¹

¹²² California Constitution, article II, section 5 (as amended by Stats. 2004, Res. C. 103 (SCA 18) (Proposition 60, approved November 2, 2004)). See also, article II, section 6 (as amended, June 3, 1986).

¹²³ Elections Code section 13001 (Stats. 2007, ch. 487 (AB 119); Stats. 2008, ch. 179 (SB 1498)). See also, former Elections Code section 13001 (Stats. 1994, ch. 920 (SB 1547)).

¹²⁴ Elections Code sections 13000 (Stats. 1994, ch. 920 (SB 1547); 13102 (Stats. 2007, ch. 515 (AB 1734)); 13300 (Stats. 2003, ch. 425 (AB 177)).

¹²⁵ See Exhibit A, Test Claim, at p. 73 [“seven qualified state political parties” participating in 2012 presidential primary election].

¹²⁶ Elections Code section 13102 (Stats. 2007, ch. 515 (AB 1734)).

¹²⁷ Elections Code section 13230 (Stats. 2000, ch. 898 (SB 28)).

¹²⁸ *Ibid.*

¹²⁹ Elections Code section 13300 (Stats. 2003, ch. 425 (AB 177)).

¹³⁰ Elections Code section 13102 (Stats. 2007, ch. 515 (AB 1734)); Elections Code section 13230 (Stats. 2000, ch. 898 (SB 28)).

¹³¹ Elections Code section 13102 (Stats. 2007, ch. 515 (AB 1734)).

For general elections, including general special elections, only one form of ballot and sample ballot was provided.¹³² That ballot contained the title of all offices to be voted for, the names of all candidates, as specified, and the titles and summaries of measures to be voted on.¹³³ The ballot also included, “immediately to the right of and on the same line as the name of the candidate, or immediately below the name, if there is not sufficient space to the right of the name...the name of the qualified political party with which the candidate is affiliated.” In addition, the ballots and sample ballots would include the names of any parties that nominated a candidate, in addition to the candidate’s own party.¹³⁴ Counties were required to mail sample ballots to registered voters 29 to 40 days prior to a general election, including notice to voters of their polling place.¹³⁵ Each political party that participated in the partisan primary had the right, under prior law, to place its successful primary candidate on the ballot as its nominee for the ensuing general election.¹³⁶

Prior law also required county elections officials to furnish precinct supplies to each polling place, including, but not limited to, lists of voters, envelopes, instruction cards, a digest of election laws, an American flag “of sufficient size to adequately assist the voter in identifying the polling place,” ballot containers, badges for members of the precinct board, and printed copies of the Voter Bill of Rights.¹³⁷

As amended by Proposition 14 and the test claim statutes and executive orders, discussed below, counties now provide for a voter-nominated primary process for all congressional and state elective offices.¹³⁸ In primary elections, candidates are placed on the ballot by gathering sufficient signatures to satisfy a nomination petition, but those signatures no longer need to be provided by voters of the same party as the candidate.¹³⁹ In a general election, the candidates on the ballot are only those that were the top two “vote-getters” at the primary election.¹⁴⁰ Political parties no longer have any right or entitlement to place their favored candidate on the general

¹³² Elections Code section 13102(Stats. 2007, ch. 515 (AB 1734)) [“There shall be provided, at each polling place, at each election at which public officers are to be voted for, but one form of ballot for all candidates for public office, except that, for partisan primary elections, one form of ballot shall be provided for each qualified political party as well as one form of nonpartisan ballot...”]. Elections Code section 13303 (Stats. 2000, ch. 899 (AB 1094)) [sample ballot shall be identical to the official ballots used in the election].

¹³³ Elections Code section 13103 (Stats. 1994, ch. 920 (SB 1547)).

¹³⁴ Elections Code section 13105 (Stats. 1994, ch. 920 (SB 1547)).

¹³⁵ Elections Code section 13303(Stats. 2000, ch. 899 (AB 1094)).

¹³⁶ California Constitution, article II, section 5 (as amended by Proposition 60, November 2, 2004).

¹³⁷ Elections Code section 14105 (Stats. 1994, ch. 920 (SB 1547); Stats. 2003, ch. 425 (AB 177); Stats. 2003, ch. 810 (AB 1679)).

¹³⁸ California Constitution, article II, section 5 (as amended by Proposition 14, June 8, 2010).

¹³⁹ Elections Code sections 8062; 8068 (Stats. 2009, ch. 1 (SB 6)).

¹⁴⁰ California Constitution, article II, section 5 (as amended by Proposition 14, June 8, 2010).

election ballot,¹⁴¹ and party designations on both the primary and general election ballots are chosen by the candidates, and do not reflect the endorsement or support of the party named.¹⁴² The voters are to be made aware of these changes by inclusion of certain instructions and explanatory text in the ballots and sample ballots, and by the posting at polling places of appropriate explanatory signage.¹⁴³ Specifically, voters are informed that they may vote for the candidate of their choosing regardless of party preference, except in presidential primary contests, but that the party preference, if any, designated by a candidate is chosen by the candidate, and does not constitute or imply support or endorsement of that political party.¹⁴⁴ The voter-nominated primary process does not require printing as many as seven separate partisan ballots for each qualified political party (as was required under prior law), except in presidential election years,¹⁴⁵ and permits, with the exception of presidential candidates and political party offices in a primary election only, any voter to vote for the candidate of his or her choice regardless of the party preference of the candidate or the voter.¹⁴⁶

Test Claim Statutes and Alleged Executive Orders

Proposition 14/Statutes 2009, Chapter 2

Senate Constitutional Amendment 4 (Stats. 2009, ch. 2) was filed with the Secretary of State on February 19, 2009, and put before the voters as Proposition 14 at the June 8, 2010 Statewide Primary Election.¹⁴⁷ Because SCA 4 had no legal effect until adopted by the voters, the analysis below will refer hereafter to SCA 4, also called Statutes 2009, chapter 2, as Proposition 14.

The text of Proposition 14, section (a) of the findings and declarations, states that “[t]his act, along with legislation already enacted by the Legislature to implement this act, are intended to implement an open primary system in California as set forth below.”¹⁴⁸ The “legislation already enacted...to implement” the act was Statutes 2009, chapter 1, discussed below.¹⁴⁹ Proposition 14 amended article II, section 5 of the California Constitution, providing, in pertinent part:

(a) A voter-nomination primary election shall be conducted to select the candidates for congressional and state elective offices in California. All voters

¹⁴¹ California Constitution, article II, section 5(b) (as amended by Proposition 14, June 8, 2010).

¹⁴² Elections Code section 9083.5 (Stats. 2009, ch. 1 (SB 6); Stats. 2012, ch. 3 (AB 1413)).

¹⁴³ Elections Code sections 13206 (Stats. 2009, ch. 1 (SB 6); Stats. 2012, ch. 3 (AB 1413)); 13206.5 (added, Stats. 2012, ch. 3 (AB 1413)); 9083.5; 14105.1 (added, Stats. 2009, ch. 1 (SB 6)).

¹⁴⁴ *Ibid.*

¹⁴⁵ Elections Code section 13102 (as amended by Stats. 2009, ch. 1 (SB 6)).

¹⁴⁶ California Constitution, article II, section 5 (as amended by Proposition 14, June 8, 2010).

¹⁴⁷ See Exhibit A, Test Claim, at p. 10; Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

¹⁴⁸ Exhibit X, Text of Proposition 14.

¹⁴⁹ Statutes 2009, chapter 1 (SB 6) states that it will not become operative unless SCA 4 (Proposition 14) is adopted.

may vote at a voter-nominated primary election for any candidate for congressional and state elective office without regard to the political party preference disclosed by the candidate or the voter, provided that the voter is otherwise qualified to vote for candidates for the office in question. The candidates who are the top two vote-getters at a voter-nominated primary election for a congressional or state elective office shall, regardless of party preference, compete in the ensuing general election.

(b) Except as otherwise provided by Section 6, a candidate for a congressional or state elective office may have his or her political party preference, or lack of political party preference, indicated upon the ballot for the office in the manner provided by statute. A political party or party central committee shall not nominate a candidate for any congressional or state elective office at the voter-nominated primary. This subdivision shall not be interpreted to prohibit a political party or party central committee from endorsing, supporting, or opposing any candidate for a congressional or state elective office. A political party or party central committee shall not have the right to have its preferred candidate participate in the general election for a voter-nominated office other than a candidate who is one of the two highest vote-getters at the primary election, as provided in subdivision (a).

(c) The Legislature shall provide for partisan elections for presidential candidates, and political party and party central committees, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

(d) A political party that participated in a primary election for a partisan office pursuant to subdivision (c) has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party's candidates.¹⁵⁰

Proposition 14 also amended article II, section 6 to add the Superintendent of Public Instruction to the list of nonpartisan offices. Judicial, school, county, and city offices were already designated nonpartisan under prior law. The amendments to article II, section 6 also provide that a political party shall not nominate a candidate for nonpartisan office, and a candidate's party preference shall not be included on the ballot.¹⁵¹ Proposition 14 was adopted by the voters June 8, 2010, with an operative date of January 1, 2011.¹⁵²

¹⁵⁰ California Constitution, article II, section 5 (as amended by Proposition 14, effective June 9, 2010).

¹⁵¹ Compare California Constitution, article II, section 6 (Amended June 3, 1986) with California Constitution, article II, section 6 (amended by Proposition 14, effective June 9, 2010).

¹⁵² Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

Statutes 2009, Chapter 1

Statutes 2009, chapter 1 effects a number of amendments to the Elections Code to conform to the Top Two Primaries Act, but explicitly states that its provisions “shall become operative only if SCA 4 is approved.”¹⁵³ The Legislative Counsel’s Digest preceding Statutes 2009, chapter 1, states that in addition to the changes proposed in Proposition 14: “[t]his measure would permit a voter, at the time of registration, to choose whether or not to disclose a party preference...[and] provide that a voter may vote for the candidate of his or her choosing in the primary election, regardless of his or her disclosure or non-disclosure of party preference.” In addition, the Digest states that the measure would provide for a “voter-nominated primary election” for each state and congressional office, in which a voter may vote for any candidate regardless of the party preference disclosed by either the candidate or the voter. The two candidates receiving the highest vote totals would then compete for the office at the general election. The Digest further states that the measure would not change existing law relating to presidential primaries.¹⁵⁴

The amendments made to the Elections Code by Statutes 2009, chapter 1, address, among other things, the form of ballots, the registration of voters, and the declaration of candidacy filed by each eligible candidate. The designation of all state and congressional offices as voter-nominated offices pursuant to Proposition 14 required adding the words “voter-nominated office” to a number of Elections Code sections pertaining to qualification of candidates,¹⁵⁵ designation of party preference,¹⁵⁶ and the form of ballots.¹⁵⁷ In addition, the Code was amended in several relevant places to provide for “party preference” in lieu of “party affiliation.”¹⁵⁸ Finally, Statutes 2009, chapter 1 required instructions to be added to the ballot and posted at polling places, to explain to voters the changes that had been made.¹⁵⁹

Secretary of State’s Memorandum CC/ROV #11005 (January 26, 2011)

This memorandum from the Secretary of State provides for specific direction to county elections officials for special elections conducted during 2011. Most of the memorandum is explanatory of the changes made by Proposition 14 and Statutes 2009, chapter 1, including changes to the declaration of candidacy and nomination forms, additions to the voter information contained in the ballot, and the limitations imposed on write-in and independent nomination processes. The memorandum restates the language required by section 13105(a) to indicate a candidate’s party preference, and provides for that information to appear on the ballot in three lines, with the name of the candidate, followed by the party preference designation sentence, followed by a “Ballot Designation.”¹⁶⁰ Lastly, the memorandum provides that for special elections, a list of

¹⁵³ Statutes 2009, chapter 1 (SB 6), section 67.

¹⁵⁴ Statutes 2009, chapter 1 (SB 6), Legislative Counsel’s Digest.

¹⁵⁵ Elections Code section 13 (Stats. 2009, ch. 1 (SB 6)).

¹⁵⁶ Elections Code section 8002.5 (Stats. 2009, ch. 1 (SB 6)).

¹⁵⁷ Elections Code sections 13102; 13105; 13110; 13206; 13230; 13302 (Stats. 2009, ch. 1 (SB 6)).

¹⁵⁸ See, e.g., section 13102 (Stats. 2009, ch. 1 (SB 6)).

¹⁵⁹ Elections Code section 9083.5; 14105.1 (Stats. 2009, ch. 1 (SB 6)).

¹⁶⁰ Exhibit A, Test Claim, at p. 54 [CC/ROV #11005].

endorsements by qualified political parties shall be considered timely received, and therefore must be printed in the sample ballot booklets, if provided 43 days prior to the special primary election.¹⁶¹

Secretary of State’s Memorandum CC/ROV #11125 (November, 23, 2011)

Memorandum #11125 addresses the changes made by Proposition 14 and Statutes 2009, chapter 1 as applied to the first full primary election cycle to begin in 2012. To reduce costs, the memorandum provides for shortening the party designation phrase from a complete sentence to “Party Preference: _____.” In addition, the memorandum provides that there may be cases in which the shorter party preference designation phrases will not solve “ballot printing and cost challenges,” and therefore the memorandum provides party abbreviations that may be used where necessary.¹⁶²

Secretary of State’s Memorandum CC/ROV #11126 (November 23, 2011)

Many of the directives of CC/ROV #11126 are similar to those stated in CC/ROV #11005, which applied only to special primary and special general elections, and most of CC/ROV #11126 restates the requirements of the Elections Code, pertaining to the reclassification of most offices to “voter-nominated” offices, the changes to candidate filing and nomination documents, and the instructions to voters to be included in the ballot and furnished to the voting precincts. The memorandum also notes that the June 5, 2012 primary election will not include any nonpartisan offices, and therefore the explanatory text for such offices is not necessary. The memorandum restates the shortened party designation phrases provided in CC/ROV #11125, and adopts for the regular primary election cycle the same “three-line format” called for in CC/ROV #11005 regarding special elections.¹⁶³

Statutes 2012, chapter 3

The Legislative Counsel’s Digest for Statutes 2012, chapter 3 states that “[t]his bill would make technical revisions to provisions of the Elections Code to reflect the ‘voter-nominated primary election’ process.”¹⁶⁴ Those technical revisions include a provision *requiring* a candidate’s party preference to appear on the primary ballot, and stating that the candidate’s preference “shall not be changed between the primary and general election.”¹⁶⁵ The amendments include changing the words “party affiliation” to “party preference” on the Declaration of Candidacy form, and changing the words “less than” to “fewer than,” with respect to the number of signatures required to nominate a candidate for office.¹⁶⁶ In addition, the amendments require candidates for voter-nominated offices to disclose their voter registration and party preference history for the previous ten years.¹⁶⁷ With respect to the form of ballots, the amendments of Statutes 2012, chapter 3

¹⁶¹ Exhibit A, Test Claim, at p. 55 [CC/ROV #11005].

¹⁶² Exhibit A, Test Claim, at pp. 56-58.

¹⁶³ Exhibit A, Test Claim, at pp. 59-64.

¹⁶⁴ Legislative Counsel’s Digest, Statutes 2012, chapter 3 (AB 1413).

¹⁶⁵ Elections Code section 8002.5 (as amended, Stats. 2012, ch. 3 (SB 1413)).

¹⁶⁶ Elections Code sections 8040; 8062 (as amended, Stats. 2012, ch. 3 (AB 1413)).

¹⁶⁷ Elections Code sections 8040 (as amended, Stats. 2012, ch. 3 (AB 1413)).

eliminated the requirement that party preference information be printed in “eight point roman lowercase type,” and the Code now provides for party preference identification “as specified by the Secretary of State.” Amendments to the form of ballots also reflect the change described above, in that if a candidate indicates a party preference on his or her voter registration and declaration of candidacy, that preference shall be printed on the ballot.¹⁶⁸ And, the amendments reflect the fact that presidential primaries are unaffected by Proposition 14 or Statutes 2009, chapter 1, and therefore information relating to party-nominated offices must appear on the ballot in every presidential election year; in all other election years, only voter-nominated and nonpartisan offices will be on the ballot, and therefore the voter information pertaining to party-nominated offices may be omitted.¹⁶⁹

Secretary of State’s Memorandum CC/ROV #12059 (February 10, 2012)

This memorandum addresses the amendments made by Statutes 2012, chapter 3. The memorandum notes that Statutes 2012, chapter 3 now requires a candidate to provide a party preference or lack of party preference “consistent with the preference stated on their voter registration card,” and thus the Declaration of Candidacy form has been updated to remove “the option for a candidate who disclosed a party preference on their voter registration card to withhold that information from the ballot.”¹⁷⁰ As before, “[t]he forms, along with the qualifications and requirements for running for voter-nominated office, were forwarded to all county elections offices.”¹⁷¹ The memorandum further provides that on the sample ballot there are only two options for a candidate’s party preference: either the name of a party, or the word “None.” And, the memorandum states that “[t]he above-described designations made by the candidates shall appear on both the primary and general election ballots and shall not be changed between the primary and general elections.” Finally, the memorandum restates the political party abbreviations that may be used on the ballots, where necessary, and clarifies that no further changes were made by AB 1413 to the requirements of printing a list of endorsements or furnishing voter information to the precincts.¹⁷²

III. Positions of the Parties

A. Position of the Claimant

The County of Sacramento has pled Statutes 2009, chapter 2 (SCA 4), which was put before the voters by the Legislature and approved in the June 2010 primary election as Proposition 14. The County has also pled specific code sections added or amended by Statutes 2009, chapter 1 (SB6), Statutes 2012, chapter 3 (AB 1413), and four specific memoranda from the Secretary of State’s office regarding the implementation of the test claim statutes and Proposition 14.¹⁷³ The County alleges that it first incurred costs in fiscal year 2011-2012 to perform the following activities required by the test claim statutes and executive orders alleged:

¹⁶⁸ Elections Code sections 13105; 13206 (as amended, Stats. 2012, ch. 3 (AB 1413)).

¹⁶⁹ Elections Code section 13206.5 (as added, Stats. 2012, ch. 3 (AB 1413)).

¹⁷⁰ Exhibit A, Test Claim, at p. 66.

¹⁷¹ Exhibit A, Test Claim, at p. 67.

¹⁷² Exhibit A, Test Claim, at pp. 70-72.

¹⁷³ Exhibit A, Test Claim, at p. 1.

- i. Reproduce and provide to each polling place the Secretary of State’s explanation of electoral procedures for party-nominated, voter-nominated and nonpartisan offices, in all required languages.
- ii. Post at each polling place the Secretary of State’s explanation of electoral procedures for party-nominated, voter-nominated and non partisan offices.
- iii. Include in each ballot and sample ballot the wording “Party Preference” for all voter-nominated candidates.
- iv. List all candidates for each voter-nominated office, regardless of party preference or lack thereof.
- v. Follow the formatting rules promulgated by the Secretary of State.
- vi. Include in each ballot and sample ballot new information regarding partisan offices, and voter-nominated and nonpartisan offices.
- vii. Include in each sample booklet authorized party endorsement lists, without cost to the party or central committee.
- viii. Include in each sample booklet new information regarding partisan offices, and voter-nominated and non partisan offices.
- ix. Include in each presidential general election ballot new specified language.
- x. Include in each election ballot new specified language.
- xi. Include in each ballot, sample ballot, and voter information pamphlet specified party abbreviations; those abbreviations will be posted at each polling place and mailed to vote-by-mail voters.
- xii. Collect and report additional specified information from candidates for voter-nominated office.
- xiii. Attend meetings and trainings to ensure uniform implementation of the Top Two Candidates Open Primary Act.
- xiv. Perform additional In-Lieu of Filing Fee petition signature verification to comply with elimination of lower signature thresholds for minor party candidates to voter-nominated offices.
- xv. Perform more complex testing of Voting System Logic and Accuracy to verify vote counting machines programming correctly tabulates lengthy voter-nominated contests.
- xvi. Increase the length of the ballot and sample ballot to accommodate lengthy voter-nominated contests.
- xvii. Increase the length of the ballot and sample ballot to accommodate lengthy instructions.
- xviii. Modify precinct officer training classes and on-line training programs to include changes implementing the Top Two Candidates Open Primary Act, including:

- a. Instructions on what documents to post, and where the documents to be posted; and
 - b. Information on the new contest designations and who is allowed to vote on the contests.
- xix. Revise polling place operations manual to include changes resulting from Top Two Candidates Open Primary Act, including:
- a. Written instructions on what is to be posted and where it is to be posted; and
 - b. Written definition and lists of Party Nominated, Voter Nominated, and Nonpartisan contests, including who is eligible to vote on these contests.¹⁷⁴

The County estimated increased costs in fiscal year 2011-2012 in the amount of \$33,000, and estimated increased costs in fiscal year 2012-2013 in the amount of \$15,000. Finally, the County alleges that no offsetting non-local funds or fee authority is available to cover the costs of this mandate.¹⁷⁵

B. Department of Finance Position

Finance argues that the test claim statutes “were necessary to either put the ballot measure before the voters or to implement the ballot measure once it was approved by the voters.” In addition, Finance argues that the four memoranda from the Secretary of State’s office were necessary to implement the ballot measure approved by the voters. Therefore, “Finance is of the opinion that the Commission on State Mandates (Commission) should deny the test claim, in its entirety, based upon Government Code section 17556(f) which finds that no state mandate exists if “The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.””¹⁷⁶

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, 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.

¹⁷⁴ Exhibit A, Test Claim, at pp. 3-4.

¹⁷⁵ Exhibit A, Test Claim, at p. 5.

¹⁷⁶ Exhibit B, Finance Comments on Test Claim, at pp. 1-2.

- (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

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.”¹⁷⁷ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁷⁸

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.¹⁷⁹
2. The mandated activity 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.¹⁸⁰
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.¹⁸¹
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.¹⁸²

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁸³ 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 6.¹⁸⁴ In making its decisions, the Commission must strictly construe article XIII

¹⁷⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁷⁸ *County of Los Angeles v. State of California (County of Los Angeles I)* (1987) 43 Cal.3d 46, 56.

¹⁷⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹⁸⁰ *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56.)

¹⁸¹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁸² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹⁸³ *County of San Diego, supra*, 15 Cal.4th 68, 109.

¹⁸⁴ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁸⁵

A. Statutes 2009, chapter 2 was adopted by the voters as Proposition 14 in a statewide election, and therefore does not impose a state-mandated local program.

Senate Constitutional Amendment 4 (Stats. 2009, ch. 2) was filed with the Secretary of State on February 19, 2009, and put before the voters as Proposition 14 at the June 8, 2010 Statewide Primary Election.¹⁸⁶ The text of Proposition 14 states that “[t]his act, along with legislation already enacted by the Legislature to implement this act, are intended to implement an open primary system in California as set forth below.”¹⁸⁷ The “legislation already enacted...to implement” the Act was Statutes 2009, chapter 1 (SB 6), discussed below. Proposition 14 amended article II, sections 5 and 6 of the California Constitution to provide for voter-nominated primary elections for congressional and state offices, and a “top-two” general election.

Government Code section 17556(f) provides that the Commission “shall not find” costs mandated by the state if:

The statute or executive order imposes duties that are necessary to implement, or are 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.¹⁸⁸

California School Boards Association v. State of California (CSBA I) makes clear that this statutory exclusion from reimbursement is consistent with the subvention requirements of article XIII B, section 6.¹⁸⁹ The court in *CSBA I* reasoned that the subvention requirement applies to mandates imposed by the Legislature, not by the voters; the voters’ powers of initiative and referendum are reserved powers, not vested in the Legislature, and are therefore not limited by article XIII B, section 6. *CSBA I* holds that the reimbursement requirement applies only to state-mandated costs, not costs incurred by way of “the people acting pursuant to the power of initiative.”¹⁹⁰

Proposition 14 was put before the voters at the June 8, 2010 primary election, and adopted the exact language as Statutes 2009, chapter 2. Therefore, all requirements of Statutes 2009, chapter 2 are expressly included in a ballot measure approved by the voters in a statewide election, and the Commission shall not find costs mandated by the state, within the meaning of article XIII B, section 6, pursuant to Government Code section 17556(f).

¹⁸⁵ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose, supra*].

¹⁸⁶ See Exhibit A, Test Claim, at p. 10; Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

¹⁸⁷ Exhibit X, Text of Ballot Measure, Proposition 14, at p. 1.

¹⁸⁸ As amended by Statutes 2010, chapter 719 (SB 856).

¹⁸⁹ *California School Boards Association v. State of California (CSBA I)* (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183, 1206-1207; 1210.

¹⁹⁰ *Ibid.*

Based on the foregoing, the Commission finds that Statutes 2009, chapter 2 does not result in a reimbursable state-mandated program and is denied.

B. Many of the code sections, as amended by the test claim statutes, and the executive orders pled, do not impose any new state-mandated activities on local government.

The first element of a reimbursable mandate, as stated above, is that the statute or executive order alleged must require or mandate local agencies to perform an activity. The following code sections and executive orders alleged in this test claim do not impose any new required activities on county election officials, as explained herein, and thus do not constitute state-mandated programs within the meaning of article XIII B, section 6: Elections Code sections 13, 300.5, 325, 332.5, 334, 337, 359.5, and 13230, as amended by Stats. 2009, ch. 1; sections 8002.5, 8040, 8062, as amended by Stats. 2012, ch. 3; and that portion of the Secretary of State’s Memorandum CC/ROV #11126 pertaining to nomination papers.

1. Elections Code section 13, as amended by Statutes 2009, chapter 1, and Statutes 2012, chapter 3.

Section 13, prior to amendment by the test claim statutes, provided that no person shall be considered a legally qualified candidate for office or party nomination *for a partisan office* unless that person has filed a declaration of candidacy with the proper official for the particular election or primary, or is entitled to have his or her name placed on the general election ballot by reason of having been nominated at a primary election, or having been selected to fill a vacancy on the general election ballot as provided in Section 8806, or having been selected as an independent candidate pursuant to section 8304. Prior section 13 further provided that nothing in this section prevents or prohibits a voter from casting a ballot by writing in the name of the person, or from having that ballot counted or tabulated.¹⁹¹

As amended, section 13 refers to a person being selected to fill a vacancy on the ballot pursuant to section 8807, rather than section 8806, and now clarifies that a person shall not be legally qualified for nomination or to participate in the general election for a *voter-nominated office* unless that person has filed a declaration of candidacy, or was nominated at a primary election. The amendment to section 13 is technical in nature, and is required to conform to the change from a party-nomination to a voter-nomination for congressional and state offices.¹⁹² Moreover, the plain language does not mandate any activities or tasks; it is definitional in nature.

Based on the foregoing, the Commission finds that Elections Code section 13, as amended by Statutes 2009, chapter 1, and Statutes 2012, chapter 3, does not impose any state-mandated activities on counties.

2. Elections Code sections 300.5, 325, 332.5, 334, 337, and 359.5, as added or amended by Statutes 2009, chapter 1 and Statutes 2012, chapter 3.

Section 300.5, as added, defines the phrase “affiliated with a political party,” as used in the code, to mean “the party preference that the voter or candidate has disclosed on his or her affidavit of registration.”

¹⁹¹ Statutes 2003, chapter 810 (AB 1679).

¹⁹² Statutes 2009, chapter 1 (SB 6); Statutes 2012, chapter 3 (AB 1413).

Section 325, as added, defines “independent status” to mean “a voter’s indication of ‘No Party Preference.’” Section 325 was repealed by Statutes 2012, chapter 3.

Section 332.5, as added, defines the term “nominate” to mean “the selection, at a state-conducted primary election, of candidates who are entitled by law to participate in the general election for that office, but does not mean any other lawful mechanism that a political party may adopt for purposes of choosing the candidate who is preferred by the party for a nonpartisan or voter nominated office.”

Section 334, as amended, clarifies that a “nonpartisan office” is one for which no party may nominate a candidate, but does not include a “voter-nominated office,” which is defined in section 359.5, discussed below.

Section 337, as amended, defines a “partisan office” to include President and Vice President of the United States, and “the delegates therefor,” and an “[e]lected member of a party committee.” Prior section 337 provided only that a partisan office “means an office for which a party may nominate a candidate.”¹⁹³

Section 359.5, as added by Statutes 2009, chapter 1 and amended by Statutes 2012, chapter 3, defines a voter-nominated office under the open primary provided for by Proposition 14). Section 359.5 provides that a voter-nominated office “means a congressional or state elective office for which a candidate may choose to have his or her party preference or lack of party preference indicated upon the ballot.” Section 359.5 further provides that a party “shall not nominate a candidate at a state-conducted primary election for a voter-nominated office,” and that “[t]he primary conducted for a voter-nominated office does not serve to determine the nominees of a political party but serves to winnow the candidates for the general election to the candidates receiving the highest or second highest number of votes cast at the primary election.” Section 359.5 goes on to list a number of state and federal offices that shall be voter-nominated, and finally states that nothing in this section shall prohibit a political party from endorsing, supporting, or opposing a candidate for a voter-nominated office.¹⁹⁴

Nothing in the plain language of sections 300.5, 325, 332.5, 334, 337, or 359.5 imposes any activities or costs on local government. The additions and amendments to the Elections Code effected by Statutes 2009, chapter 1 and Statutes 2012, chapter 3 are definitional in nature.

Based on the foregoing, the Commission finds that Elections Code sections 300.5, 325, 332.5, 334, 337, and 359.5, as added or amended by Statutes 2009, chapter 1 and Statutes 2012, chapter 3 do not impose any state-mandated activities on counties.

3. Elections Code section 13230, as amended by Statutes 2009, chapter 1.

Pre-existing law, section 13230, added by Statutes 2000, chapter 898, provided that “[i]f the county elections official determines that, due to the number of candidates and measures that must be printed on the ballot, the ballot will be larger than may be conveniently handled, the county elections official may provide that a nonpartisan ballot shall be given to each partisan voter, together with his or her partisan ballot, and that the material appearing under the heading ‘Nonpartisan Offices’ on partisan ballots, as well as the heading itself, shall be omitted from the

¹⁹³ Statutes 1994, chapter 920 (SB 1547).

¹⁹⁴ Elections Code section 359.5 (Stats. 2009, ch. 1 (SB 6); Stats. 2012, ch. 3 (AB 1413)).

partisan ballots.” In addition, prior section 13230 provided that “[p]artisan voters,’ for purposes of this section, includes persons who have declined to state a party affiliation, but who have chosen to vote the ballot of a political party as authorized by that party’s rules duly noticed to the Secretary of State.”¹⁹⁵

As amended by Statutes 2009, chapter 1,¹⁹⁶ section 13230 provides that if the county elections official determines that a ballot will be larger than may be conveniently handled, “the county elections official may provide that a nonpartisan ballot shall be given to each partisan voter, together with his or her partisan ballot, and that the material appearing under the heading ‘Voter Nominated and Nonpartisan Offices’ on partisan ballots, as well as the heading itself, shall be omitted from the partisan ballots.”¹⁹⁷ And, amended section 13230 provides that “partisan voters” includes “both persons who have disclosed a party preference pursuant to Section 2151 or 2152 and persons who have declined to disclose a party preference, but who have chosen to vote the ballot of a political party as authorized by that party’s rules duly noticed to the Secretary of State.”¹⁹⁸

None of the amendments to section 13230 impose new state-mandated activities on counties. The amended definition of “partisan voter” is merely clarifying of the law as approved by the voters in Proposition 14, and does not impose any activities or tasks on counties. More importantly, the county elections official is not *mandated* to provide separate ballots, but *may* provide separate ballots if he or she determines that a single ballot would be “larger than may be conveniently handled.”¹⁹⁹ That determination is a local discretionary decision, and there is no requirement that the county elections official provide for separate ballots even if such a determination is made.²⁰⁰ Moreover, the provision that a county elections official may provide for separate partisan and nonpartisan ballots is found also in prior law,²⁰¹ and is therefore not new.

Based on the foregoing, the Commission finds that Elections Code section 13230, as amended by Statutes 2009, chapter 1, does not impose any new state-mandated activities on counties.

4. Elections Code sections 8002.5 and 8040, as amended by Statutes 2012, chapter 3.

Prior to the enactment of the test claim statute, section 8002.5 provided that a candidate “may indicate his or her party preference, or a lack of party preference, as disclosed upon the candidate’s most recent statement of registration,” and if a candidate indicates a party preference,

¹⁹⁵ Elections Code section 13230 (Stats. 2000, ch. 898 (SB 28)).

¹⁹⁶ The amendment to section 13230 made by Statutes 2012, chapter 3 (AB 1413) was not properly pled, and the Commission does not have jurisdiction over that amendment.

¹⁹⁷ Elections Code section 13230(a) (Stats. 2009, ch. 1 (SB 6)) [emphasis added].

¹⁹⁸ Elections Code section 13230(c) (Stats. 2009, ch. 1 (SB 6)) [emphasis added].

¹⁹⁹ Elections Code section 13230(a) (Stats. 2009, ch. 1 (SB 6)).

²⁰⁰ See Government Code section 14 [“‘Shall’ is mandatory and ‘may’ is permissive.”].

²⁰¹ See Elections Code section 13230 (Stats. 2000, ch. 898 (SB 28)).

“it shall appear on the primary and general election ballot.”²⁰² The prior version of section 8002.5 also required that all references to party preference or affiliation “shall be omitted from all forms required to be filed by a voter-nominated candidate...except that the declaration of candidacy required by Section 8040 shall include space for the candidate to list the party preference disclosed upon the candidate’s most recent affidavit of registration.”²⁰³

As amended by Statutes 2012, chapter 3, section 8002.5 now requires a candidate to indicate either a party preference or no party preference in the candidate’s declaration of candidacy, “which shall be consistent with what appears on the candidate’s most recent affidavit of registration.” The candidate’s party preference “shall appear on the primary and general election ballot in conjunction with his or her name, and shall not be changed between the primary and general election.”²⁰⁴

Section 8040, was also amended by Statutes 2012, chapter 3 to eliminate the reference to party affiliation, in accordance with the implementation of a voter-nominated primary election system. Prior section 8040 provided for the Declaration of Candidacy form which stated “I hereby declare myself a _____ Party candidate for nomination to the office of _____ District Number _____ to be voted for at the primary election...”²⁰⁵ The amended section omits any reference to party, and instead provides that the form shall state: “I hereby declare myself a candidate for nomination to the office of _____ District Number _____ to be voted for at the primary election...”²⁰⁶ In addition, amended section 8040 now provides that on the Declaration of Candidacy form a candidate shall certify his or her political party preference as indicated on his or her current affidavit of registration, and certify his or her “party affiliation/preference history” for 10 years prior to the year in which the document is executed.²⁰⁷

The 2012 amendments to sections 8002.5 and 8040 therefore consist of (1) a requirement that candidates indicate a party preference or no party preference, and that the statement of party preference be consistent with the candidate’s most recent affidavit of registration; (2) a directive that a candidate’s party preference shall not be changed between the primary and general election; and (3) an amendment to the language of the Declaration of Candidacy form.

The County argues that these amendments require county elections officials to verify that a candidate’s indication of party preference or no party preference is consistent with the most recent affidavit of registration. The County also argues that if the candidate’s designation of party preference does not match the most recent affidavit of registration, county elections officials would be required “to explain the requirement to the candidate and give the candidate the opportunity to change their filing or their affidavit of registration.”²⁰⁸ And finally, the

²⁰² Elections Code section 8002.5 (as added, Stats. 2009, ch. 1). Note that this section as amended by Statutes 2009, chapter 1 was not pled in this test claim. See Exhibit A.

²⁰³ Elections Code section 8002.5 (as added, Stats. 2009, ch. 1 (SB 6)).

²⁰⁴ Elections Code section 8002.5 (as amended, Stats. 2012, ch. 3 (AB 1413)).

²⁰⁵ Elections Code section 8040 (Stats. 2003, ch. 277 (AB 277)).

²⁰⁶ Elections Code section 8040 (Stats. 2012, ch. 3 (AB 1413)).

²⁰⁷ *Ibid.*

²⁰⁸ See Exhibit C, Claimant Rebuttal Comments, at pp. 1-2.

County argues that “AB 1413 amended Elections Code [section] 8040 to include new candidate certifications in the candidate’s declaration of candidacy. This additional certification is not contained in Proposition 14 and is not required for its implementation.” Therefore, the County reasons, “[t]hese requirements increase costs related to redesigning and reprinting those forms and instructions as well as staff training on these new requirements.”²⁰⁹

The plain language of section 8002.5 does not impose any requirement on the county to verify that the candidate’s party preference matches his or her affidavit of registration; nor does the code provide any consequence for the situation in which the candidate’s declaration and most recent registration do not match. The requirement is directed to the candidate; the plain language does not require anything of local government. Furthermore, the provision that a stated party preference “shall not be changed” between the primary election and the general election does not impose any affirmative duty on local government officials; this, too, is directed to the candidate.

Similarly, the plain language of amended section 8040 does not impose any state-mandated activities on local government. The plain language of section 8040 does not require training, and does not require counties to update the form, as alleged.²¹⁰ Indeed, the test claim executive order CC/ROV #12059, entitled: “Top Two Candidates Open Primary Act of 2010: UPDATED Implementation Guidelines” provides expressly that updated forms that “comply with AB 1413, have been forwarded to all county elections offices.”²¹¹ Therefore, any changes required to the Declaration of Candidacy form have been implemented by the Secretary of State and provided to the counties, and no “redesigning and reprinting” is necessary.

Based on the foregoing, the Commission finds that Elections Code sections 8002.5 and 8040, as amended by Statutes 2012, chapter 3 (AB 1413) do not impose any state-mandated activities on counties.

5. Elections Code section 8062, as amended by Statutes 2012, chapter 3 (AB 1413); and the portion of the Secretary of State Memorandum CC/ROV #11126 relating to signatures on nomination papers.

Section 8062 provides the number of registered voters required to sign a nomination paper for a candidate for a primary election for specified offices. Statutes 2012, chapter 3 (AB 1413) amended section 8062 as follows in underline and strikeout:

- (a) The number of registered voters required to sign a nomination paper for the respective offices are as follows:
 - (1) State office or United States Senate, not ~~less~~fewer than 65 nor more than 100.
 - (2) House of Representatives in Congress, State Senate or Assembly, State Board of Equalization, or any office voted for in more than one county, and not statewide, not ~~less~~fewer than 40 nor more than 60.
 - (3) Candidacy in a single county or any political subdivision of a county, other than State Senate or Assembly, not ~~less~~fewer than 20 nor more than 40.

²⁰⁹ Exhibit C, Claimant Rebuttal Comments, at p. 2.

²¹⁰ Exhibit C, Claimant Rebuttal Comments, at pp. 1-2.

²¹¹ Exhibit A, Test Claim, at p. 67.

(4) With respect to a candidate for a political party committee, if any political party has ~~less~~fewer than 50 voters in the state or in the county or district in which the election is to be held, one-tenth the number of voters of the party.

(5) ~~When~~If there are fewer than 150 voters in the county or district in which the election is to be held, not ~~less~~fewer than 10 nor more than 20.

(b) The provisions of this section are mandatory, not directory, and no nomination paper shall be deemed sufficient that does not comply with this section. However, this subdivision shall not be construed to prohibit withdrawal of signatures pursuant to Section 8067. This subdivision also shall not be construed to prohibit a court from validating a signature which was previously rejected upon showing of proof that the voter whose signature is in question is otherwise qualified to sign the nomination paper.²¹²

The 2012 amendments are technical and clarifying in nature and do not impose any new state-mandated activities or costs on local government.²¹³

Nevertheless, the County alleges that “SB 6 and AB 1413 amended Election Code 8062 [*sic*] changing the number of nomination signatures required for certain political parties and candidates for political party committees.” The County further alleges that section 8068, which was not pled, results in increased costs related to nomination petitions:

SB 6 amended Elections Code Section 8068 to allow voters of any party affiliation to sign a candidate's nomination forms. While this makes sense to do in the wake of Proposition 14, it is not necessary for its implementation. This change resulted in changes to counties' Election Management Systems (EMS). Any change to the EMS results in costs for training staff.²¹⁴

The changes to sections 8062 and 8068 to which the County refers were not pled in this test claim.²¹⁵ It may be true that sections 8062 and 8068, as amended by Statutes 2009, chapter 1 (SB 6), together require counties to review a greater number of nomination petitions, but the only amendment to section 8062 properly pled in this test claim is that made by Statutes 2012, chapter 3 (AB 1413), which changed the words “less than” to “fewer than,” with respect to signatures needed to file nomination papers, added the word “State” before “Board of Equalization,” and changed “when” to “if,” in paragraph (a)(5). These technical changes do not impose any mandated activities on counties.

The County also alleges that CC/ROV #11126 imposed new activities related to review of nomination petitions. The Memorandum states:

Signatures in-lieu - Prior to the Top Two Candidates Open Primary Act, only a voter of the same political party as a candidate could sign the candidate's

²¹² Elections Code section 8062 (as amended, Stats. 2012, ch. 3 (AB 1413)).

²¹³ Compare Elections Code section 8062, as amended by Statutes 2009, chapter 1 (SB 6) with section 8062 as amended by Statutes 2012, chapter 3 (AB 1413).

²¹⁴ Exhibit C, Claimant Rebuttal Comments, at p. 2.

²¹⁵ Exhibit A, Test Claim, at p. 1.

nomination paper. Additionally, any voter could sign an in-lieu petition, but only the signature of a voter who was of the same political party could be counted toward the number of voters required to sign a nomination paper. Now any registered voter, regardless of party preference, can sign a nomination paper. As a result, all signatures on an in lieu petition can be counted toward the number of voters required to sign a candidate's nomination paper. (Elec. Code §§ 8061, 8068.)²¹⁶

The plain language of this paragraph of the memorandum does not impose any new mandated activities on counties; it merely clarifies that all signatures of registered voters may be counted on a nomination paper or an “in-lieu petition” pursuant to the amendments made by the Top Two Candidates Open Primary Act. The memorandum is explanatory in this respect, not mandatory.

Based on the foregoing, Elections Code section 8062, as amended by Statutes 2012, chapter 3 and CC/ROV #11126 do not impose any state-mandated activities on counties.

C. The remaining code sections and executive orders pled require the County to perform some new activities, but the required activities do not impose costs mandated by the state because they are necessary to implement Proposition 14 or are intended to implement and incidental to Proposition 14 and impose at most de minimis added costs in the scope of the Top Two Primary.

The remaining test claim statutes and executive orders pled (Elec. Code §§ 9083.5, 13102, 13105, 13110, 13206, 13206.5, and 14105.1 as added or amended by Stats. 2009, ch. 1, and Stats. 2012, ch. 3; Secretary of State’s Memoranda CC/ROV# 11005, 11125, 11126, and 12059), as explained below, require counties to perform some new activities. However, the costs of these activities are not mandated by the state pursuant to Government Code section 17556(f).

1. The courts have interpreted the “necessary to implement” clause of Government Code section 17556(f) to preclude a finding of costs mandated by the state if the activities or costs: would be required “even in the absence of” the test claim statute; in a situation in which the state has no “true choice” as to the manner of implementation; and, if duties imposed by the statute or executive order are incidental to the ballot measure and produce at most de minimis added costs.

Section 17556(f) states that the Commission “shall not find costs mandated by the state” if, after a hearing, the Commission finds that “[t]he statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.”²¹⁷ The plain language of the statute provides that when the state imposes requirements that are not expressly contained in a ballot measure approved by the voters, but are necessary to implement the ballot measure, the excess activities required by the state do not impose costs mandated by the state and are not reimbursable within the meaning of article XIII B, section 6.

²¹⁶ Exhibit A, Test Claim, at p. 60.

²¹⁷ Government Code section 17556(f) (Stats. 2010, ch. 719 (SB 856)).

The courts have analyzed the “necessary to implement” language of section 17556(f), pertaining to ballot measure mandates, in the same manner as section 17556(c),²¹⁸ which proscribes a finding of costs mandated by the state if the state statute or executive order “imposes a requirement that is mandated by a *federal* law or regulation.”²¹⁹

Two early court of appeal decisions in which underlying *federal* law was at issue in a test claim analysis are *Hayes v. Commission on State Mandates*²²⁰ and *County of Los Angeles v. Commission on State Mandates (County of Los Angeles II)*.²²¹ In *Hayes*, the test claim statute addressed special education services required of school districts, and the court considered whether federal special education law on point constituted a federal mandate. The court found, in this respect, that “[t]he alternatives were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event.” The court concluded that the federal Education of the Handicapped Act did indeed constitute a federal mandate, relevant to the test claim statutes, and therefore held:

When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies’ taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate *so long as the state had no “true choice” in the manner of implementation of the federal mandate.*²²²

In *County of Los Angeles II*, the test claim statute at issue required counties to provide for indigent defendants “investigators, experts, and others for the preparation or presentation of the defense.”²²³ The court found that these requirements were not state mandated, but were required by the Sixth Amendment to the United States Constitution, and therefore “even in the absence of [the test claim statute], appellant and other counties would be responsible for providing ancillary services under the constitutional guarantees of due process.”²²⁴

Then, the California Supreme Court, relying in part on *County of Los Angeles II*, analyzed Government Code section 17556(c) in *San Diego Unified School District v. Commission on State Mandates, (San Diego Unified)*,²²⁵ and the Third District Court of Appeal later applied that analysis to section 17556(f) in *California School Boards Association v. State of California*

²¹⁸ *California School Boards Association v. State of California (CSBA I)* (2009) 171 Cal.App.4th 1183, at p. 1214 [“[T]here is no difference in the effect” of sections 17556(c) and 17556(f).].

²¹⁹ Government Code section 17556(c) (Stats. 2010, ch. 719 (SB 856)).

²²⁰ (1992) 11 Cal.App.4th 1564.

²²¹ (1995) 32 Cal.App.4th 805.

²²² *Hayes, supra*, 11 Cal.App.4th, at pp. 1592-1594 (Emphasis added.).

²²³ 32 Cal.App.4th at p. 812, fn. 3 [quoting Penal Code section 987.9].

²²⁴ *Id.*, at p. 815.

²²⁵ (2004) 33 Cal.4th 859.

(CSBA I) with respect to activities required by the state that exceed the requirements of a ballot measure mandate.²²⁶ In *San Diego Unified*, the Court considered whether due process procedures which were required to be provided to a public school student facing possible expulsion constituted a reimbursable state-mandated program. Specifically, the Court noted that “[t]he District recognizes, of course, that...it is not entitled to reimbursement to the extent Education Code section 48918 *merely implements federal due process law*.”²²⁷ The requirements of the Education Code that “merely implement[ed]” federal due process requirements were considered adopted to implement a federal mandate, and nonreimbursable pursuant to Government Code section 17556(c). However, with respect to those requirements “attributable to hearing procedures that *exceed* federal due process requirements,”²²⁸ the Court reasoned that “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.”²²⁹ The activities that “exceeded” the plain language of federal law, but that the Court found to be “incidental” to the federal mandate were listed in a footnote, and included adopting rules and regulations, preparing and sending notices to parents, and maintaining records, as follows:

... (i) adoption of rules and regulations pertaining to pupil expulsions; (ii) inclusion in the notice of hearing of (a) a copy of the disciplinary rules of the District, (b) a notice of the parents' obligation to notify a new school district, upon enrollment, of the pupil's expulsion, and (c) a notice of the opportunity to inspect and obtain copies of all documents to be used at the hearing; (iii) allowing, upon request, the pupil or parent to inspect and obtain copies of the documents to be used at the hearing; (iv) sending of written notice concerning (a) any decision to expel or suspend the enforcement of an expulsion order during a period of probation, (b) the right to appeal the expulsion to the county board of education, and (c) the obligation of the parent to notify a new school district, upon enrollment, of the pupil's expulsion; (v) maintenance of a record of each expulsion, including the cause thereof; and (vi) the recording of expulsion orders and the causes thereof in the pupil's mandatory interim record (and, upon request, the forwarding of this record to any school in which the pupil subsequently enrolls).²³⁰

The Court found that these “assertedly ‘excessive due process’ aspects of Education Code section 48918 for which the District seeks reimbursement...fall within the category of matters that are merely incidental to the underlying federal mandate, and that produce at most a de minimis cost.”²³¹

²²⁶ (2009) 171 Cal.App.4th 1183.

²²⁷ 33 Cal.4th at p. 885 [emphasis added].

²²⁸ *Ibid* [emphasis in original].

²²⁹ *Id*, at p. 890.

²³⁰ *Id*, at p. 873, fn. 11 [citing Education Code section 48918]; 890.

²³¹ *Ibid*.

The Third District Court of Appeal reasoned in *CSBA I* that “there is no difference in the effect” of sections 17556(c) and 17556(f).²³² The court determined that “the ‘necessary to implement’ language of [section 17556(f)] is consistent with article XIII B, section 6 because it denies reimbursement only to the extent that costs imposed by a statute are necessary to implement the ballot measure.”²³³ In addition, the court in *CSBA I* stated: “We also conclude 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 at most de minimis added costs.”²³⁴ The court explained:

In *San Diego Unified*, the court considered whether costs resulting from statutes that were not adopted to implement federal due process requirements were reimbursable under article XIII B, section 6, and Government Code section 17556, subdivision (c). The court determined that “the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections.” It also determined that the statutes, “viewed singly or cumulatively, [] did not significantly increase the cost of compliance with the federal mandate.” The court concluded that, “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.”

There is no reason not to apply this practical holding similarly to ballot measure mandates. Thus, the Commission must consider the holding of *San Diego Unified* in determining whether costs are reimbursable for ballot measure mandates.²³⁵

Therefore, based on the holdings of *Hayes*,²³⁶ *County of Los Angeles II*,²³⁷ *San Diego Unified*,²³⁸ and *CSBA I*,²³⁹ two possible tests for the exception to reimbursable costs under section 17556(f) arise, either of which will proscribe a finding of costs mandated by the state within the meaning of section 17514; first, section 17556(f) proscribes reimbursement if costs imposed by a statute are *necessary to implement* a relevant ballot measure, defined to mean activities or costs that would be required or compelled “even in the absence of” the test claim statute, or a situation in which the state has no “true choice” as to the manner of implementation; and second, there can be no reimbursement under section 17556(f) if duties imposed by the statute or executive order

²³² *California School Boards Association v. State of California (CSBA I)* (2009) 171 Cal.App.4th 1183, at p. 1214.

²³³ *Id.*, at p. 1213.

²³⁴ *Id.*, at p. 1216.

²³⁵ *CSBA*, *supra*, at p. 1217 [citing *San Diego Unified*, *supra*, 33 Cal4th at pp. 889-890].

²³⁶ (1992) 11 Cal.App.4th 1564.

²³⁷ (1995) 32 Cal.App.4th 805.

²³⁸ 33 Cal.4th 859, at pp. 889-890.

²³⁹ 171 Cal.App.4th 1183, at pp. 1212-1217.

are *incidental to the ballot measure* and produce at most *de minimis added costs*. This includes “specific statutory procedures to comply with the general federal mandate, [which] reasonably articulated various incidental procedural protections,” so long as those specific procedures or incidental protections “viewed singly or cumulatively, [] did not significantly increase the cost of compliance with the federal mandate.”²⁴⁰

2. Government Code section 17556(f) applies here.

Here, as discussed in more detail below, the activities required by the remaining test claim statutes and alleged executive orders address the amendments to the form and content of ballots and sample ballots, and require additional information be provided to educate voters about the new top two primary system and voter-nominated offices. Although the activities required to be performed may exceed the plain language of Proposition 14, they are necessary to implement Proposition 14, are incidental to the implementation of Proposition 14, and produce at most *de minimis added costs*, and are, therefore, not eligible for reimbursement within the meaning of article XIII B, section 6 and Government Code section 17556(f).

- a) *Prior court decisions and the plain language of the Proposition 14 findings and declarations and constitutional amendments support the finding that the required activities imposed by the test claim statutes and executive orders are necessary to implement Proposition 14 or are intended to implement, are incidental and de minimus in cost in the context of the Top Two Primary program.*

Before the adoption of Proposition 14, existing statutes and case law made clear that ballots must be written and prepared in a way that avoids confusing the voters, or providing inaccurate or misleading information. One of the cases described below, *Washington State Grange*,²⁴¹ specifically addressed a similar top-two primary system in another state, and this case was expressly identified in the voter materials for Proposition 14.

Under existing California law, avoidance of electoral confusion is an expected feature of the ballots to be prepared by counties. In the context of preparing ballot measures to be put before the voters, the courts have held that the title and summary prepared by the Attorney General “must reasonably inform the voter of the character and real purpose of the proposed measure.”²⁴² In addition, the Government Code requires the Attorney General to prepare a title and summary of each measure,²⁴³ which the Elections Code states “must be true and impartial, and not argumentative or likely to create prejudice for or against the measure.”²⁴⁴ The goal “is to avoid misleading the public with inaccurate information.”²⁴⁵

²⁴⁰ CSBA, *supra*, at p. 1217 [citing *San Diego Unified, supra*, 33 Cal4th at pp. 889-890].

²⁴¹ *Washington State Grange v. Washington State Republican Party* (2008) 552 U.S. 442.

²⁴² *Lungren v. Superior Court* (1996) 48 Cal.App.4th 435, at p. 440 [citing *Tinsley v. Superior Court* (1980) 150 Cal.App.3d 90].

²⁴³ Government Code section 88002; Elections Code section 9002; 9050; 9051 (Stats. 1994, ch. 920 (SB 1547)).

²⁴⁴ Elections Code section 9051 (Stats. 1994, ch. 920 (SB 1547)).

²⁴⁵ *Lungren, supra*, 48 Cal.App.4th at p. 440 [citing *Amador Valley Joint Union High School District v. State Board of Equalization*, (1978) 22 Cal.3d 208].

In 2008, the United States Supreme Court heard a challenge to a top-two primary system, similar to that in Proposition 14 in the State of Washington, and the Court acknowledged that a top-two primary, which had not yet been implemented and for which ballots had not yet been printed, could mislead the public with inaccurate information with respect to candidates' party preference designations being viewed as an endorsement by the party named. As described in the *Washington State Grange* case, the voters in the State of Washington eliminated their partisan primary system (wherein candidates are endorsed by and expressly affiliated with a political party) and enacted a top-two primary system (wherein party preferences on the primary election ballots are chosen by the candidates, and do not reflect the endorsement or support of the party named). A facial constitutional challenge was immediately brought by the Washington State Republican Party based on a perceived impairment of the political parties' associational rights under the First Amendment of the United State Constitution. The Washington State Republican Party argued that the new primary system violated its associational rights under the First Amendment, by usurping its right to nominate its own candidates and forcing it to associate with candidates it did not endorse.²⁴⁶ The Court characterized the early facial challenge as "sheer speculation," stating that "[i]t depends upon the belief that voters can be 'misled' by party labels." However, the Court further held that "[o]f course, it is *possible* that voters will misinterpret the candidates' party-preference designations as reflecting endorsement by the parties..." but "because I-872 has never been implemented, we do not even have ballots indicating how party preference will be displayed."²⁴⁷ The Court held that "[i]t stands to reason that whether voters will be confused by the party-preference designations will depend in significant part on the form of the ballot," and that the inquiry must turn on "whether the ballot could conceivably be printed in such a way as to eliminate the possibility of widespread voter confusion and with it the perceived threat to the First Amendment."²⁴⁸ Specifically, the Court suggested:

[T]he ballots might note preference in the form of a candidate statement that emphasizes the candidate's personal determination rather than the party's acceptance of the candidate, such as "my party preference is the Republican Party." Additionally, the State could decide to educate the public about the new primary ballots through advertising or explanatory materials mailed to voters along with their ballots.²⁴⁹

The Court concluded that "there are a variety of ways in which the State could implement [its top-two primary] that would eliminate any real threat of voter confusion," and thus upheld the law against the facial challenge on the basis of impairment of the parties' associational rights.²⁵⁰

Following the *Washington State Grange* example, the section (b) of the findings and declarations in Proposition 14 states in part that "[a]ll registered voters otherwise qualified to vote shall be

²⁴⁶ *Washington State Grange v. Washington State Republican Party* (2008) 552 U.S. 442, at p. 448.

²⁴⁷ *Id.*, at p. 455.

²⁴⁸ *Id.*, at p. 456.

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

guaranteed the unrestricted right to vote for the candidate of their choice in all state and congressional elections.” Section (b) of the findings and declarations also states that “[a]ll candidates for a given state or congressional office shall be listed on a *single primary ballot*.” And, section (c) of the findings and declarations states that “[a]t the time they register, all voters shall have the freedom to choose whether or not to disclose their party preference,” and “[a]t the time they file to run for public office, all candidates shall have the choice to declare a party preference.” Section (d) of the findings and declarations adopted by the voters explains that candidate’s party preference “shall accompany the candidate’s name on both the primary and general election ballots,” and “shall not constitute or imply endorsement of the candidate by the party designated, and no candidate for that office shall be deemed the official candidate of any party by virtue of his or her selection in the primary.” Finally, section (f) of the findings and declarations adopted for Proposition 14 states that “[t]his act conforms to the ruling of the United States Supreme Court in *Washington State Grange v. Washington State Republican Party* (2008) 128 S.Ct. 1184.”²⁵¹

Accordingly, Proposition 14 eliminated partisan primary elections for all congressional and state offices (preserving partisan primaries for presidential candidates and party committee offices), and provided that any voter, regardless of party preference, could vote for any candidate for congressional or state office. The adoption of Proposition 14 by the voters amended article II, section 5 of the California Constitution, which provides, in pertinent part:

(a) A voter-nomination primary election shall be conducted to select the candidates for congressional and state elective offices in California. All voters may vote at a voter-nominated primary election for any candidate for congressional and state elective office without regard to the political party preference disclosed by the candidate or the voter, provided that the voter is otherwise qualified to vote for candidates for the office in question. The candidates who are the top two vote-getters at a voter-nominated primary election for a congressional or state elective office shall, regardless of party preference, compete in the ensuing general election.

(b) Except as otherwise provided by Section 6, a candidate for a congressional or state elective office may have his or her political party preference, or lack of political party preference, indicated upon the ballot for the office in the manner provided by statute. A political party or party central committee shall not nominate a candidate for any congressional or state elective office at the voter-nominated primary. This subdivision shall not be interpreted to prohibit a political party or party central committee from endorsing, supporting, or opposing any candidate for a congressional or state elective office. A political party or party central committee shall not have the right to have its preferred candidate participate in the general election for a voter-nominated office other than a candidate who is one of the two highest vote-getters at the primary election, as provided in subdivision (a).

²⁵¹ Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

(c) The Legislature shall provide for partisan elections for presidential candidates, and political party and party central committees...²⁵²

Proposition 14 also amended article II, section 6 to provide that for nonpartisan candidates, including the Superintendent of Public Instruction, no party may nominate a candidate, and the candidate's party preference shall not be included on the ballot for nonpartisan office.²⁵³

Therefore, based on the plain language of the constitutional provisions amended by Proposition 14, as well as the findings and declarations approved by the voters in Proposition 14, a voter-nominated top two primary election system requires that

- All candidates for a particular office be listed on a unified *primary* election or *special primary* election ballot;²⁵⁴
- Voters of any party preference be permitted to vote for any candidate and have that vote counted; that candidates be permitted to select their party preference at the time they file their candidacy;
- Each candidate's designated party preference be included in the ballot for both primary and general election ballots;
- Parties be permitted to informally nominate candidates for voter-nominated office, but no longer have an automatic right to have their chosen candidate appear on the ballot for the general election; and
- Only the top two "vote-getters" for any voter-nominated office advance to the general election, irrespective of those two candidates' stated party preferences.

Finally, Proposition 14 makes no changes to presidential primary elections, and retains party committee offices as partisan-nominated, and thus requires the Legislature to continue to provide for separate ballots for those offices.

b) *Activities Pertaining to the Reorganization of Ballots: Elections Code sections 13102 and 13110, as amended by Statutes 2009, chapter 1 (SB 6).*

The activities required by sections 13102 and 13110, as amended, pertain to the consolidation and reorganization of primary election ballots in order to implement a top two candidates open primary consistently with Proposition 14.

Before the adoption of Proposition 14, existing law required the county elections official or county clerk to "provide ballots for any elections within his or her jurisdiction, and...cause to be printed on them the name of every candidate whose name has been certified to or filed with the proper officer pursuant to law, and who, therefore, is entitled to a place on the appropriate ballot."²⁵⁵ Prior section 13110 required that the group of names appearing on the ballot shall be

²⁵² California Constitution, article II, section 5 (as amended by Proposition 14, adopted June 8, 2010) [emphasis added].

²⁵³ California Constitution, article II, section 6 (as amended by Proposition 14, adopted June 8, 2010).

²⁵⁴ All candidates are already required be listed on a *general* election ballot under prior law.

²⁵⁵ Elections Code section 13000 (Stats. 1994, ch. 920 (SB 1547)).

the same for all voters entitled to vote for candidates for that office.²⁵⁶ Prior section 13102 required separate ballots for *partisan* primary elections for each qualified political party, to be printed together with the nonpartisan ballot, if possible,²⁵⁷ and provided that voters would receive a partisan ballot only if registered with the particular political party whose ballot they requested, or if the party whose ballot was requested adopted a rule permitting nonparty voters to vote that ballot.²⁵⁸ The names of candidates appearing on each of the separate partisan primary ballots were those that were duly nominated by registered party voters.²⁵⁹

Prior to Proposition 14, all congressional and state offices were elected by this partisan nominating process.²⁶⁰ However, Proposition 14 removed all congressional and state offices from the *partisan* nominating process, and reclassified those offices as “voter-nominated.” Proposition 14 provided that all voters would have the opportunity to vote for any candidate, and that candidates would have the opportunity to self-select their party preferences. Proposition 14 also provided that the “Legislature shall provide for partisan elections” for presidential and party committee candidates. As noted above, the Proposition 14 findings and declarations section (b) states expressly that “[a]ll candidates for a given state or congressional office shall be listed on a single primary ballot.” Accordingly, separate partisan ballots are still provided for in the Elections Code and the Constitution, but only for presidential and party committee offices; and voter-nominated offices are included in the nonpartisan primary ballot, along with the candidate’s self-ascribed party preference designation, which previously would only have been printed in the general election ballot.

In conjunction with placing Proposition 14 before the voters, the Legislature enacted Statutes 2009, chapter 1, which expressly stated that it would become operative only if Proposition 14 were adopted by the voters.²⁶¹ Statutes 2009, chapter 1 amended Elections Code section 13102 to change all “party affiliation” language to “party preference,”²⁶² and sections 13102 and 13110 to provide for a unified nonpartisan primary ballot, containing the names of all candidates for voter-nominated offices and nonpartisan offices.²⁶³ These amendments do not of themselves impose any new activities on counties; the requirement to print ballots is found in section 13000, which is not new.²⁶⁴ Moreover, the scope and extent of the counties’ duties under sections 13102 and 13110 are not clearly expanded by the test claim statutes; counties were always required to include in the ballot the names of all candidates duly nominated, and both sections 13102 and 13110 were amended only to ensure that voter-nominated offices would be included

²⁵⁶ Elections Code section 13110 (Stats. 1994, ch. 920 (SB 1547)).

²⁵⁷ Elections Code section 13230 (Stats. 2000, ch. 898 (SB 28)).

²⁵⁸ Elections Code section 13102 (Stats. 2007, ch. 515 (AB 1734)).

²⁵⁹ Elections Code sections 8062; 13000 (Stats. 1994, ch. 920 (SB 1547)).

²⁶⁰ California Constitution, article II, section 5 (as amended by Stats. 2004, Res. C. 103 (SCA 18) (Proposition 60, approved November 2, 2004)).

²⁶¹ Statutes 2009, chapter 1 (SB 6) section 67.

²⁶² Elections Code sections 13102; 13105 (as amended by Stats. 2009, ch. 1 (SB 6)).

²⁶³ Elections Code sections 13102; 13110 (as amended by Stats. 2009, ch. 1 (SB 6)).

²⁶⁴ See Elections Code section 13000 (Stats. 1994, ch. 920 (SB 1547)).

in the nonpartisan ballot, and party committee offices would remain partisan, consistent with the requirements of Proposition 14.

The County alleges increased costs, based on “[e]ach ballot and sample ballot will [now] list all candidates for each voter-nominated contest, regardless of party preference or lack of party preference,” and “[i]ncreased length of ballot and sample ballot to accommodate lengthy voter-nominated contests.”²⁶⁵

However, the County’s allegations do not describe a new activity or task imposed on counties, and no new activity is found in the plain language of sections 13102 and 13110, as amended; the same offices and candidates previously included in primary election ballots are now required to be included in the nonpartisan ballot provided to all voters. Even if the reorganization of ballots imposes additional costs on counties, increased costs alone do not amount to a new program or higher level of service.²⁶⁶

Moreover, any costs resulting from the “increased length of ballot [*sic*]” are imposed by the voter-enacted ballot measure, Proposition 14, and are not mandated by the state. As noted above, the Proposition 14 findings and declarations expressly call for a “single primary ballot,”²⁶⁷ and the plain language of article II, section 5, as amended, provides that “[a]ll voters may vote at a voter-nominated primary election for any candidate for congressional and state elective office without regard to the political party preference disclosed by the candidate or the voter.”²⁶⁸

Therefore, the tests described above to determine when duties imposed by a test claim statute are “necessary to implement” a ballot measure both apply to this situation. Because the California Constitution, as amended by Proposition 14, calls for all voters to be permitted to vote for any candidate, except presidential or party committee candidates, counties would be required, “even in the absence of”²⁶⁹ the test claim statutes, to provide the list of candidates for voter-nominated office to all voters (i.e., to include voter-nominated offices in the nonpartisan ballot). In addition, the amendments made to sections 13102 and 13110 were a matter of “no true choice”²⁷⁰ for the Legislature; the Proposition 14 findings and declarations call for a “single primary ballot,” as noted above, but also state that “[t]his act makes no change in current law as it relates to presidential primaries...” and “[p]olitical parties may also adopt such rules as they see fit for the selection of party officials...”²⁷¹ Therefore, the amendments to sections 13102 (adding “voter-nominated” offices to the nonpartisan ballot provided to all voters) and 13110 (providing for political party committee and presidential candidates to remain on a separate partisan ballot) implemented Proposition 14 as a matter of “no true choice.”

²⁶⁵ Exhibit A, Test Claim, at pp. 6-7.

²⁶⁶ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830.

²⁶⁷ Exhibit X, Text of Ballot Measure, Proposition 14.

²⁶⁸ California Constitution, article II, section 5 (as amended by Proposition 14, June 8, 2010).

²⁶⁹ *County of Los Angeles II, supra*, (1995) 32 Cal.App.4th 805.

²⁷⁰ *Hayes, supra*, 11 Cal.App.4th, at pp. 1592-1594.

²⁷¹ Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

Based on the foregoing, the requirements of sections 13102 and 13110 to include all candidates for voter-nominated offices in the nonpartisan ballot provided to all voters, and to include political party candidates only in the partisan ballots provided to voters registered as disclosing a preference for that party, are necessary to implement the plain language requirements of Proposition 14, and therefore do not impose costs mandated by the state.

- c) Activities Pertaining to the Form and Content of Candidates' Ballot Entries: Elections Code section 13105, as amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413); and portions of Secretary of State's Memoranda CC/ROV #11005, CC/ROV #11125, and CC/ROV #12059 are necessary to implement Proposition 14.

The activities required by section 13105 as amended, and by portions of the Secretary of State's Memoranda CC/ROV #11005, CC/ROV #11125, and CC/ROV #12059, pertain to the form and content of each candidate's entry on the primary, general, and special election ballots.

Before the adoption of Proposition 14, existing law required the county elections official or county clerk to "provide ballots for any elections within his or her jurisdiction, and...cause to be printed on them the name of every candidate whose name has been certified to or filed with the proper officer pursuant to law, and who, therefore, is entitled to a place on the appropriate ballot."²⁷² Existing law requires separate ballots for *partisan* primary elections for each qualified political party, to be printed together with the nonpartisan ballot, if possible,²⁷³ and voters receive a partisan ballot only if registered with the particular political party, or if the party whose ballot was requested adopted a rule permitting nonparty voters to vote that ballot.²⁷⁴ The names of candidates appearing on each of the separate partisan primary ballots are those that are duly nominated by registered party voters.²⁷⁵ In a *general* election for partisan office, the nominee of each qualified political party that participated in the partisan primary election is printed on the ballot, along with the nominee's political party affiliation,²⁷⁶ or the word "independent."²⁷⁷ Seven qualified political parties participated in the 2012 presidential election, requiring seven separate partisan ballots, and requiring county elections officials to print the names of as many as seven party nominees for the general election.²⁷⁸

Absent Proposition 14, all congressional and state offices would have been elected by this partisan nominating process.²⁷⁹ What has changed, is the definition and scope of "partisan" offices, and the addition of a new category, called "voter-nominated" offices: Proposition 14

²⁷² Elections Code section 13000 (Stats. 1994, ch. 920 (SB 1547)).

²⁷³ Elections Code section 13230 (Stats. 2000, ch. 898 (SB 28)).

²⁷⁴ Elections Code section 13102 (Stats. 2007, ch. 515 (AB 1734)).

²⁷⁵ Elections Code sections 8062; 13000 (Stats. 1994, ch. 920 (SB 1547)).

²⁷⁶ Elections Code section 13105 (Stats. 1994, ch. 920 (SB 1547)).

²⁷⁷ See Elections Code section 8300 et seq. (Stats. 1994, ch. 920 (SB 1547)).

²⁷⁸ Exhibit A, Test Claim, at p. 72.

²⁷⁹ California Constitution, article II, section 5 (as amended by Stats. 2004, Res. C. 103 (SCA 18) (Proposition 60, approved November 2, 2004)).

removed all congressional and state offices from the partisan nominating process, and reclassified those offices as “voter-nominated.” Proposition 14 provided that all voters would have the opportunity to vote for any candidate, and that candidates would have the opportunity to self-select their party preferences. In so doing, Proposition 14 significantly limited the importance of party affiliation in primary elections, and provided that only the top two candidates for any office would advance to the general election, regardless of their stated party preferences. Accordingly, separate partisan ballots are still provided for in the Elections Code and the Constitution, but only for presidential and party committee offices; and *all candidates* for voter-nominated offices are included in the nonpartisan primary ballot, along with each candidate’s self-ascribed party preference designation, which previously would only have been printed in the general election ballot.

In conjunction with placing Proposition 14 before the voters, the Legislature enacted Statutes 2009, chapter 1, which expressly stated that it would become operative only if Proposition 14 were adopted by the voters.²⁸⁰ Statutes 2009, chapter 1 amended Elections Code section 13105 to provide that in *both the primary and general election ballots*, each candidate for voter-nominated office would have his or her party *preference* indicated in the ballot, with the words “My party preference is the _____ Party,” or the words “No Party Preference.” If a candidate chose not to have his or her party preference listed in the ballot, the space for party preference would be left blank.²⁸¹ Secretary of State’s Memorandum CC/ROV #11005, issued January 26, 2011, restated and clarified the requirements of amended sections 13105 and 13107²⁸² as applied to *special elections*, and required that counties print the name, party preference, and ballot designation of each candidate on three lines in the ballot.²⁸³ CC/ROV #11125, issued November 23, 2011, provided for shortening the party preference designation phrases required to be printed in the ballot, from a full sentence (“My party preference is the...”) to “Party Preference: _____.” CC/ROV #11125 also provided for party name abbreviations to be used to aid in solving “ballot printing and cost challenges.”²⁸⁴ On February 10, 2012, the Legislature enacted Statutes 2012, chapter 3 as an urgency measure, which amended section 13105 to adopt the shortened party preference designation phrases called for by CC/ROV #11125, and to eliminate the option for a candidate for voter-nominated office to withhold a registered party preference (section 8002.5, discussed above, was similarly amended).²⁸⁵ CC/ROV #12059, issued on the same day that Statutes 2012, chapter 3 took effect, restated the shortened party preference designation phrases, this time omitting the option “Party Preference: Not Given,” in accordance with the amendment to section 13105, and restated the requirements of the earlier orders to print

²⁸⁰ Statutes 2009, chapter 1 (SB 6) section 67.

²⁸¹ Elections Code section 13105 (as amended by Stats. 2009, ch. 1 (SB 6)).

²⁸² Section 13107 was not pled in the test claim filing, and the Commission therefore does not have jurisdiction to analyze this section. However, the plain language of section 13107 addresses the form and content of the candidate’s ballot designation, usually a few words describing the candidate’s current occupation, vocation, or office.

²⁸³ Exhibit A, Test Claim, at pp. 52-55.

²⁸⁴ Exhibit A, Test Claim, at p. 57.

²⁸⁵ Elections Code section 13105 (Stats. 2012, ch. 3 (AB 1413)).

the required candidate information on three consecutive lines and to utilize the party name abbreviations.²⁸⁶

The County alleges that the amendments to section 13105, as well as the requirements imposed by the alleged executive orders, impose state-mandated increased costs for the preparation and printing of ballots by requiring a certain font size and lengthy wording, and using a three line format on the ballots to reflect the candidates' party preference.

The County's allegations are not persuasive. Although the county may experience additional costs to comply with the statutes and executive orders that implement Proposition 14, those costs are not mandated by the state, but result from the voters adoption of Proposition 14. Moreover, increased costs alone do not constitute a state mandated new program or higher level of service.²⁸⁷ Counties were always required to print ballots, and to provide the names of all candidates eligible for nomination or election.²⁸⁸ Under prior law, counties would provide separate partisan ballots for each qualified political party for a primary election, and then print each party's nominee in a single ballot for a general election. Now, pursuant to Proposition 14 and the test claim statutes, ballots have been reorganized, and the group of candidates appearing on the single unified primary ballot has increased, and thus the length of the nonpartisan ballot will be increased, in the usual case, but the added length itself does not constitute a new activity.

However, the addition of a party preference designation to primary election ballots is a new activity, and the use of specific wording, which the County describes as "lengthy," also constitutes an additional or new activity.

Thus, the plain language of the above-described statutes and executive orders requires counties to perform the following new activities:

- Identify in the ballot, for voter-nominated offices in a *primary election*, including a *special primary election*, the political party designated by the candidate pursuant to section 8002.5;²⁸⁹
- Identify each candidate's name, party preference, and ballot designation on three consecutive lines in the ballot.²⁹⁰
- Beginning November 23, 2011, utilize approved party name abbreviations, as necessary.²⁹¹
- With regard to a candidate's party preference designation:
 - For the period between July 1, 2011 and November 23, 2011,²⁹² identify each candidate's party preference in *both the primary and general election ballots*,

²⁸⁶ Exhibit A, Test Claim, at pp. 70-71.

²⁸⁷ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830.

²⁸⁸ See Elections Code section 13000 (Stats. 1994, ch. 920 (SB 1547)).

²⁸⁹ Elections Code section 13105 (Stats. 2009, ch. 1 (SB 6)).

²⁹⁰ Secretary of State's Memorandum CC/ROV #11005, issued January 26, 2011.

²⁹¹ Secretary of State's Memorandum CC/ROV #11125, issued November 23, 2011.

including special elections, with the words “My party preference is the _____ Party,” “No Party Preference,” or “My party preference is the _____ Party,” with the space left blank;”²⁹³

- For the period between November 23, 2011 and February 10, 2012,²⁹⁴ identify each candidate’s party preference in *both the primary and general election ballots* with the words “Party Preference: _____,” “Party Preference: None,” or “Party Preference: Not Given;”²⁹⁵ And,
- Beginning February 10, 2012, identify each candidate’s party preference in *both the primary and general election ballots* with the words “Party Preference: _____,” or “Party Preference: None;”²⁹⁶

However, the Commission finds that these activities are necessary to implement Proposition 14 or are incidental to the ballot measure mandate and produce at most de minimis added costs, and are, therefore, not reimbursable pursuant to Government Code section 17556(f).

- i) *The requirement to identify each candidate’s party preference designation in primary and special primary ballots is necessary to implement Proposition 14.*

The requirements of section 13105 to add each candidate’s party preference designation to the *primary election* ballot,²⁹⁷ and of CC/ROV #11005 to include each candidate’s party preference in a *special primary election* ballot,²⁹⁸ are necessary to implement the plain language requirements of Proposition 14. Prior to Proposition 14, as noted above, counties were required to prepare separate primary ballots for each qualified political party for any election containing “partisan offices.”²⁹⁹ This could include any or every primary or special primary election: all congressional and state offices were then party-nominated.³⁰⁰ As discussed above, pursuant to

²⁹² The potential period of reimbursement begins July 1, 2011, based on the filing date of the test claim. As of November 23, 2011, CC/ROV #11125 required counties to use the shortened “Party Preference: _____.” The Commission takes official notice that at least one special election was held within between July 1, 2011 and November 23, 2011 in which candidates for a voter-nominated office appeared on the ballot. (See Exhibit X, Special Election, Congressional District 36, July 12, 2011.).

²⁹³ Elections Code section 13105 (Stats. 2009, ch. 1 (SB 6)); CC/ROV #11005, issued January 26, 2011.

²⁹⁴ The Commission is unaware of any special elections between November 23, 2011 and February 10, 2012 in which a voter-nominated candidate appeared on the ballot.

²⁹⁵ Secretary of State’s Memorandum CC/ROV #11125, issued November 23, 2011.

²⁹⁶ Elections Code section 13105 (as amended by Stats. 2012, ch. 3 (AB 1413) effective February 10, 2012).

²⁹⁷ Elections Code section 13105 (Stats. 2009, ch. 1 (SB 6)).

²⁹⁸ CC/ROV #11005, found at Exhibit A, Test Claim, at p. 54.

²⁹⁹ Former Elections Code section 13102 (Stats. 2007, ch. 515 (AB 1734)).

³⁰⁰ California Constitution, article II, section 5 (as amended by Stats. 2004, ch. 103 (Proposition 60, November 2, 2004)).

Proposition 14, all candidates for congressional and state offices are now included in the nonpartisan ballot given to all voters, irrespective of their party preference or affiliation. Therefore some indication on the ballot of party preference attributed to each candidate is required. Moreover, article II, section 5 expressly provides, as amended, that “a candidate for a congressional or state elective office *may have his or her political party preference, or lack of political party preference, indicated upon the ballot* for the office in the manner provided by statute.”³⁰¹ Accordingly, section 13105 (requiring party preference to be included in both primary and general election ballots) gives effect to the express requirements of the California Constitution, as amended by Proposition 14, and the express language of the Proposition 14 findings and declarations adopted by the voters. And likewise that portion of CC/ROV #11005 that requires each candidate’s party preference to be indicated in a special primary ballot also gives effect to the express requirements of Proposition 14 and the express language of the findings and declarations.

As discussed above, the court found in *Hayes v. Commission on State Mandates* that a test claim statute could not impose a state-mandated cost if the state had no “true choice” in the manner of implementation of the federal mandate.³⁰² And, in *County of Los Angeles II*, the court held that an activity or requirement of a test claim statute was not “state-mandated” if the local government would be required by federal law [or in this case, a ballot measure] to perform the activity or incur the cost “even in the absence of” the test claim statute.³⁰³ Here, the requirements to include each candidate’s party preference designation in primary and special primary ballots is both a matter of “no true choice,” and would be required “even in the absence of” the test claim statute (section 13105) and executive order (CC/ROV#11005).

Based on the foregoing, the portion of section 13105, as amended by Statutes 2009, chapter 1, and Statutes 2012, chapter 3, and that portion of CC/ROV #11005, which require party preferences to be indicated in a *primary* or *special primary* election ballot, do not impose costs mandated by the state pursuant to Government Code section 17556(f).

- ii) *The requirement to identify each candidate’s party preference in primary and general election ballots with specified party preference language is incidental to the implementation Proposition 14 and produces at most de minimis added costs in the context of the Top Two Primary.*

The remaining requirements of section 13105, as amended by Statutes 2009, chapter 1 (SB 6), as interpreted by CC/ROV #11005 and CC/ROV #11125, and as subsequently amended by Statutes 2012, chapter 3 (AB 1413) and restated by CC/ROV #12059, to identify each candidate’s party preference in *both the primary and general election ballots with specified party preference language* (the language varies with subsequent amendments and based on interpretation in the Secretary of State’s Memoranda, as noted above) are incidental to the ballot measure mandate and produce at most de minimis added costs, pursuant to *San Diego Unified, supra*, and *CSBA I, supra*.³⁰⁴ In addition, the requirements of the alleged executive orders to print each candidate’s

³⁰¹ *Ibid.*

³⁰² 11 Cal.App.4th, at pp. 1592-1594.

³⁰³ 32 Cal.App.4th at p. 815.

³⁰⁴ *San Diego Unified*, 33 Cal.4th at p. 873, fn. 11; *CSBA I*, 171 Cal.App.4th 1183, at p. 1214.

name, party preference designation, and ballot designation in a “three-line format” is incidental to the ballot measure mandate and produces at most de minimis added costs.

Under prior law, candidates’ party *affiliations* were only included in the *general* election ballot, at which time each candidate appearing on the ballot would be the official nominee of a qualified political party,³⁰⁵ and therefore only the *name* of the candidate’s affiliated party was needed to identify that nomination.³⁰⁶ Similarly, with respect to primary election ballots under prior law, each candidate appearing on the *separate partisan* ballot of his or her political party would be a duly-nominated candidate affiliated with that party, and therefore no indication of party affiliation was needed.³⁰⁷ And, under prior law, a candidate’s party affiliation could be placed to the right of the name, or below the name if necessary,³⁰⁸ and a ballot designation (usually the candidate’s current or previous occupation or office), was required to be placed beneath the candidate’s name.³⁰⁹ However, pursuant to Proposition 14, the concept of “party *affiliation*,” with respect to voter-nominated offices has been replaced by the concept of a candidate’s “party *preference*,” which the Proposition 14 findings and declarations make clear is chosen *by the candidate* and does not reflect the endorsement or support of the party named.³¹⁰ A candidate appearing in either a primary or general election ballot need not be *affiliated* with any particular party, or any party, and may declare a party preference at the time he or she files a declaration of candidacy. Furthermore, the *general* election ballot no longer consists of the official party *nominees* for each office: article II, section 5 states that “[a] political party *shall not have the right* to have its preferred candidate participate in the general election for a voter-nominated office other than a candidate who is one of the two highest vote-getters at the primary election.”³¹¹ Thus, not only is it inaccurate to suggest that the party named in conjunction with each candidate is that candidate’s party affiliation, it also is inaccurate and misleading to fail to indicate in the text of the ballot itself that the party preference of the candidate is chosen by the candidate, and not necessarily reflective of the party’s endorsement or approval of the candidate. Accordingly, the *party preference designation* required by section 13105 (which replaced party *affiliation* previously required only for general election ballots) was expanded to provide some context, and resulted in more often being placed on the line below the candidate’s name.³¹²

In *Washington State Grange, supra*, the United States Supreme Court recognized that a top-two primary system imposed by direct voter enactment may lead to voter confusion, and may give

³⁰⁵ See former California Constitution, article II, section 5 (as amended by Stats. 2004, ch. 103 (Proposition 60, November 2, 2004)).

³⁰⁶ Elections Code section 13105 (Stats. 1994, ch. 920 (SB 1547)).

³⁰⁷ Elections Code section 13102 (Stats. 2007, ch. 515 (AB 1734)).

³⁰⁸ Elections Code section 13105 (Stats. 1994, ch. 920 (SB 1547)).

³⁰⁹ Elections Code section 13107 (Stats. 1994, ch. 920 (SB 1547)).

³¹⁰ Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

³¹¹ California Constitution, article II, section 5 (as amended by Proposition 14, June 8, 2010).

³¹² See Exhibit A, Test Claim, at p. 54 [CC/ROV #11005, stating that the need to place party preference below candidate’s name “will be more likely to occur now, given the new political party identification sentences required by the Top Two Candidates Open Primary Act”].

rise to a constitutional challenge on the basis of an impairment of the political parties' associational rights under the First Amendment.³¹³ Helpfully, the Court suggested remedial measures that might be implemented to avoid such challenge: "the ballots might note preference in the form of a candidate statement that emphasizes the candidate's personal determination rather than the party's acceptance of the candidate, such as 'my party preference is the Republican Party.'"³¹⁴ Accordingly, the state has implemented the Court's suggestions in Elections Code section 13105, as amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413), and as interpreted by the Secretary of State in CC/ROV #11005, CC/ROV #11125, and CC/ROV #12059. Section 13105, as noted above, requires counties to include in both the primary and general election ballots a party preference designation "in substantially the following form: 'My party preference is the _____ Party.'"³¹⁵ Later interpretations of that section, pursuant to CC/ROV #11125,³¹⁶ followed by a statutory amendment effected by Statutes 2012, chapter 3 (AB 1413), shortened the party preference designation, as described above, to simply "Party Preference: _____."³¹⁷ But the requirement to print in the ballot something more than merely the name of a party preferred by the candidate remains. As noted above, section (a) of the Proposition 14 findings and declarations expressly invokes Statutes 2009, chapter 1 (SB 6),³¹⁸ and findings and declarations section (f) expressly states that the "act conforms to the ruling in *Washington State Grange*. . ."³¹⁹ The amendments to section 13105, and the later interpretations of that section, along with the statutory "clean-up" of Statutes 2012, chapter 3,³²⁰ are therefore intended to implement Proposition 14 in a manner that does not lead to a confusing or misleading ballot.

Moreover, as discussed above, the Court in *San Diego Unified* found that where a test claim statute provides "specific statutory procedures," designed to "set forth...details that were not expressly articulated" in prior law or in the ballot measure, and which do not "significantly increase the cost of compliance," those activities should be viewed as "part and parcel" of the underlying [ballot measure] mandate.³²¹ The activities that the Court in *San Diego Unified* found were "incidental and de minimis" included a number of notice and recordkeeping requirements related to providing due process to students under threat of expulsion from public school, but which the Court presumed to be "excessive due process" aspects of the statute.

³¹³ *Washington State Grange v. Washington State Republican Party* (2008) 552 U.S. 442

³¹⁴ *Id.*, at p. 456.

³¹⁵ Elections Code section 13105 (as amended, Stats. 2009, ch. 1 (SB 6)).

³¹⁶ See Exhibit A, Test Claim, at p. 57.

³¹⁷ Elections Code section 13105 (as amended, Stats. 2012, ch. 3 (AB 1413)).

³¹⁸ Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

³¹⁹ Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

³²⁰ See Statutes 2012, chapter 3 (AB 1413) ["This bill would make technical revisions to provisions of the Elections Code to reflect the 'voter-nominated primary election process.'"].

³²¹ 33 Cal.4th at p. 889.

Nevertheless, the Court found the "excessive" activities to be part and parcel of the federal mandate, and denied reimbursement.³²²

Here, the requirements of section 13105 to include a short party preference designation sentence³²³ (later reduced to only a few words³²⁴) in the primary and general election ballots, and to print each candidate's entry, including name, party preference, and ballot designation, on three consecutive lines, when viewed in context of the existing and other new requirements, impose at most de minimis added costs. As shown above, existing law required that counties produce ballots for every election; and the plain language of Proposition 14 and Elections Code sections 13102 and 13110 require including all voter-nominated offices in a single nonpartisan primary ballot. The plain language of amended section 13105, requiring including each candidate's party preference in the primary ballot (in addition to the general election ballot, which was already required), is also shown above to be required by the plain language of Proposition 14 (i.e., even in the absence of the test claim statutes, and the state had "no true choice"). Moreover, because a general election now includes only two candidates for each office, rather than a candidate from each participating qualified political party, there may be a cost savings inherent in the Top Two Candidates Open Primary Act, related to the form and content of general election ballots. In that context, the asserted new requirement to print a short phrase or sentence identifying each candidate's party preference, and to do so on three lines, is significantly less costly and burdensome than the notice and recordkeeping activities denied by the California Supreme Court in *San Diego Unified*, and therefore the activities are incidental to the ballot measure mandate and produce at most de minimis added costs.

Based on the foregoing, the Commission finds that the requirements of section 13105, as amended by Statutes 2009, chapter 1 and Statutes 2012, chapter 3, as well as those portions of CC/ROV #11005, CC/ROV #11125, and CC/ROV #12059 which pertain to the party preference designation phrases required for each candidate's entry on the ballot do not impose costs mandated by the state pursuant to Government Code section 17556(f).

d) Activities Pertaining to the Receipt and Printing of Party Endorsements in the Sample Ballot: Elections Code section 13302, as amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413); and portions of Secretary of State's Memoranda CC/ROV #11005, CC/ROV #12059 are intended to implement and are incidental to Proposition 14 and produce at most de minimus additional costs in the context of the Top Two Primary.

Elections Code section 13302, as amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3, as well as portions of CC/ROV #11005 and CC/ROV #12059, require counties to receive and print in the voter information portion of the sample ballot, for any election, including a special election, a list of party endorsements timely submitted by a qualified political party. In addition, CC/ROV #11005 interprets section 13302 to require counties to treat as timely, for purposes of special elections, a list of endorsements received from a qualified political party not

³²² 33 Cal.4th at p. 873, fn. 11.

³²³ Elections Code section 13105 (as amended, Stats. 2009, ch. 1 (SB 6)).

³²⁴ See Exhibit A Test Claim, at p. 57 [CC/ROV #11125].

later than 43 days prior to a *special primary* election, and to “work with any interested qualified political parties who wish to submit lists” of endorsements for a *special general* election.³²⁵

Under existing law, each county elections official is required to “provide ballots for any election within his or her jurisdiction.”³²⁶ Separate ballots are required for partisan primary elections for each qualified political party, and for partisan offices each party participating in the primary election has the right to participate in the general election.³²⁷

Pursuant to and after Proposition 14, all candidates for voter-nominated office are included on a single primary ballot, and the general election ballot contains the names only of the two candidates for each office who received the highest vote totals in the primary election, regardless of those candidates' party preference. Partisan elections are still provided for presidential and party committee candidates, but political parties no longer have the right to nominate a candidate for voter-nominated office, and the candidates appearing on the ballot for voter-nominated office need not be nominated only by members of the party for which the candidate states a preference.³²⁸ However, the findings and declarations section (e) in Proposition 14 states, in pertinent part, as follows:

Nothing in this measure shall restrict the parties' right to contribute to, endorse, or otherwise support a candidate for state elective or congressional office. Political parties may establish such procedures as they see fit to endorse or support candidates or otherwise participate in all elections, and they may informally “nominate” candidates for election to voter-nominated offices at a party convention or by whatever lawful mechanism they so choose, other than at state-conducted primary elections.³²⁹

Accordingly, in conjunction with the adoption of Proposition 14, the Legislature amended Elections Code section 13302 to require counties to receive and print in the sample ballot a list of party endorsements timely submitted by a qualified political party.³³⁰ CC/ROV #11005 interpreted section 13302 to apply also to a special election, and directed counties to treat as timely a list of endorsements received not later than 43 days prior to the election,³³¹ and Statutes

³²⁵ Exhibit A, Test Claim, at pp. 52-5 [emphasis added].

³²⁶ Elections Code section 13000 (Stats. 1994, ch. 920 (SB 1547)).

³²⁷ See Elections Code section 13102 (Stats. 2007 ch. 515 (AB 1734); Stats. 2009, ch. 1 (SB 6)) [new category of “voter-nominated” offices added to the nonpartisan ballot, but separate ballot still required for partisan offices]. See also, California Constitution, article II, section 5 (as amended, Stats. 2004, ch. 103 (Proposition 60, November 2, 2004); Stats. 2009, ch. 2 (SCA 4) (Proposition 14, June 8, 2010)) [political party participating in partisan primary election has the right to participate in general election for partisan office, but all congressional and state offices now designated voter-nominated].

³²⁸ California Constitution, article II, section 5 (as amended by Proposition 14, June 8, 2010).

³²⁹ Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

³³⁰ Elections Code section 13302(b) (as amended, Stats. 2009, ch. 1 (SB 6)).

³³¹ See Exhibit A, Test Claim, at p. 55.

2012, chapter 3, made minor technical changes to section 13302, which clarified that counties were only required to print the list of endorsements if timely submitted.³³²

The County argues that printing a list of party endorsements is not necessary to implement Proposition 14, and “makes printing sample ballot booklets much more expensive by increasing the number of pages that must be included.” The County also alleges that printing party endorsements “increases staff costs because counties must verify the information submitted to ensure it complies with all requirements.”³³³

The County's focus on costs is not persuasive, and the existing requirement to print the ballot is not new and has not been amended by the test claim statutes.³³⁴ However, to the extent the County alleges increased staff time and additional information being included in the ballots and sample ballots pursuant to amended section 13302, the following new activities are identified for analysis:

- In connection with any election at which a candidate for voter-nominated office will appear on the ballot, receive from a qualified political party a list of endorsements for candidates for voter nominated office, and print the list, if provided not later than 43 days prior to a *special primary* election, or 83 days prior to a primary or general election, in the voter information section of the sample ballot.³³⁵

The Commission finds that these activities, as explained herein, are incidental to the ballot measure mandate and produce at most de minimis added costs, and therefore do not impose costs mandated by the state pursuant to Government Code section 17556(f).

As discussed above, the United States Supreme Court in *Washington State Grange* recognized that a top two candidates primary election system could give rise to a constitutional challenge based on a perceived threat to the associational rights of the political parties, (i.e., a threat to their right to exclude unwanted candidates, or disassociate themselves from such persons). The Court held that in order to mitigate that threat and defuse potential legal challenges, “the State could decide to educate the public about the new primary ballots through advertising or explanatory materials mailed to voters along with their ballots.”³³⁶

Here, the requirements of section 13302, to receive from a qualified political party and print in the ballot, if timely received, a list of party endorsements for congressional and state elective offices, constitute a form of “explanatory materials” in the ballot, which are intended to vindicate the parties’ rights to “informally ‘nominate’ candidates,” and to avoid a constitutional challenge to the Top Two Candidates Open Primary Act on the basis of the parties’ First Amendment associational rights. As discussed above, the legal standard for “necessary to implement” under

³³² Elections Code section 13302(b) (as amended, Stats. 2012, ch. 3 (AB 1413)).

³³³ Exhibit C, Claimant Rebuttal Comments, at p. 4.

³³⁴ Elections Code section 13000 (Stats. 1994, ch. 920 (SB 1547)).

³³⁵ Elections Code section 13302 (Stats. 2009, ch. 1 (SB 6); Stats. 2012, ch. 3 (AB 1413)) Secretary of State’s Memorandum CC/ROV #11005 [See Exhibit A, Test Claim, at p. 55.].

³³⁶ *Washington State Grange v. Washington State Republican Party* (2008) 552 U.S. 442, at p. 456.

section 17556(f) is whether the duties imposed would be required “even in the absence of” the test claim statute or executive order,³³⁷ or the Legislature had no “true choice” but to enact the statute or order implementing the ballot measure, and choice may include the compulsion of likely litigation.³³⁸ Here, some mechanism or procedure to allow political parties to express their “informal” endorsements (both at primary and general elections) is required to effectuate the provisions of Proposition 14 even in the absence of the test claim statute.³³⁹ And, because the top two primary system imposed by Proposition 14 results in a potential threat to the parties’ First Amendment associational rights, a “barrage of litigation”³⁴⁰ on constitutional grounds is sufficiently likely, and the Legislature is compelled to act to provide the parties with some means to distinguish their favored candidates from those less favored.

However, while some new or additional requirement is implicated by the plain language requirements of Proposition 14, and by the compulsion to avoid a First Amendment challenge to the law,³⁴¹ the state likely exercised some discretion as to the manner of implementation of the ballot measure in this case. Nevertheless, the excess requirements of section 13302 and CC/ROV #11005 to receive and print a list of party endorsements, if timely, are not reimbursable. In *San Diego Unified School Dist.*, the California Supreme court determined that statutory procedures designed to make the underlying federal due process rights enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the due process rights, did not significantly increase the cost of compliance with the underlying federal mandate. Thus, for purposes of article XIII B, section 6, the excess activities were considered part and parcel of the federal mandate and not reimbursable under Government Code section 17556(c).³⁴² The court in *CSBA* directed the Commission to apply that same analysis to Government Code section 17556(f) and statutes that implement underlying ballot measure mandates.³⁴³

Applying that analysis here, section 13302, as amended, and that portion of CC/ROV #11005 pertaining to printing a list of endorsements in the ballot for special elections,³⁴⁴ constitute “specific statutory procedures” which are “designed to...set forth procedural details that were not expressly articulated”³⁴⁵ in the ballot measure, in order to provide for political parties to continue to express their endorsements and to “informally nominate” candidates. The requirements of

³³⁷ *County of Los Angeles II* (1995) 32 Cal.App.4th 805.

³³⁸ *Hayes, supra*, (1992) 11 Cal.App.4th 1564, at pp. 1592-1594.

³³⁹ *County of Los Angeles II, supra*.

³⁴⁰ *Hayes, supra*, at p. 1592.

³⁴¹ *Washington State Grange, supra*, 552 U.S. 442.

³⁴² *San Diego Unified, supra*, 33 Cal.4th at p. 889.

³⁴³ *CSBA, supra*, 171 Cal.App.4th at p. 1216.

³⁴⁴ Exhibit A, Test Claim, at p. 55.

³⁴⁵ *San Diego Unified, supra*, 33 Cal.4th, at p. 889.

section 13302 are intended to implement Proposition 14,³⁴⁶ and provide for a statutory procedure to allow parties to continue to participate, and to express their approval of certain candidates.

And, as compared with the prior law requirement to print separate ballots for each qualified political party (as many as seven separate ballots required for the 2012 presidential election [See Exhibit A, Test Claim, at p. 72.]), and to include the names of each party's winning candidates in the general election ballot,³⁴⁷ preparing a *single* primary ballot for all voter-nominated offices, and printing *only the names of the top two* "vote getters" in the general election ballot likely presents a cost savings to the counties. In that context, the additional requirement to receive and print a list of endorsements from qualified political parties produces at most de minimis added costs. Moreover, the requirement imposed by CC/ROV #11005, to treat a list of endorsements as timely received if provided by a qualified political party not later than 43 days prior to a *special* election, is also intended to implement and incidental to Proposition 14 and produces at most de minimis added costs.

Therefore, the requirements of section 13302, as amended, and of CC/ROV #11005, to receive and print in the ballot, if timely, a list of endorsements from a qualified political party, do not impose costs mandated by the state pursuant to Government Code section 17556(f).

- e) *Activities to Educate Voters About Proposition 14 with Instructions and Voter Information Provided in the Ballot and Posted at Polling Places: Elections Code sections 9083.5, 14105.1, 13302, 13206, and 13206.5, as added or amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413); and portions of Secretary of State's Memoranda CC/ROV #11005, CC/ROV #11126, CC/ROV #12059 are intended to implement and are incidental to Proposition 14 and produce at most de minimus costs.*

Elections Code sections 9083.5, 14105.1, 13206, and 13206.5, as added or amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413), as well as portions of CC/ROV #11005, CC/ROV #11126, and CC/ROV #12059, require counties to include certain instructions and explanatory text in the ballots and sample ballots for primary elections, general elections and special primary and general elections, respectively, and to furnish to precincts and post at polling places a poster informing voters of the changes to the election laws.

Under pre-existing law, each county elections official is required to "provide ballots for any election within his or her jurisdiction."³⁴⁸ Those ballots are required to contain certain instructions to voters, with respect to how to mark their ballots for particular candidates, how to vote for a qualified write-in candidate, how to vote for a ballot measure, and what to do if the

³⁴⁶ The Proposition 14 findings and declarations approved by the voters expressly state that "[t]his act, along with legislation already enacted by the Legislature to implement this act, are intended to implement an open primary system in California as set forth below." Accordingly, Statutes 2009, chapter 1 states that "[t]his measure shall become operative only if SCA 4 [Proposition 14] is approved by the voters."

³⁴⁷ See former California Constitution, article II, section 5 (as amended by Stats. 2004, Res. C. 103 (SCA 18) (Proposition 60, approved November 2, 2004)) [providing that a qualified political party participating in the primary election has the right to participate in the general election].

³⁴⁸ Elections Code section 13000 (Stats. 1994, ch. 920 (SB 1547)).

voter makes a mistake or wrongly tears or defaces their ballot. These instructions also include the procedures for confirmation of justices of the Supreme Court or the Court of Appeal.³⁴⁹ In addition, county elections officials are required to include in the ballot, as appropriate to the election cycle, instructions for voting for delegates to a national convention, and for voting for the electors for a presidential candidate.³⁵⁰ And finally, under pre-existing law, county elections officials are required to provide to each precinct a list of “precinct supplies,” as specified by statute.³⁵¹

Proposition 14 eliminated partisan primary elections for all congressional and state offices, and created a new category of elective office, called “voter-nominated.” Proposition 14 required that all voters would be permitted to vote for any candidate for voter-nominated office, regardless of the party preference of the voter or the candidate, and accordingly called for a unified ballot for all voter-nominated and nonpartisan offices. In addition, Proposition 14 provided that a candidate for voter-nominated office could have his or her party preference indicated in the ballot, but a candidate for nonpartisan office would not be permitted to do so. Proposition 14 also provided that only the top two “vote getters” in any voter-nominated primary contest would advance to the general election for that office, regardless of party preference, but that no party shall have the right to have its preferred candidate appear on the ballot unless that candidate is one of the two highest “vote getters” in the primary election.³⁵² And finally, Proposition 14 findings and declarations section (d), approved by the voters, also cautioned that a candidate’s self-selected party preference “shall not constitute or imply endorsement of the candidate by the party designated, and no candidate for that office shall be deemed the official candidate of any party by virtue of his or her selection in the primary.”³⁵³

In conjunction with placing Proposition 14 before the voters, the Legislature enacted Statutes 2009, chapter 1, which expressly stated that it would become operative only if Proposition 14 were adopted by the voters.³⁵⁴ Statutes 2009, chapter 1 provided for posters available at polling places³⁵⁵ and additional instructions to be added to the ballot³⁵⁶ containing information for voters regarding the changes to the primary election system, including the ability of voters to vote for any candidate regardless of party preference. Secretary of State’s Memorandum CC/ROV #11005, issued January 26, 2011, restates and clarifies the requirements of the amended and added sections of the Elections Code as applied to *special elections*, noting specifically that while section 9083.5 *requires the Secretary of State* to include in the statewide Voter Information Guide (VIG) certain information pertaining to the new voter-nominated primary

³⁴⁹ Elections Code sections 13204; 9083 (Stats. 1994, ch. 920 (SB 1547)).

³⁵⁰ Elections Code section 13205 (Stats. 1994, ch. 920 (SB 1547)).

³⁵¹ Elections Code section 14105 (Stats. 1994, ch. 920 (SB 1547); Stats. 2003, ch. 425 (AB 177); Stats. 2003, ch. 810 (AB 1679)).

³⁵² California Constitution, article II, sections 5, 6 (as amended by Proposition 14, June 8, 2010).

³⁵³ Exhibit X, Text of Ballot Measure, Proposition 14, June 8, 2010.

³⁵⁴ Statutes 2009, chapter 1 (SB 6) section 67.

³⁵⁵ Elections Code sections 9083.5; 14105.1 (added, Stats. 2009, ch. 1 (SB 6)).

³⁵⁶ Elections Code section 13206 (as amended, Stats. 2009, ch. 1 (SB 6)).

system and top two candidates open primaries, “there is no VIG for special elections to fill vacancies,” and therefore “county elections officials should provide...the language (taken from Elections Code section 9083.5), *on the sample ballot* in order to educate voters about the changes in the law.”³⁵⁷ CC/ROV #11126, issued November 23, 2011, directs counties to *omit from the primary ballots* some of the language provided by section 13206, because the June 5, 2012 Presidential Primary election did not contain any nonpartisan offices, and thus explanation of the procedures and significance of nonpartisan offices was not necessary.³⁵⁸ On February 10, 2012, the Legislature enacted Statutes 2012, chapter 3 as an urgency measure, amending section 13206 to make the explanatory text in the ballot describing voter-nominated and nonpartisan offices slightly shorter than that provided in Statutes 2009, chapter 1,³⁵⁹ and also adding section 13206.5, which provides for similar explanatory text to appear in the statewide *general* election ballot.³⁶⁰ CC/ROV #12059, issued on the same day that Statutes 2012, chapter 3 took effect, restated the language of amended section 13206, including the language pertaining to nonpartisan offices that counties had been directed to exclude pursuant to CC/ROV #11126. The order also restated the language added by section 13206.5.³⁶¹ Because CC/ROV #12059 superseded CC/ROV #11126 before the June 5, 2012 primary election occurred, the omission required pursuant to CC/ROV #11126 is no longer required.

The County alleges that sections 13206 and 13206.5 require each ballot and sample ballot to “include new specified information regarding partisan offices, and voter-nominated and nonpartisan offices,” and “contain specified language, per election type.”³⁶² In rebuttal comments, the County more specifically explains that “[n]othing in Proposition 14 requires voter education,” and that “[u]sing space on official ballots for voter education is particularly expensive due to the extraordinarily strict requirements related to official ballot paper quality, type, thickness, and ink quality...”³⁶³ In addition, the County alleges that “AB 1413 added Elections Code Section 13206.5, which requires certain information to be printed at the top of the ballot used in a statewide general election in years evenly divisible by four” and that “[t]hese requirements are entirely new and involve considerable ballot space to print.”³⁶⁴ And, the County alleges that sections 9083.5 and 14105.1 require counties to “[r]eproduce and provide to each polling place the Secretary of State created explanation of electoral procedures,” to “[p]ost at each polling place, in specified locations and quantities, the Secretary of State created explanation of electoral procedures,” and to post at each polling place and mail to vote-by-mail voters “[s]pecified party abbreviations.”³⁶⁵ The County alleges that “[t]his requirement results in

³⁵⁷ See Exhibit A, Test Claim, at pp. 52-53 [CC/ROV #11005].

³⁵⁸ Exhibit A, Test Claim, at p. 62 [CC/ROV #11126].

³⁵⁹ Elections Code section 13206 (as amended, Stats. 2012, ch. 3 (AB 1413)).

³⁶⁰ Elections Code section 13206.5 (added, Stats. 2012, ch. 3 (AB 1413)).

³⁶¹ Exhibit A, Test Claim, at p. 70.

³⁶² Exhibit A, Test Claim, at p. 6.

³⁶³ Exhibit C, Claimant Rebuttal Comments, at p. 3.

³⁶⁴ Exhibit C, Claimant Rebuttal Comments, at p. 3.

³⁶⁵ Exhibit A, Test Claim, at pp. 6-7.

increased costs to change poll worker training materials and training procedures,” and that “[v]oter education is not required by Proposition 14.”

The County’s allegations are not persuasive. To begin, the County’s assertion that “nothing in Proposition 14 requires voter education” is not accurate, because, as discussed below, the findings and declarations approved by the voters in Proposition 14 expressly state that the Top Two Candidates Open Primary Act “conforms to the ruling in *Washington State Grange v. Washington State Republican Party*,” which centers on the potential for voter confusion giving rise to a constitutional challenge to a top two primary system. The Court in *Washington State Grange* held that a constitutional challenge to Washington’s top two primary system could be avoided by the institution of certain voter information and education procedures, as discussed below. By expressly invoking that case, the Proposition 14 findings and declarations demonstrate the voters’ intent that Proposition 14 must be implemented in a manner that would avoid a similar constitutional challenge. Secondly, the plain language of sections 9083.5 and 14105.1 does not require counties to “reproduce” the notices specified in section 9083.5, as the County alleges;³⁶⁶ section 14105.1 expressly states that the notices will be “supplied by the Secretary of State,” and therefore only the activity of “furnishing” the notices is required.³⁶⁷ Moreover, the County’s comments and allegations focus heavily on the increased *costs* of preparing ballots resulting from Proposition 14 and the implementing test claim statutes, but increased costs alone do not result in a reimbursable state-mandated program.³⁶⁸

Therefore, based on the foregoing, the following new activities pertaining to voter information and instructions provided in the ballot and posted at polling places are required:

- Furnish to precinct officers printed copies of the notices specified in section 9083.5, as supplied by the Secretary of State.³⁶⁹
- Conspicuously post the notices inside and outside every polling place.³⁷⁰
- Add to a *partisan primary ballot*, below the box labeled “Party-Nominated Offices,” the following:

“Only voters who disclosed a preference upon registering to vote for the same party as the candidate seeking the nomination of any party for the Presidency or election to a party committee may vote for that candidate at the primary election, unless the party has adopted a rule to permit non-party voters to vote in its primary elections.”³⁷¹

³⁶⁶ Exhibit A, Test Claim, at p. 6.

³⁶⁷ Elections Code section 14105.1 (added, Stats. 2009, ch. 1 (SB 6)).

³⁶⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830.

³⁶⁹ Elections Code section 14105.1 (as added, Stats. 2009, ch. 1 (SB 6)).

³⁷⁰ *Ibid.*

³⁷¹ Elections Code section 13206(a) (as amended, Stats. 2009, ch. 1 (SB 6); Stats. 2012, ch. 3 (AB 1413)).

- Add to a *special primary election ballot* a box and label for “Voter-Nominated Offices,” and below that box the following:

“All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office.

Voter-Nominated Offices. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only.

It does not constitute or imply an endorsement of the candidate by the party indicated, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party.³⁷²
- From July 1, 2011 to February 10, 2012,³⁷³ add to the nonpartisan part of the *primary election ballot*, below the box labeled “Voter-Nominated and Nonpartisan Offices,” the following:

“All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office.

Voter-Nominated Offices. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only.

It does not constitute or imply an endorsement of the candidate by the party indicated, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party.

“Nonpartisan Offices. A candidate for a nonpartisan office may not designate a party reference on the ballot.”³⁷⁴
- Beginning February 10, 2012, add to the nonpartisan part of the *primary election ballot*, below the box labeled “Voter-Nominated and Nonpartisan Offices,” the following:

³⁷² Secretary of State’s Memorandum CC/ROV #11005 [See Exhibit A, Test Claim, at pp. 53-54.].

³⁷³ The potential period of reimbursement begins July 1, 2011, based on the filing date of the test claim. As of February 10, 2012, Elections Code section 13206 was amended to shorten the required text for inclusion in the ballot. The Commission takes official notice that at least one special election was held within between July 1, 2011 and November 23, 2011 in which candidates for a voter-nominated office appeared on the ballot. (See Exhibit X, Special Election, Congressional District 36, July 12, 2011.).

³⁷⁴ Elections Code section 13206(b) (as amended, Stats. 2009, ch. 1 (SB 6)).

“All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot.”³⁷⁵

- Add to the *general election ballot, in an election year evenly divisible by the number four*, below the box and label for “Party Nominated Offices,” the following:

“The party label accompanying the name of a candidate for party-nominated office on the general election ballot means that the candidate is the official nominee of the party shown.”³⁷⁶

- Add to the *general election ballot, in all election years*, below the box and label for “Voter-Nominated and Nonpartisan Offices,” the following:

“All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot.”³⁷⁷

- Add to a *special election ballot*, the following:

“VOTER-NOMINATED OFFICES

Under the California Constitution, political parties are not entitled to formally nominate candidates for voter-nominated offices at the primary election, and a candidate nominated for a voter-nominated office at the primary election is not the official nominee of any party for the office in question at the ensuing general election. A candidate for nomination or election to a voter-nominated office may, however, designate his or her party preference, or lack of party preference, and have that designation reflected on the primary and general election ballot, but the party designation so indicated is selected solely by the candidate and is shown for the

³⁷⁵ Elections Code section 13206(b) (as amended, Stats. 2012, ch. 3 (AB 1413)).

³⁷⁶ Elections Code section 13206.5(a)(1) (added, Stats. 2012, ch. 3 (AB 1413)).

³⁷⁷ Elections Code section 13206.5(a)(2) (added, Stats. 2012, ch. 3 (AB 1413)).

information of the voters only. It does not constitute or imply an endorsement of the candidate by the party designated, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party. The parties may have a list of candidates for voter-nominated offices, who have received the official endorsement of the party, printed in the sample ballot.

All voters, regardless of the party for which they have expressed a preference upon registering, or of their refusal to disclose a party preference, may vote for any candidate for a voter-nominated office, provided they meet the other qualifications required to vote for that office. The top two vote-getters at the primary election advance to the general election for the voter-nominated office, and both candidates may have specified the same party preference designation. No party is entitled to have a candidate with its party preference designation participate in the general election unless such candidate is one of the two highest vote-getters at the primary election.”³⁷⁸

The Commission finds that these activities are incidental to the ballot measure mandate and produce at most de minimis added costs, and therefore do not impose costs mandated by the state pursuant to Government Code section 17556(f).

In *Hayes, supra*, court held that “[r]eimbursement is required when the state ‘freely chooses to impose on local agencies any peculiarly “governmental” cost which they were not previously required to absorb,’”³⁷⁹ but “[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention.”³⁸⁰ Ultimately the threat of “a barrage of litigation” was seen as sufficient compulsion against the state to act to implement an applicable federal mandate.³⁸¹ Accordingly, here, a significant potential for constitutional challenge (and the significant potential that such challenge could succeed) is sufficiently compelling as against the state to require certain voter education measures, as discussed herein.

In *Washington State Grange, supra*, the Court recognized that a top two candidates open primary could give rise to widespread voter confusion, especially with respect to the diminished role of the political parties, and thus lead to a successful constitutional challenge to the law, asserting impairment of the political parties’ associational rights under the First Amendment. The Court held that “[i]t stands to reason that whether voters will be confused by the party-preference

³⁷⁸ Secretary of State’s Memorandum CC/ROV #11005 [See Exhibit A, Test Claim, at pp. 52-53].

³⁷⁹ (1992) 11 Cal.App.4th 1564, at p. 1578 [quoting *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, at p. 70].

³⁸⁰ *Id.*, at p. 1593.

³⁸¹ *Hayes, supra*, 11 Cal.App.4th at p. 1592.

designations will depend in significant part on the form of the ballot,”³⁸² but because the State of Washington had yet to implement its voter-enacted top two primary system, a facial constitutional challenge based on possible voter confusion was premature. Specifically, the Court suggested:

[T]he ballots might note preference in the form of a candidate statement that emphasizes the candidate's personal determination rather than the party's acceptance of the candidate, such as “my party preference is the Republican Party.” Additionally, the State could decide to educate the public about the new primary ballots through advertising or explanatory materials mailed to voters along with their ballots.³⁸³

Here, the Top Two Candidates Open Primary Act has been implemented in a manner that includes both of the innovations that the Court suggested would help weather any challenge asserting impairment of the parties’ First Amendment associational rights. Specifically, the requirements of sections 9083.5 and 14105.1 to furnish the notices and post the notices inside and outside each polling place, and of sections 13206 and 13206.5 and CC/ROV #11005 to include additional explanation in primary, general, and special election ballots, involve notice and information to the voters which operate to “educate the public about the new primary ballots.”³⁸⁴ The explanatory text specified in amended section 13206 and added section 13206.5, and in CC/ROV #11005 (all of which are substantially similar), whether posted at polling places or printed in the ballot, draws heavily from the text of Proposition 14 itself,³⁸⁵ and the information is provided to voters in order to avoid misleading or confusing the voters. Based on the state law requirement to “avoid misleading the public with inaccurate information,”³⁸⁶ and the statement in the text of Proposition 14 that the act conforms to the ruling of *Washington State Grange*, additional instructions and voter information as required by sections 9083.5, 14105.1, 13206, and 13206.5 provide helpful information to voters regarding the changes to the primary system.

However, the Court in *Washington State Grange* suggested some options for the State of Washington to implement its top-two primary in a manner that avoided further litigation; the Court did not demand all of the stated measures. Moreover, the Court was not specific as to exactly what extent and scope of “advertising or explanatory materials” would be necessary to vindicate the First Amendment rights of the political parties.

Therefore, the activities required by added sections 9083.5 and 14105.1, to furnish to precinct officers the notices specified in section 9083.5, and to conspicuously post the notices at each polling place; as well as those required by added and amended sections 13206.5 and 13206, and by CC/ROV #11005, to include additional instructions and explanatory text in primary, general,

³⁸² *Id.*, at p. 456.

³⁸³ *Ibid.*

³⁸⁴ *Washington State Grange, supra*, (2008) 552 U.S. 442, at p. 456.

³⁸⁵ See Exhibit X, Text of Ballot Measure, Proposition 14.

³⁸⁶ *Lungren, supra*, 48 Cal.App.4th at p. 440 [citing *Amador Valley Joint Union High School District v. State Board of Equalization*, (1978) 22 Cal.3d 208].

and special election ballots, are adopted to implement Proposition 14, but may not be strictly necessary to implement a top two candidates open primary consistently with Proposition 14 within the meaning of Government Code section 17556(f).

Nevertheless, Government Code section 17556(f) still applies; these requirements are incidental to the ballot measure mandate and produce at most de minimis added costs. As discussed above, the California Supreme Court in *San Diego Unified, supra*, found that statutory notice and recordkeeping requirements associated with public school expulsion proceedings were not reimbursable under Government Code section 17556(c) because they represented “specific statutory procedures to comply with the general federal mandate,” which are “designed to...set forth procedural details that were not expressly articulated in the case law establishing the respective rights [of the parties].” The Court held that if the excess procedural activities, “viewed singly or cumulatively, [do] not significantly increase the cost of compliance,” then they “should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable” under Government Code section 17556(c).³⁸⁷ The court of appeal in *CSBA* applied the same reasoning to a voter-enacted ballot measure under section 17556(f), and concluded 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 at most de minimis costs.”³⁸⁸

Here, the requirements of sections 9083.5 and 14105.1 to furnish the notice specified in section 9083.5 to precinct officers along with the precinct supplies identified in section 14105,³⁸⁹ and to conspicuously post the notice inside and outside each polling place; and the requirements of sections 13206 and 13206.5,³⁹⁰ and a portion of CC/ROV #11005,³⁹¹ to include similar explanatory information in the ballots for primary, general, and special elections, constitute “specific statutory procedures” which are “designed to...set forth...details that were not expressly articulated”³⁹² in Proposition 14, or in *Washington State Grange, supra*. And when “viewed singly or cumulatively, [those activities] did not significantly increase the cost of compliance...”³⁹³ This conclusion is reached by examining the extent of voter instructions printed in the ballot under prior and existing law, and the preexisting duties of county elections officials with respect to precinct supplies.

Under prior law, section 14105, as amended by Statutes 2003, chapter 810, provides for a long list of precinct supplies that a county elections official must already furnish, as follows:

- (a) Printed copies of the indexes.

³⁸⁷ *San Diego Unified, supra*, 33 Cal.4th at p. 889.

³⁸⁸ *CSBA, supra* (2009) 171 Cal.App.4th 1183, at p. 1216.

³⁸⁹ Elections Code section 14105.1 (added, Stats. 2009, ch. 1 (SB 6)).

³⁹⁰ Elections Code section 13206 (amended, Stats. 2009, ch. 1 (SB 6); Stats. 2012, ch. 3 (AB 1413)); Elections Code section 13206.5 (added, Stats. 2012, ch. 3 (AB 1413)).

³⁹¹ Exhibit A, Test Claim, at pp. 52-53.

³⁹² *San Diego Unified, supra*, 33 Cal.4th at p. 889.

³⁹³ *Ibid.*

- (b) Necessary printed blanks for the roster, tally sheets, lists of voters, declarations, and returns.
- (c) Envelopes in which to enclose returns.
- (d) Not less than six nor more than 12 instruction cards to each precinct for the guidance of voters in obtaining and marking their ballots. On each card shall be printed necessary instructions and the provisions of Sections 14225, 14279, 14280, 14287, 14291, 14295, 15271, 15272, 15273, 15276, 15277, 15278, 18370, 18380, 18403, 18563, and 18569.
- (e) A digest of the election laws with any further instructions the county elections official may desire to make.
- (f) An American flag of sufficient size to adequately assist the voter in identifying the polling place. The flag is to be erected at or near the polling place on election day.
- (g) A ballot container, properly marked on the outside indicating its contents.
- (h) When it is necessary to supply additional ballot containers, these additional containers shall also be marked on the outside, indicating their contents.
- (i) Sufficient ink pads and stamps for each booth. The stamps shall be one solid piece and shall be made so that a cross (+) may be made with either end. If ballots are to be counted by vote tabulating equipment, an adequate supply of other approved voting devices shall be furnished. All voting stamps or voting devices shall be maintained in good usable condition.
- (j) When a candidate or candidates have qualified to have his or her or their names counted pursuant to Article 3 (commencing with Section 15340) of Chapter 4 of Division 15, a sufficient number of ink pens or pencils in the voting booths for the purpose of writing in on the ballot the name of the candidate or candidates.
- (k) A sufficient number of cards to each polling place containing the telephone number of the office to which a voter may call to obtain information about his or her precinct location. The card shall state that the voter may call collect during polling hours.
- (l) An identifying badge or insignia for each member of the precinct board. The member shall print his or her name and the precinct number thereon and shall wear the badge or insignia at all times in the performance of duties, so as to be readily identified as a member of the precinct board by all persons entering the polling place.
- (m) Facsimile copies of the ballot containing ballot measures and ballot instructions printed in Spanish or other languages as provided in Section 14201.
- (n) Sufficient copies of the notices to be *posted* on the indexes used at the polls. The notice shall read as follows: "This index shall not be marked in any manner except by a member of the precinct board acting pursuant to Section 14297 of the Elections Code. Any person who removes, tears, marks, or otherwise defaces this

index with the intent to falsify or prevent others from readily ascertaining the name, address, or political affiliation of any voter, or the fact that a voter has or has not voted, is guilty of a misdemeanor.”

(o) A roster of voters for each precinct in the form prescribed in Section 14107.

(p) In addition, the elections official may, with the approval of the board of supervisors, furnish the original books of affidavits of registration or other material necessary to verify signatures to the precinct officers.

(q) Printed copies of the Voter Bill of Rights, as supplied by the Secretary of State. The Voter Bill of Rights shall be conspicuously *posted* both inside and outside every polling place.³⁹⁴

The new requirements to *furnish* to precinct officers printed copies of the notices specified in section 9083.5, as supplied by the Secretary of State, and to ensure that those notices are *conspicuously posted* inside and outside each polling place, do not significantly increase the cost of compliance with Proposition 14 and the costs of conducting elections pursuant to the Elections Code. In other words, these activities are “incidental” to Proposition 14 and “produce at most de minimis added costs.”³⁹⁵ As noted above, these are the only requirements of the plain language of sections 908.5 and 14105.1.

Similarly, prior to enactment of the test claim statutes, section 13204 provided for the following instructions in the ballots of all voters:

“To vote for a candidate for Chief Justice of California; Associate Justice of the Supreme Court; Presiding Justice, Court of Appeal; or Associate Justice, Court of Appeal, stamp a cross (+) in the voting square after the word “Yes,” to the right of the name of the candidate. To vote against that candidate, stamp a cross (+) in the voting square after the word “No,” to the right of the name of that candidate.”

“To vote for any other candidate of your selection, stamp a cross (+) in the voting square to the right of the candidate’s name. [When justices of the Supreme Court or Court of Appeal do not appear on the ballot, the instructions referring to voting after the word “Yes” or the word “No” will be deleted and the above sentence shall read: “To vote for a candidate whose name appears on the ballot, stamp a cross (+) in the voting square to the right of the candidate’s name.”] Where two or more candidates for the same office are to be elected, stamp a cross (+) after the names of all candidates for the office for whom you desire to vote, not to exceed, however, the number of candidates to be elected.”

“To vote for a qualified write-in candidate, write the person’s name in the blank space provided for that purpose after the names of the other candidates for the same office.”

³⁹⁴ Elections Code section 14105 (Stats. 1994, ch. 920 (SB 1547); Stats. 2003, ch. 425 (AB 177); Stats. 2003, ch. 810 (AB 1679)) [emphasis added].

³⁹⁵ *CSBA, supra*, 171 Cal.App.4th 1183, at p. 1216.

“To vote on any measure, stamp a cross (+) in the voting square after the word “Yes” or after the word “No.”

“All distinguishing marks or erasures are forbidden and make the ballot void.”

“If you wrongly stamp, tear, or deface this ballot, return it to the precinct board member and obtain another.”

“On vote by mail ballots mark a cross (+) with pen or pencil.”³⁹⁶

The pre-existing requirements of section 13205 also provide for four paragraphs of *additional* instructions to be included in the ballot during presidential election cycles.³⁹⁷

Section 13206, as amended by Statutes 2009, chapter 1, requires counties to add the following, to primary election ballots, below the box and label for “Voter-Nominated and Nonpartisan Offices”:

“All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office.

Voter-Nominated Offices. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only.

It does not constitute or imply an endorsement of the candidate by the party indicated, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party.

“Nonpartisan Offices. A candidate for a nonpartisan office may not designate a party reference on the ballot.”³⁹⁸

Beginning February 10, 2012, that additional language was made more brief, by Statutes 2012, chapter 3, as follows:

“All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot.”³⁹⁹

³⁹⁶ Elections Code section 13204 (Stats. 2007, ch. 508 (AB 1243)).

³⁹⁷ Elections Code section 13205 (Stats. 1994, ch. 920 (SB 1547)).

³⁹⁸ Elections Code section 13206(b) (as amended, Stats. 2009, ch. 1 (SB 6)).

³⁹⁹ Elections Code section 13206(b) (as amended, Stats. 2012, ch. 3 (AB 1413)).

In addition, as explained above, CC/ROV #11005 directed counties to omit the last sentence of section 13206(b), as amended by Statutes 2009, chapter 1, pertaining to nonpartisan offices for special election ballots, and to add two paragraphs explaining the procedure and significance of voter-nominated offices, derived from section 9083.5, to a special election ballot, to take the place of the statewide Voter Information Guide.⁴⁰⁰ Then, section 13206.5, added by Statutes 2012, chapter 3 required two additional sentences to be included in the general election ballot during presidential election cycles, and one additional sentence to be included the general election ballot during all other election cycles.

In context of the instructions already required pursuant to sections 13204 and 13205, the additional text required pursuant to sections 13206 and 13206.5, and CC/ROV #11005 (for special elections) produces at most de minimis added costs, and these sections do not impose costs mandated by the state within the meaning of article XIII B, section 6.

Based on the foregoing, the requirements of Elections Code sections 9083.5, 14105.1, 13302, 13206, and 13206.5, as added or amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012, chapter 3 (AB 1413), and portions of Secretary of State's Memoranda CC/ROV #11005, CC/ROV #11126, CC/ROV #12059 related to the instructions and explanatory information for the voters do not impose costs mandated by the state pursuant to Government Code section 17556(f).

V. Conclusion

Based on the foregoing, the Commission finds that the test claim statutes and executive orders alleged either do not require any new activities of local government, or impose duties that are necessary to implement the ballot measure, and are incidental to the ballot measure and produce at most de minimis added costs within the meaning of Government Code section 17556(f). Therefore all alleged statutes and executive orders are denied.

⁴⁰⁰ Secretary of State's Memorandum CC/ROV #11005 [See Exhibit A, Test Claim, at pp. 52-54.].

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Yolo 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 May 19, 2014, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Top Two Candidates Open Primary Act, 12-TC-02
Elections Code Sections 13 et al.,
Statutes 2009, Chapter 2 (SCA 4); Statutes 2009, Chapter 1 (SB 6);
Statutes 2012, Chapter 3 (AB 1413)
Secretary of State's CC/ROV Memorandums #11005, #11125, #11126, and #12059
County of Sacramento, 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 May 19, 2014 at Sacramento, California.



Jason Hone
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/30/14

Claim Number: 12-TC-02

Matter: Top Two Candidates Open Primary Act

Claimant: County of Sacramento

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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County of Sacramento

Exhibit E

Divisions
Campaign Services
Precincts
Registration
Vote By Mail
Voting Systems and Technology

RECEIVED
July 11, 2014
**Commission on
State Mandates**

July 11, 2014

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey,

RE: Claimant's Comments on Draft Proposed Decision
Top Two Candidates Open Primary Act (12-TC-02)

The County of Sacramento respectfully submits comments on the draft proposed decision, issued May 19, 2014, on the Top Two Candidates Open Primary Act (Top Two) test claim. The Claimant's response clearly shows state mandated activities resulting from the cited statutes and executive orders.

The staff's draft proposed decision discusses many court cases that purport to relate to the Top Two test claim. The report contends that GC 17556 (f) applies to this entire test claim because the Proposition was voter approved and therefore is not part of the mandate process. Claimant believes otherwise. SCA 4 / Proposition 14 contained very clear ballot measure language. This very clear language was altered and in some cases even superseded by legislative statutes and executive orders that were not necessary to implement or incidental to SCA 4 / Proposition 14.

The report further goes on to explain that because the State is the responsible party, the Counties have no new or higher level of service. This is factually incorrect. The State is the State Election Official, but has no ability to conduct an election; issue, process or validate candidate nomination paperwork; prepare official ballots; present voter specific sample ballot pamphlets; or even process affidavits of registration. These are all activities handled by Counties. As such, the Top Two test claim is very much a mandate to Counties who bear the burden of the activities identified in the test claim.

Staff provided a chart of their issues and their reasons for denial. Below is the Claimants response to each item in the chart.

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Staff Subject	Staff Description	Claimant Response
<p>Statutes 2009, chapter 2 (SCA4)/ Proposition 4 [sic]</p>	<p>SCA 4 put before the voters a proposed amendment to article II of the California Constitution, providing for a top-two candidates open primary for all congressional and state elected offices. SCA 4 was approved by the voters as Proposition 14 on June 8, 2010</p>	<p>SCA 4 / Proposition 14 provided very clear language for a Top Two Candidates Open Primary Act. In fact, SCA 4 / Proposition 14 was an attempt to turn away from party driven elections and addressed party registration, candidate disclosure, primary elections, freedom of political parties and presidential primaries. SCA 4 / Proposition 14 does not impose the mandate. It is SB 6 and AB 1413 together that defined a complex and party-centric implementation of the Top Two Candidates Open Primary Act which exceeded the plain language and in some instances changed the intention of SCA 4 / Proposition 14 that has produced the mandate.</p> <p>This legislation set out new or higher levels of service than previously provided for in code, without regard to efficiencies, effectiveness, or cost burdens to the local election offices. These new and higher levels of services are not necessary to implement nor are they incidental to SCA 4 / Proposition 14.</p> <p>The costs resulting from these new and higher levels of service are not de minimus.</p>
<p>Elections Code section 13, 300.5, 325, 332.5, 334, 337, 359.5, as added or amended by Statutes 2009, chapter 1 (SB6).</p>	<p>Section 13, as amended, states that no person shall be considered a legally qualified candidate in a general election unless that person has filed a declaration of candidacy or statement of write-in candidacy, or has been nominated at a primary election, or has been selected to fill a vacancy on the general election ballot, or has been selected as an independent candidate. Sections 300.5, 325, 332.5, 334, 337 and 359.5 define the terms "affiliated with a political party," "independent status," "nominate," "nonpartisan office," "partisan office" or "party nominated</p>	<p>While SCA 4 / Proposition 14 set forth party-nominated and voter-nominated offices, SB 6 and AB 1413 went beyond what was necessary to implement the change in SCA 4 / Proposition 14's very plain language.</p> <p>Nothing in SCA 4 / Proposition 14 addresses the elimination of write-in candidates in the General election. Election Code Section 13 previously allowed write-in candidates for any election. With the enactment of SB 6 and AB 1413, write-in candidacy for voter-nominated offices were limited to primary elections only, eliminating this opportunity for write-in candidates in voter-nominated contests in the general election.</p> <p>300.5 – affiliated with a political party, as applies to a candidate, is contrary to how SCA 4 / Proposition 14 defined the word which clearly</p>

	<p>office,” and “voter-nominated office.”</p>	<p>states ‘all candidates shall have the choice to declare a party preference’ without any association to their affidavit of registration.</p> <p>359.5 – defines voter nominated, and its offices. The Counties must put all these in the various documents, manuals, media, publications, etc; on-going and extensive training for poll workers, voters, candidates; Implementation/training/information is a burden placed on the County election official when it is better located at the State level as these are all State level or higher offices. As such, transferring the training and information duties to the County is a practical mandate.</p>
<p>Elections Code section 13230, as amended by Statutes 2009, chapter 1 (SB6)</p>	<p>Section 13230 was amended to provide that if the county elections official determines that the number of candidates and measures that must be printed will result in a ballot that is too large to be conveniently handled, and decides to separate the nonpartisan and partisan portions of the ballot, the voter instructions described under section 13206 pertaining to voter-nominated and nonpartisan offices may be omitted from the partisan ballots.</p>	<p>The intent of the legislature in putting forth the elections code is to ensure equal access to voting; giving voters a ballot ‘larger than may be conveniently handled’ disenfranchises voters and candidates to the extent that down-ballot contests are avoided.</p> <p>Previous code allowed all nonpartisan contests to be on one ballot card and all other contests (at that time, partisan races) to be on another card; SB6 changed this to require voter-nominated contests stay with nonpartisan races on one ballot card, thereby continuing the problem of ballots being ‘larger than can be conveniently handled’.</p> <p>Presenting the party-nominated contests on a separate ballot card appears to meet the intent of the legislature under the existing law, but in reality continues the voter disenfranchisement. By simply removing the party-nominated contests (president and central committee) the ballot is still ‘larger than can be conveniently handled’. The voter-nominated contests are now placed with the nonpartisan contests and result in ballots that continue to be ‘larger than can be conveniently handled’.</p>
<p>Elections Code section 8002.5, as amended by Statutes 2012, chapter 3 (SB1413) [sic].</p>	<p>Section 8002.5, as amended, provides that a candidate for a voter-nominated office shall either indicate a party preference, or indicate no party preference, “which shall be consistent with what appears on</p>	<p>SCA 4 / Proposition 14 Second subdivision paragraph (d) states ‘At the time they file to run for public office, all candidates shall have the choice to declare a party preference. The preference chosen shall accompany the candidate’s name on both the primary and general election ballots. The names of candidates who</p>

	<p>the candidate's most recent affidavit of registration."</p>	<p>choose not to declare a party preference shall be accompanied by the designation "No Party Preference" on both the primary and general election ballots.' The legislature, by implementing AB 1413, changed the intention of SCA 4 / Proposition 14 from a candidate's political party <i>preference</i> to a candidate's political party <i>registration</i>. The change is significant as it voids the candidates 'choice' to declare their party preference and requires the candidate to use only the political party with which they are registered at the time they file for office. This legislation is not necessary to implement nor incidental to SCA 4 / Proposition 14.</p> <p>This task does impose additional activities and tasks on County election officials. Candidates file at the County election office, and it is the County election official that is responsible for interacting with the candidates, requesting the newly required information, and ensuring filing paperwork is completed as required by this new law. The cost is not de minimus.</p>
<p>Elections Code section 8040, as amended by Statutes 2012, chapter 3 (SB1413) [sic].</p>	<p>Section 8040, as amended, omits from the Declaration of Candidacy filed by each candidate the initial declaration of party affiliation, and also requires that candidates for voter-nominated offices certify their voter registration history and their disclosed party preference.</p>	<p>SCA 4 / Proposition 14 does not include any requirement for candidates to disclose their prior 10 years voter registration history. This requirement is clearly a mandate put forth by the legislature in AB 1413.</p> <p>This requirement does impose additional activities and tasks on County election officials as the new form requires information not previously mandated. Candidates file at the County election office, and it is the County election official that is responsible for interacting with the candidates, requesting the newly required information, and ensuring filing paperwork is completed as required by this new law. Should the County not gather this information, the candidate will not be qualified to run for office; the burden is on the County to accept and timely file candidate's paperwork.</p> <p>This information and related activity is not necessary to implement nor incidental to SCA 4 / Proposition 14; new and higher level of services</p>

<p>Elections Code 8062, as amended by Statutes 2012, chapter 3 (SB 1413) [sic].</p>	<p>Section 8062, as amended, changes the word "less than," as it pertains to the number of signatures needed to nominate a person for a primary election, to "fewer than," and adds the word "State" before "Board of Equalization."</p>	<p>required in AB 1413 are not de minimus.</p> <p>The amendment put forth by Claimant references Section 8106 in place of Section 8062. SCA 4 / Proposition 14 does not include any language relative to candidate petition-in-lieu filing. AB 1413 changed the number of signatures required from minor party candidates from 150 to 1,500 for Assembly, 3,000 for State Senate or Congress, and 10,000 for statewide offices. This significantly increases the amount of work County election officials must do to validate these minor party candidate filings.</p> <p>This language is not required in the plain language of SCA 4 / Proposition 14. The costs to perform this mandate are not de minimus.</p>
<p>Reorganization of the ballot pursuant to Elections Code sections 13102 and 13110, as amended by Stats. 2009, ch.1 (SB6).</p>	<p>The test claim statutes require counties to provide the names of candidates for voter-nominated offices on the ballots of all voters, but to provide the names of presidential and party committee candidates only on the ballots of partisan voters.</p>	<p>SCA 4 / Proposition 14 Third subdivision, section (c) states 'The Legislature shall provide for primary partisan election for partisan offices <i>presidential candidates, and political party and party central committees</i>, including an open presidential primary...' This language is plain and clear in its directive that presidential primary elections be <i>open</i>. As such, there is no need to prepare a partisan ballot in any primary election.</p> <p>The Legislature, in passing SB6, implemented partisan ballot rules that exceeded the plain language of SCA 4 / Proposition 14. The partisan ballot rules found in the codes changed by SB6 set out specific rules for political party ballots in primary elections, rules that were not contemplated in the SCA 4 / Proposition 14. This is not needed to implement, nor incidental to SCA 4 / Proposition 14.</p>
<p>Addition of party preference designation and use of three lines for each candidate's entry, pursuant to Elections Code section 13105, as amended by Statutes 2009, chapter 1 (SB6), Statutes 2012,</p>	<p>Section 13105 requires counties to include each candidate's party preference designation in both the primary and the general election ballots, using the party preference designation phrases, as specified in the amended code section and in CC/ROV #11125 and CC/ROV #12059. CC/ROV #11005 applies this requirement to special primary elections containing voter-nominated</p>	<p>The wording 'party preference' is not required ballot wording in SCA 4 / Proposition 14 and is not necessary to implement the plain language requirements of SCA 4 / Proposition 14. The 'party preference' requirement was promulgated in SB 6 and AB 1413, as well as the CCROV's noted in this filing.</p> <p>For counties that are required to provide materials in alternate languages, this 'party preference' wording after each voter-nominated candidate makes the official ballot longer by one line for each candidate on the ballot, in some cases</p>

<p>chapter 3 (AB 1413); CC/ROV #11005; CC/ROV #11125; CC/ROV#12059.</p>	<p>offices, and CC/ROV #11005, and the later orders, require the use of three consecutive lines for each candidate's name, party preference designation, and ballot designation.</p>	<p>several inches longer.</p> <p>The ballot is the most costly part of any election and the legislation and CCROVs could have directed the counties to provide a definition of the party preference in the sample ballot pamphlet at a much reduced, and even de minimus, cost. They did not. Adding the words 'party preference' after each voter-nominated candidate on the ballot results in longer ballots cards and even additional ballot cards. The resulting costs are not de minimus.</p>
<p>Receipt and printing of party endorsements pursuant to Elections Code section 13302, as amended by Stats. 2009, ch. 1 (SB 6); Stats. 2012, ch. 3 (AB 1413); CC/ROV #11005.</p>	<p>Section 13302 requires counties to receive and print in the voter information section of the sample ballot a list of endorsements, if timely received, from a qualified political party. CC/ROV #11005 applies this section also to special elections, with "shortened time frame[s]."</p>	<p>SCA 4/ Proposition 14 does not provide for, nor in any manner of interpretation, require counties to provide, at the counties' costs, sample ballot pamphlet endorsement pages for the California's qualified political parties.</p> <p>SCA 4 / Proposition 14 clearly states that 'Political Parties may establish such procedures as they see fit to endorse or support candidates or otherwise participate in all elections,...' Nothing in this wording requires the county to receive and print a list of party endorsements at the County's cost in order to implement SCA 4 / Proposition 14. Nor would such page be incidental to SCA 4 / Proposition 14.</p> <p>Costs to comply with the mandate language in both SB6 and AB 1413 exceed \$1,000 which meets the threshold for mandate claiming and therefore are not de minimus.</p>
<p>Additional instructions in the ballot, and posters furnished to precincts and posted conspicuously at polling places, pursuant to sections 13206, 13206.5, 9083.5, and 14105.1, as added or amended by Statutes 2009, chapter 1 (SB 6) and Statutes 2012,</p>	<p>Sections 13206 and 13206.5 provide for additional instructions to be added to the ballots for primary and general elections, including special instructions for a presidential election cycle. Sections 9083.5 and 14105.1 provide for posters to be furnished to precincts and posted at polling places explaining the changes to primary elections. CC/ROV#11005 provides for the text specified in section 9083.5 to be provided in the ballot for special elections,</p>	<p>SCA 4 / Proposition 14 does not provide for any type of additional instructions or ballot text in the absence of voter information guides. Further, additional instructions or ballot text is not required to implement nor incidental to SCA 4 / Proposition 14. This is burdensome to the counties in that it requires significant time to produce, translate, prepare, and distribute these instructional materials.</p> <p>Government Code 17556 (f) does not apply here as these activities are not expressly included in the ballot measure and are not necessary to implement SCA 4 / Proposition 14. This ballot text and additional instructions only appear in the legislation and executive orders cited in this</p>

<p>chapter 3 (AB 1413); CC/ROV #11005; CC/ROV #11126; CC/ROV#12059.</p>	<p>because there would be no voter information guide. CC/ROV #11126 provides for omitting the language in section 13206(b) pertaining to nonpartisan offices for the June 2012 primary election. And CC/ROV #12059 restates and explains the minor technical amendments made to section 13206, 13206.5, 9083.5, and 14105.1 by Statutes 2012, chapter 3 (AB 1413).</p>	<p>letter.</p> <p>Even should the Commission find they are necessary, these methods are not the least burdensome method for providing the information to the voters.</p> <p>The costs related to these activities are not de minimus for the Claimant, exceeding the \$1000 threshold required for mandate claiming.</p>
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The Claimant respectfully requests the Commission find that the activities and costs pled in the test claim and amended test claim are not due to language contained in, incidental to or required to implement SCA 4 / Proposition 14. Further, Claimant requests the Commission find the test claim statutes and executive orders cited in the test claim and amended test claim do impose new mandated activities and results in costs mandated by the State, resulting in a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please feel free to contact me at (916) 875 6255.

Sincerely,


 Alice Jarboe, Claimant Representative
 Assistant Registrar of Voters
 Sacramento County

cc: Julie Valverde, Sacramento County Director of Finance

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 14, 2014, I served the:

Claimant Comments

Top Two Candidates Open Primary Act, 12-TC-02

Statutes 2009, Chapter 2 (SCA 4); Statutes 2009, Chapter 1 (SB 6); Statutes 2012, Chapter 3 (AB 1413)

Secretary of State's CC/ROV Memorandums #11005, #11125, #11126, and #12059
County of Sacramento, 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 14, 2014 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/1/14

Claim Number: 12-TC-02

Matter: Top Two Candidates Open Primary Act

Claimant: County of Sacramento

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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1. TEST CLAIM TITLE

Top Two Candidates Open Primary Act -
Amendment

2. CLAIMANT INFORMATION

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E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Alice Jarboe
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Assistant Registrar of Voters
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<i>For CSM Use Only</i>	
Filing Date:	RECEIVED October 28, 2013 COMMISSION ON STATE MANDATES FILING REJECTED November 4, 2013
Test Claim #:	

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Amended Test Claim - Statutes generally and sections specifically

The original test claim included the below named statutes in their entirety. Certain sections were called out and the below sections are listed for clarification purposes.

Statutes of 2009, Chapter 1 (SB6), operative 6/9/2010
Section 17 adding EC 8002.5
Section 20 amending EC 8062
Section 21 amending EC 8068
Section 31 amending EC 8300

Statutes of 2012, Chapter 3 (AB1413), effective 1/1/2012
Section 18 amending EC 8106
Section 24 amending EC 8300

Tasks and costs associated with the above named sections are included in the original filing. Page 6 and 7 of the original test claim are resubmitted with this document for clarification purposes.

Copies of statutes and executive orders already on file.

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

- 5. Written Narrative: pages 2 to 5.
- 6. Declarations: pages 6 to 8.
- 7. Documentation: pages 9 to 9.

5. WRITTEN NARRATIVE

The following are the specific sections of statutes or executive orders alleged to contain mandates. These statutes or executive orders caused claimant to first incur costs during the Fiscal Year 2011/2012.

Statutes of 2009, Chapter 2 (SCA 4), effective 6/9/2010

Statutes of 2009, Chapter 1 (SB6), operative 6/9/2010

- Section 1 amending EC 13
- Section 2 adding EC 300.5
- Section 3 adding EC 325
- Section 4 adding EC 332.5
- Section 5 amending EC 334
- Section 6 amending EC 337
- Section 7 adding EC 359.5
- Section 17 adding EC 8002.5
- Section 20 amending EC 8062
- Section 21 amending EC 8068
- Section 31 amending EC 8300
- Section 40 adding EC 9083.5
- Section 45 amending EC 13102
- Section 46 amending EC 13105
- Section 48 amending EC 13110
- Section 49 amending EC 13206
- Section 52 amending EC 13230
- Section 54 amending EC 13302
- Section 56 adding EC 14105.1

Statutes of 2012, Chapter 3 (AB1413), effective 1/1/2012

- Section 12 amending EC 8002.5
- Section 14 amending EC 8040
- Section 18 amending EC 8106
- Section 16 amending EC 8062
- Section 24 amending EC 8300
- Section 30 amending EC 9083.5
- Section 35 amending EC 13105
- Section 37 amending EC 13206
- Section 38 adding EC 13206.5
- Section 43 amending EC 13302

- Secretary of State's CC/ROV Memorandum #11005, effective 1/26/11
- Secretary of State's CC/ROV Memorandum #11125, effective 11/23/11
- Secretary of State's CC/ROV Memorandum #11126, effective 11/23/11
- Secretary of State's CC/ROV Memorandum #12059, effective 2/10/12

Actual and/or estimated costs resulting from these alleged mandates exceed one thousand dollars (\$1,000).

(A) Detailed description of the new activities and costs that arise from the mandate.

Costs were first incurred for the following 13 activities in Fiscal Year 2011/2012:

1. Reproduce and provide to each polling place the Secretary of State created explanation of electoral procedures for party-nominated, voter-nominated and nonpartisan offices, in all specified languages.
2. Post at each polling place, in specified locations and quantities, the Secretary of State created explanation of electoral procedures for party-nominated, voter-nominated and nonpartisan offices.
3. Each ballot and sample ballot will include the wording "Party Preference:" for all voter-nominated candidates.
4. Each ballot and sample ballot will list all candidates for each voter-nominated contest, regardless of party preference or lack of party preference.
5. Each ballot and sample ballot will follow added formatting rules.
6. Each ballot and sample ballot will include new specified information regarding partisan offices, and voter-nominated and nonpartisan offices.
7. Each sample ballot booklet will include authorized party endorsement lists, without cost to the party or central committee
8. Each sample ballot booklet will include specified information regarding partisan offices, and voter-nominated and nonpartisan offices.
9. Each presidential general election ballot will contain new specified language.
10. Each election ballot will contain new specified language.
11. Each ballot, sample ballot, and voter information pamphlet will include specified party abbreviations. Specified party abbreviations will be posted at each polling place and in information mailed to vote-by-mail voters.
12. The election official will collect and report additional specified information from candidates for voter-nominated office.
13. Attend meetings and trainings to ensure uniform implementation of Top Two Candidates Open Primary Act.

(B) Detailed description of existing activities and costs that are modified by the mandate.

Costs were first incurred for the following 6 activities in Fiscal Year 2011/2012:

1. Additional In-Lieu of Filing Fee petition signature verification to comply with elimination of lower signature thresholds for minor party candidates to voter-nominated offices and changes to nomination signature requirements.
2. Voting System Logic and Accuracy testing iterations more complex to verify vote counting machines programming correctly tabulates lengthy voter-nominated contests.
3. Increased length of ballot and sample ballot to accommodate lengthy voter-nominated contests.
4. Increased length of ballot and sample ballot to accommodate lengthy instructions.

5. Modify precinct officer training classes and on-line training programs to include changes from Top Two Candidates Open Primary Act
 - a. Instructions on what documents to post, and where the documents are to be posted
 - b. Information on the new contest designations and who is allowed to vote on the contests
6. Revise polling place operations manual to include changes resulting from Top Two Candidates Open Primary Act
 - a. Written instructions on what is to be posted and where it is to be posted
 - b. Written definition and lists of Party Nominated, Voter Nominated and Nonpartisan contests, including who is eligible to vote on these contests.

(C) Actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

Actual increased costs first incurred by the claimant during the fiscal year for which the claim was filed (FY 2011/2012) in order to implement the alleged mandate are estimated to be \$33,000.

(D) Actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

The actual or increased costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year (2012/2013) immediately following the fiscal year (2011/2012) for which the claim was filed is estimated to be \$15,000.

(E) Statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

The statewide cost estimate of increased costs for all local agencies incurred to implement the alleged mandate during the fiscal year (2012/2013) immediately following the fiscal year (2011/2012) for which the claim was filed is \$726,000.

(F) Identification of all of the following funding sources available for this program:

- (i) **Dedicated state funds:**
Claimant is unaware of any dedicated state funds for this program.
- (ii) **Dedicated federal funds:**
Claimant is unaware of any dedicated federal funds for this program.
- (iii) **Other nonlocal agency funds:**
Claimant is unaware of any other nonlocal agency funds available for this program.
- (iv) **The local agency's general purpose funds:**
Claimant is unaware of any general purpose funds available for this program.

(v) Fee authority to offset costs:

Claimant is unaware at this time of any fee authority to offset costs available for this program

(G) Identification of prior mandate determinations made by the Board of Control or the Commission on State mandates that may be related to the alleged mandate.

Claimant is not aware at this time of any prior mandate determination made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

(H) Identification of a legislative determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

Claimant is not aware at this time of any legislatively determined mandate on this same statute or executive order.

6. DECLARATIONS

Support the written narrative with declarations that:

- (A) Declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

The actual or estimated increased costs first incurred in Fiscal Year 2011/2012 by the claimant to implement the alleged mandate are approximately \$33,000.

- (B) Identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

Claimant is not aware at this time of any local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct or indirect costs.

- (C) Describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

Costs were first incurred for the following 19 activities in Fiscal Year 2011/2012:

1. Reproduce and provide to each polling place the Secretary of State created explanation of electoral procedures for party-nominated, voter-nominated and nonpartisan offices, in all specified languages. (EC 9083.5, Stats of 2009, c.1, §40; EC 9083.5, Stats of 2012, c.3, §30; EC 14105.1, Stats 2009, c. 1, §56; SOS CCROV 11126)
2. Post at each polling place, in specified locations and quantities, the Secretary of State created explanation of electoral procedures for party-nominated, voter-nominated and nonpartisan offices. (EC 9083.5, Stats of 2009, c.1, §40; EC 9083.5, Stats of 2012, c.3, §30; EC 14105.1, Stats 2009, c. 1, §56; SOS CCROV 11126)
3. Each ballot and sample ballot will include the wording "Party Preference:" for all voter-nominated candidates. (EC 8002.5, Stats of 2009, c.1 §17 and Stats 2012, c. 3 §12; EC 13105, Stats 2009, c. 1, §46; EC 13105, Stats 2012, c. 3, §35)
4. Each ballot and sample ballot will list all candidates for each voter-nominated contest, regardless of party preference or lack of party preference. (EC 8002.5, Stats of 2009, c.1 §17 and Stats 2012, c. 3 § 12; EC8300, Stats of 2009, c.1§ 31 and Stats of 2012, c.3 §24; EC 13102, Stats 2009, c. 1 §45; EC 13110, Stats 2009, c. 1 §48)
5. Each ballot and sample ballot will follow new formatting rules. (EC 13110; Stats 2009, c. 1, §48; EC 13230, Stats 2009, c. 1 §52; SOS CCROV 11126)
6. Each ballot and sample ballot will include new specified information regarding partisan offices, and voter-nominated and nonpartisan offices. (EC 13206; Stats 2012, c. 3, §38)
7. Each sample ballot booklet will include authorized party endorsement lists, without cost to the party or central committee (EC 13302; Stats 2009, c. 1, §54; EC 13302, Stats 2012, c. 3 §43)

8. Each sample ballot booklet will include specified information per election type regarding partisan offices, and voter-nominated and nonpartisan offices. (SOS CCROV 11005; SOS CCROV 12059)
9. Each election ballot will contain specified language, per election type. (EC 13206, Stats 2012, c. 3 §37; EC 13206.5, Stats 2012, c. 3 §38; SOS CCROV 11005; SOS CCROV 11126; SOS CCROV 12059)
10. Each ballot, sample ballot, and sample ballot booklet will include specified party abbreviations. (SOS CCROV 11125, SOS CCROV 12059)
11. Specified party abbreviations will be posted at each polling place and in information mailed to vote-by-mail voters. (SOS CCROV 11125, SOS CCROV 12059)
12. The election official will collect and report additional specified information from candidates for voter-nominated office. (EC 8040, Stats 2012, c. 3 §14)
13. Additional In-Lieu of Filing Fee petition signature verification to comply with elimination of lower signature thresholds for minor party candidates to voter-nominated offices and changes to nomination signature requirements. (EC 8062, Stats of 2009, c.1 §20 and Stats 2012, c. 3 §16; EC 8068, Stats of 2009, c.1 §21; EC 8106, Stats of 2012, c.3 § 18; SOS CCROV 11126)
14. Voting System Logic and Accuracy testing iterations more complex to verify vote counting machines programming correctly tabulates lengthy voter-nominated contests correctly. (EC 13110, Stats 2009, c.1 §48)
15. Increased length of ballot and sample ballot to accommodate lengthy voter-nominated contests. (EC 13110, Stats 2009, c.1 §48)
16. Increased length of ballot and sample ballot to accommodate lengthy instructions. (EC 13206, Stats 2009, c.1 §49; EC 13206.5 Stats 2012, c.3 §38)
17. Modify precinct officer training classes and on-line training programs to include information on changes from Top Two Candidates Open Primary Act
 - a. Instructions on what documents to post, and where the documents are to be posted (EC 14105.1, Stats 2009, c.1 §56)
 - b. Information on the new contest designations and who is allowed to vote on the contests (EC 13110, Stats 2009, c.1 §48)
18. Revise polling place operations manual to include information changes resulting from Top Two Candidates Open Primary Act
 - a. Written instructions on what is to be posted and where it is to be posted (EC 14105.1, Stats 2009, c.1 §56)
 - b. Written definition and lists of Party Nominated, Voter Nominated and Nonpartisan contests, including who is eligible to vote on these contests. (EC 13110, Stats 2009, c.1 §48)
19. Attend meetings and trainings to ensure uniform implementation of Top Two Candidates Open Primary Act
1. If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Section 17574.

Not applicable

2. Declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

I declare under penalty of perjury under the laws of the State of California, that this information in this declaration is true and complete to the best of my own knowledge, information or belief.

Julie Valverde, Director of Finance

Date: Oct 28, 2013



Alice Jarboe, Claimant Representative

7. DOCUMENTATION

Note: supporting documentation on file with original test claim

Support the written narrative with copies of all of the following:

(A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or Statutes of 2009, Chapter 2 (SCA 4), effective 6/9/2010 (attached)

Statutes of 2009, Chapter 1 (SB6), operative 6/9/2010 (attached)

Statutes of 2012, Chapter 3 (AB1413), effective 1/1/2012 (attached)

(B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and Secretary of State's CC/ROV Memorandum #11005, effective 1/26/11 (attached)

Secretary of State's CC/ROV Memorandum #11125, effective 11/23/11 (attached)

Secretary of State's CC/ROV Memorandum #11126, effective 11/23/11 (attached)

Secretary of State's CC/ROV Memorandum #12059, effective 2/10/12 (attached)

(C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and

(D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and

(E) statutes, chapters of original legislatively determined mandate and any amendments.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Alice Jarboe

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

Assistant Registrar of Voters

Print or Type Title

October 28, 2013

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



November 4, 2013

Ms. Julie Valverde

Director of Finance

County of Sacramento

700 H Street, Room 3650

Sacramento, CA 95814

Ms. Alice Jarboe

Assistant Registrar of Voters

County of Sacramento

7000 65th Street, Suite A

Sacramento, CA 95823-2315

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

Re: **Rejection of Proposed Test Claim Amendment**

Top Two Candidates Open Primary Act, 12-TC-02

Statutes 2009, Chapter 2 (SCA 4); Statutes 2009, Chapter 1 (SB 6);

Statutes 2012, Chapter 3 (AB 1413)

Secretary of State's CC/ROV Memorandums #11005, #11125, #11126, and #12059

County of Sacramento, Claimant

Dear Ms. Valverde and Ms. Jarboe:

On October 28, 2013, the Commission on State Mandates (Commission) received your proposed test claim amendment filing on the above-named matter.

As required by Government Code section 17553(b), the original test claim filing identified "the specific sections of statutes or executive orders and the effective date" alleged to contain the mandate. Test claims must be pled with particularity since the basis of a valid mandate claim is a requirement imposed by a particular code section as amended by a particular statute and chapter (or a specific regulatory section, as amended by a specific register) which imposes a new program or higher level of service and increased costs mandated by the state.

Here, the original test claim filing specifically lists statutes, chapters, articles and code sections. The declaration of alleged mandated activities in support of the test claim filing also specifically tags the statutes, chapters, articles and code sections. The proposed amendment alleges that the activities identified remain the same and that the amendment is intended to clarify. However, the code sections as amended by the statutes included in the proposed amendment were never identified in the original test claim filing. Thus, the proposed amendment is not merely a clarification, but is an addition of code sections as amended by statutes not previously pled in the original filing.

Section 1183(c) of the Commission's regulations requires that all test claims or amendments be filed within the statute of limitations. Both the test claim and amendment allege that costs were first incurred in the 2011/2012 fiscal year, putting the deadline for filing the amendment at June 30, 2013. However, the amendment was filed on October 28, 2013. Unlike a court, the Commission does not have any equitable authority to approve amendments past the point that the statute of limitations has expired.

Ms. Valverde and Ms. Jarboe

November 4, 2013

Page 2

Therefore, because the amendment newly identifies specific sections of statutes not pled in the initial test claim filing, and the statute of limitations has passed, the amendment is hereby rejected.

Please contact Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director



County of Sacramento

RECEIVED
January 21, 2014
**Commission on
State Mandates**

January 2, 2014

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

RE: Claimant's Challenge to Rejection of Test Claim Amendment
Top Two Candidates Open Primary Act (12-TC-02)

Dear Ms. Halsey,

The County of Sacramento respectfully challenges the decision of the Executive Director to reject the proposed test claim amendment submitted on October 28, 2013, for reasons explained below.

The Executive Director rejected the proposed amendment 'because the amendment newly identifies specific sections of statutes not pled in the initial test claim filing, and the statute of limitations has passed...' However, Claimant is allowed to amend a test claim filing under Government Code 17557 (e), which states 'A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The claimant may thereafter amend the test claim at any time, but before the test claim is set for a hearing, without affecting the original filing date as long as the amendment substantially relates to the original test claim.'

The proposed amendments submitted on October 28, 2013 substantially relate to the original test claim and were submitted prior to the test claim being set for hearing. Further, the code allows for amendments to be submitted '*at any time....without affecting the original filing date*'. Therefore, the statute of limitations does not apply.

It is for these reasons that I ask the rejection of the proposed test claim amendment be reversed and the amendment be accepted in its entirety.

We proudly conduct elections with accuracy, integrity and dignity

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please feel free to contact me directly at (916) 875-6255.

Sincerely,

A handwritten signature in blue ink that reads "Alice Jarboe". The signature is written in a cursive, flowing style.

Alice Jarboe. Claimant Representative
Assistant Registrar of Voters
Sacramento County

cc: Julie Valverde, Sacramento County Auditor/Controller

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 January 28, 2014, I served the:

Claimant Comments

Top Two Candidates Open Primary Act, 12-TC-02

Statutes 2009, Chapter 2 (SCA 4); Statutes 2009, Chapter 1 (SB 6);

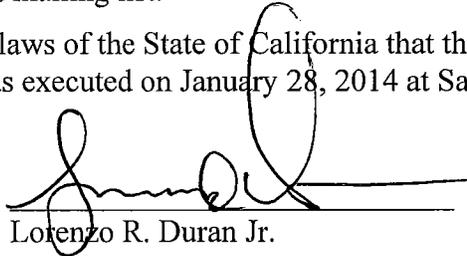
Statutes 2012, Chapter 3 (AB 1413)

Secretary of State's CC/ROV Memorandums #11005, #11125, #11126, and #12059

County of Sacramento, 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 January 28, 2014 at Sacramento, California.



Lorenzo R. Duran Jr.

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/16/14

Claim Number: 12-TC-02

Matter: Top Two Candidates Open Primary Act

Claimant: County of Sacramento

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Alice Jarboe, *County of Sacramento*

Claimant Representative

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hyaghobyan@auditor.lacounty.gov

shall not be bound by the findings of the lead governmental agency in determining whether the presumption has been overcome.

(4) This subdivision applies only to replacement property that is acquired or constructed on or after January 1, 1995, and to property repairs performed on or after that date.

(j) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, ~~shall be~~ *are* effective for changes in ownership that occur, and new construction that is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, ~~shall be~~ *are* effective for changes in ownership that occur, and new construction that is completed, on or after the effective date of the amendment.

PROPOSITION 14

This amendment proposed by Senate Constitutional Amendment 4 of the 2009–2010 Regular Session (Resolution Chapter 2, Statutes of 2009) expressly amends the California Constitution by amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

First—This measure shall be known and may be cited as the “Top Two Candidates Open Primary Act.”

Second—The People of the State of California hereby find and declare all of the following:

(a) Purpose. The Top Two Candidates Open Primary Act is hereby adopted by the People of California to protect and preserve the right of every Californian to vote for the candidate of his or her choice. This act, along with legislation already enacted by the Legislature to implement this act, are intended to implement an open primary system in California as set forth below.

(b) Top Two Candidate Open Primary. All registered voters otherwise qualified to vote shall be guaranteed the unrestricted right to vote for the candidate of their choice in all state and congressional elections. All candidates for a given state or congressional office shall be listed on a single primary ballot. The top two candidates, as determined by the voters in an open primary, shall advance to a general election in which the winner shall be the candidate receiving the greatest number of votes cast in an open general election.

(c) Open Voter Registration. At the time they register, all voters shall have the freedom to choose whether or not to disclose their party preference. No voter shall be denied the right to vote for the candidate of his or her choice in either a primary or a general election for statewide constitutional office, the State Legislature, or the Congress of the United States based upon his or her disclosure or

nondisclosure of party preference. Existing voter registrations, which specify a political party affiliation, shall be deemed to have disclosed that party as the voter’s political party preference unless a new affidavit of registration is filed.

(d) Open Candidate Disclosure. At the time they file to run for public office, all candidates shall have the choice to declare a party preference. The preference chosen shall accompany the candidate’s name on both the primary and general election ballots. The names of candidates who choose not to declare a party preference shall be accompanied by the designation “No Party Preference” on both the primary and general election ballots. Selection of a party preference by a candidate for state or congressional office shall not constitute or imply endorsement of the candidate by the party designated, and no candidate for that office shall be deemed the official candidate of any party by virtue of his or her selection in the primary.

(e) Freedom of Political Parties. Nothing in this act shall restrict the right of individuals to join or organize into political parties or in any way restrict the right of private association of political parties. Nothing in this measure shall restrict the parties’ right to contribute to, endorse, or otherwise support a candidate for state elective or congressional office. Political parties may establish such procedures as they see fit to endorse or support candidates or otherwise participate in all elections, and they may informally “nominate” candidates for election to voter-nominated offices at a party convention or by whatever lawful mechanism they so choose, other than at state-conducted primary elections. Political parties may also adopt such rules as they see fit for the selection of party officials (including central committee members, presidential electors, and party officers). This may include restricting participation in elections for party officials to those who disclose a party preference for that party at the time of registration.

(f) Presidential Primaries. This act makes no change in current law as it relates to presidential primaries. This act conforms to the ruling of the United States Supreme Court in *Washington State Grange v. Washington State Republican Party* (2008) 128 S.Ct. 1184. Each political party retains the right either to close its presidential primaries to those voters who disclose their party preference for that party at the time of registration or to open its presidential primary to include those voters who register without disclosing a political party preference.

Third—That Section 5 of Article II thereof is amended to read:

SEC. 5. (a) *A voter-nomination primary election shall be conducted to select the candidates for congressional and state elective offices in California. All voters may vote at a voter-nominated primary election for any candidate for congressional and state elective office without regard to the political party preference disclosed by the candidate or the voter, provided that the voter is otherwise qualified to vote for candidates for the office in question. The*

candidates who are the top two vote-getters at a voter-nominated primary election for a congressional or state elective office shall, regardless of party preference, compete in the ensuing general election.

(b) Except as otherwise provided by Section 6, a candidate for a congressional or state elective office may have his or her political party preference, or lack of political party preference, indicated upon the ballot for the office in the manner provided by statute. A political party or party central committee shall not nominate a candidate for any congressional or state elective office at the voter-nominated primary. This subdivision shall not be interpreted to prohibit a political party or party central committee from endorsing, supporting, or opposing any candidate for a congressional or state elective office. A political party or party central committee shall not have the right to have its preferred candidate participate in the general election for a voter-nominated office other than a candidate who is one of the two highest vote-getters at the primary election, as provided in subdivision (a).

(c) The Legislature shall provide for primary partisan elections for partisan offices presidential candidates, and political party and party central committees, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

~~(b)~~

(d) A political party that participated in a primary election for a partisan office pursuant to subdivision (c) has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party's candidates.

Fourth—That Section 6 of Article II thereof is amended to read:

SEC. 6. (a) All judicial, school, county, and city offices, *including the Superintendent of Public Instruction*, shall be nonpartisan.

~~(b) No~~ A political party or party central committee may endorse, support, or oppose *shall not nominate* a candidate for nonpartisan office, *and the candidate's party preference shall not be included on the ballot for the nonpartisan office.*

Fifth—This measure shall become operative on January 1, 2011.

PROPOSITION 15

This law proposed by Assembly Bill 583 (Statutes of 2008, Chapter 735) is submitted to the people in accordance with the provisions of Article II, Section 10 of the California Constitution.

This proposed law adds sections to the Elections Code; adds and repeals sections of the Government Code; and adds and repeals sections of the Revenue and Taxation Code; therefore, provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Chapter 7 (commencing with Section 20600) is added to Division 20 of the Elections Code, to read:

CHAPTER 7. FAIR ELECTIONS FUND

20600. (a) *Each lobbying firm, as defined by Section 82038.5 of the Government Code, each lobbyist, as defined by Section 82039 of the Government Code, and each lobbyist employer, as defined by Section 82039.5 of the Government Code, shall pay the Secretary of State a nonrefundable fee of seven hundred dollars (\$700) every two years. Twenty-five dollars (\$25) of each fee from each lobbyist shall be deposited in the General Fund and used, when appropriated, for the purposes of Article 1 (commencing with Section 86100) of Chapter 6 of Title 9 of the Government Code. The remaining amount of each fee shall be deposited in the Fair Elections Fund established pursuant to Section 91133 of the Government Code. The fees in this section may be paid in even-numbered years when registrations are renewed pursuant to Section 86106 of the Government Code.*

(b) The Secretary of State shall biennially adjust the amount of the fees collected pursuant to this section to reflect any increase or decrease in the Consumer Price Index.

SEC. 2. Section 85300 of the Government Code is repealed.

~~85300.—No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office.~~

SEC. 3. Section 86102 of the Government Code is repealed.

~~86102.—Each lobbying firm and lobbyist employer required to file a registration statement under this chapter may be charged not more than twenty-five dollars (\$25) per year for each lobbyist required to be listed on its registration statement.~~

SEC. 4. Chapter 12 (commencing with Section 91015) is added to Title 9 of the Government Code, to read:

CHAPTER 12. CALIFORNIA FAIR ELECTIONS ACT OF 2008

Article 1. General

91015. *This chapter shall be known and may be cited as the California Fair Elections Act of 2008.*

91017. *The people find and declare all of the following:*

State of California



SECRETARY OF STATE

CERTIFIED LIST OF CANDIDATES

for the
Special General Election
Thirty-Sixth Congressional District
July 12, 2011

This is to certify that the following list contains the names, addresses, ballot designations, and party preferences of the two candidates who received the most votes at the Special Primary Election held May 17, 2011; and

Are entitled to receive votes at the Special General Election to be held in the Thirty-Sixth Congressional District on July 12, 2011, by the reason of the Special Election Proclamation issued by the Governor of this State, to fill the vacancy in said district, and in compliance with provisions of the Elections Code; and

That the title of the office, together with the names, ballot designations, and party preferences of said candidates will appear on the Special General Election ballot.



IN WITNESS WHEREOF, I
hereunto set my hand and
affix the Great Seal of
California, at Sacramento,
this 25th day of May, 2011.

Debra Bowen

DEBRA BOWEN
Secretary of State

2011 CD 36 Special General - July 12, 2011

Official Certified List of Candidates

05/25/2011

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UNITED STATES REPRESENTATIVE DISTRICT 36

JANICE HAHN

Democratic

2513 PACIFIC COAST HWY
TORRANCE, CA 90505
(323) 338-4441 (Business)
(818) 943-2348 (Residence)
WEBSITE: www.janicehahn.com
E-MAIL: info@janicehahn.com

Local City Councilwoman

CRAIG HUEY

Republican

PO BOX 5404
TORRANCE, CA 90510
(310) 365-9024 (Business)
(310) 732-1279 (Residence)
(310) 212-5773 (FAX)
WEBSITE: www.craighuey.com
E-MAIL: craig@craighuey.com

Small Business Owner