Hearing Date: October 4, 2006
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ITEM 6

TEST CLAIM
PROPOSED STATEMENT OF DECISION

Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303 and 13306

Statutes 2000, Chapter 899 (AB 1094)

Fifteen Day Close of Voter Registration
(01-TC-15)

County of Orange, Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates ("Commission") is whether the Proposed Statement of Decision accurately reflects the Commission's decision on the *Fifteen Day Close of Voter Registration* test claim.[1]

Recommendation

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

If the Commission's vote on item 5 modifies the staff analysis, staff recommends that the motion to adopt the Proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a Proposed Statement of Decision be continued to the October 26, 2006 Commission hearing.

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

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303 and 13306;

Statutes 2000, Chapter 899;

Filed on May 17, 2002, by County of Orange, Claimant.

Case No.: 01-TC-15

Fifteen Day Close of Voter Registration

PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Proposed for Adoption on October 4, 2006)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 4, 2006. [Witness list will be included in the final Statement of Decision.]

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

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

Summary of Findings

Claimant, County of Orange, filed this test claim on changes to the deadline for voter registration prior to an election. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 amended Elections Code sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13303 and 13306, and repealed and reenacted Elections Code section 13300, allowing new registrations or changes to voter registrations through the 15th day prior to an election. The claimant seeks mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections, such as for: implementation planning meetings; revising training programs; holding an informational media campaign; responding to additional inquiries about the new law; and providing additional personnel to accommodate the increased workload.

Generally, the Commission finds that most of the statutory amendments by Statutes 2000, chapter 899, do not mandate a new program or higher level of service on county elections officials within the meaning of article XIII B, section 6. Processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code. County elections officials have been required to perform these activities long before the

enactment of Statutes 2000, chapter 899. The test claim allegations generally request reimbursement for increased staffing expenses, developing and conducting training, and holding planning meetings; these are not new *activities* directly required by the test claim legislation, but instead are *costs* that the claimant is associating with the changed timeframes. Counties are required to perform the same activities they have long performed – accepting new voter registrations and changes of address. The courts have consistently held that increases in the *cost of an existing program*, are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of article XIII B, section 6.

The Commission concludes that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)

The other amendments by Statutes 2000, chapter 899, are not subject to article XIII B, section 6 of the California Constitution, or do not mandate a new program or higher level of service, and are denied.

BACKGROUND

This test claim deals with changes to the deadline for voter registration prior to an election in California. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 was chaptered on September 29, 2000; it amended Elections Code sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13303 and 13306, and repealed and reenacted Elections Code section 13300. These amendments allow new registrations or changes to voter registrations through the 15th day prior to an election. The claimant is seeking mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections.

Claimant's Position

Claimant, County of Orange, filed this test claim on May 17, 2002.[2] Claimant contends that "The specific sections which contain the mandated activities are Elections Code, Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303 and 13306." Claimant asserts that these code sections, as amended by Statutes 2000, chapter 899, constitute a reimbursable state-mandated program. Following are some of the reimbursable activities or costs asserted by the claimant:

[2] Potential reimbursement period for this claim begins no earlier than July 1, 2000, based on the filing date of the test claim. (Gov. Code, § 17557, subd. (e).)

- have internal planning meetings, as well as meetings with the Secretary of State, in order to make sure the changes were implemented properly;
- printing, processing and mailing of postcards and additional sample ballot pamphlets for voters registering between the 28th day and up to and including the 15th day prior to the election;
- retrain personnel on new program, including revising training program, videos, and manuals;
- hold a media campaign to inform the public of the additional time to register and vote;
- respond to additional media and public inquiries about the new law;
- redesign and republish the sample ballot and absentee voter materials;
- redesign and implement voter election software;
- provide additional personnel to accommodate the increased workload;
- change the method of delivery rosters to the polls, including express delivery and dispatch;
- notify those who registered too late;
- complete additional steps in order to conduct the election.

In response to Department of Finance's (DOF's) July 2002 comments on the test claim filing, described below, claimant disputes DOF's disagreements with the reimbursable activities identified, with the exception of agreeing that software redesign is a one-time activity, and reasserts that all of activities identified are necessary to implement the test claim legislation, or are the most reasonable method to comply.

Department of Finance's Position

DOF filed comments on July 3, 2002, addressing the allegations stated in the test claim. The comments state: "we do not concur with all of the activities identified by the claimant. ... we note our concern with what appears to be a fundamental assumption asserted by the claimants that there was an increase in the number of voters as a result of the test claim legislation, ..."

> Specifically, claimants cite costs related to an increase in the number of voters needing assistance, and costs for voters who registered between the 28th day and the 15th day prior to the election, necessitating additional staff, printing, processing and mailing costs. We have two objections with this assumption: First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29th day until after the 29th and before the 14th day prior to an election, as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.
>
> In addition, we note that even if there were an increase in the number of registrants subsequent to the test claim legislation, this legislation did not increase the number of persons eligible to register. The Secretary of State's Website

> indicates that approximately 71 percent of the eligible voters were registered during the 2002 Primary Election. To the extent that the remaining 29 percent chose to register, it would be incumbent upon the local agencies to accommodate those persons, regardless of the test claim legislation. Accordingly, there does not appear to be a correlation between the test claim legislation and an increase in the number of registrants and there should be no reimbursement for those costs.

DOF then describes several claimant-identified activities that should either be designated as "one-time" activities, or denied altogether on the grounds that they are not required by the test claim legislation, if the test claim is approved by the Commission.

In comments on the draft staff analysis, dated August 7, 2006, DOF concurs with staff's identification of a one-time reimbursable activity for amending the polling place notice, but reiterate opposition to any reimbursement for the other test claim activities alleged, "such as training, public education and addressing public complaints."

Secretary of State's Position

The Secretary of State's office filed comments on the test claim filing, received July 15, 2002, agreeing with the claimant that Statutes 2000, chapter 899 "imposed significant new responsibilities on county elections officials and that the costs of these additional responsibilities should be borne by the state."

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution[3] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[4] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[5] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or

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

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

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

task.[6] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[7]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[8] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[9] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[10]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[11]

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.[12] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[13]

Issue 1: Is the test claim legislation subject to article XIII B, section 6, of the California Constitution?

Elections Code Sections 2187 and 9094:

As a preliminary matter, the claimant alleges Elections Code section 2187, as amended by Statutes 2000, chapter 899, imposes a reimbursable state-mandated program. This code section

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

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

[8] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

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

[10] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

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

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

[13] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

addresses long-standing county reporting requirements on the numbers of registered voters to the Secretary of State. The amendment to Elections Code section 2187 by Statutes 2000, chapter 899 was never operative upon the subsequent adoption of Statutes 2000, chapter 1081 in the same session.[14] The amendments made by Statutes 2000, chapter 1081 are entirely different from the amendments in Statutes 2000, chapter 899, and were not pled as part of this test claim.[15] Thus, Elections Code section 2187, as pled, is not subject to article XIII B, section 6 of the California Constitution.

Elections Code section 9094, as amended by Statutes 2000, chapter 899, addresses the duties of the Secretary of State to provide ballot pamphlets. The amendment to this code section is in subdivision (a), which is specific to the Secretary of State and does not mandate any requirements on local government. Thus, Elections Code section 9094, as amended by the test claim statute, is not subject to article XIII B, section 6 of the California Constitution.

Therefore, any future references to "test claim legislation" do not include Elections Code sections 2187 or 9094.

Remaining Test Claim Legislation:

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[16] The court has held that only one of these findings is necessary.[17]

The Commission finds that registering voters imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. County elections officials provide a service to the members of the public who register to vote. The test claim legislation also requires local elections officials to engage in administrative activities solely applicable to local government, thereby imposing unique requirements upon counties that do not apply generally to all residents and entities of the state.

Accordingly, the Commission finds that the test claim legislation constitutes a "program" and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution *if* the legislation also mandates a new program or higher level of service, and costs mandated by the state.

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[14] Affected by two or more acts at the same session of the Legislature. (See Gov. Code, § 9605.)

[15] The changes made by Statutes 2000, chapter 1081 included the deletion of two commas, and the deletion of one of seven regular reporting dates to the Secretary of State.

[16] *County of Los Angeles, supra*, 43 Cal.3d at page 56.

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

Issue 2: Does the test claim legislation mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution?

Test claim legislation mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.[18] The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs."[19] A statute or executive order mandates a reimbursable "higher level of service" when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service to the public provided in the existing program.[20]

Elections Code Sections 2035, 2102, 2107, 2119, and 2154:

Elections Code section 2035 formerly provided that a voter registered in California who moves during the last 28 days before an election shall be entitled to vote in the precinct where they were last properly registered. The amendment by Statutes 2000, chapter 899 changed that period to the last *14* days before an election.

Elections Code sections 2102 and 2107 describe what constitutes an effective new voter registration affidavit. The amendment by Statutes 2000, chapter 899, changed the received date, postmarked date, or alternative delivery deadlines from on or before the 29th day prior to an election, to on or before the 15th day prior to an election. The amendment to Elections Code section 2119 made similar changes to the deadlines for accepting notices of change of address for voters who have moved.

Elections Code section 2154 states a number of presumptions that county elections officials shall apply if there is missing information on a voter registration affidavit, in order to hold the registration valid. If the affidavit is not dated, the amendment by Statutes 2000, chapter 899 requires the elections official to presume the registration affidavit was signed on or before the 15th day prior to the election, instead of on or before the 29th day, if the document is received or postmarked by the 15th day prior to the election.

The amendments to numbers of days before an election are the only changes made to these Elections Code sections by the test claim statute. As an example, the complete text of Elections Code section 2107, as amended by Statutes 2000, chapter 899 follows, with changes indicated in underline and strikethrough:

> (a) Except as provided in subdivision (b), the county elections official shall accept affidavits of registration at all times except during the ~~28~~14 days immediately

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[18] *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 836.

[19] *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *San Diego Unified School District, supra*, 33 Cal.4th 859, 874.

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

preceding any election, when registration shall cease for that election as to electors residing in the territory within which the election is to be held. Transfers of registration for an election may be made from one precinct to another precinct in the same county at any time when registration is in progress in the precinct to which the elector seeks to transfer.

(b) The county elections official shall accept an affidavit of registration executed as part of a voter registration card in the forthcoming election if the affidavit is executed on or before the ~~29~~15th day prior to the election, and if any of the following apply:

(1) The affidavit is postmarked on or before the ~~29~~15th day prior to the election and received by mail by the county elections official.

(2) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.

(3) The affidavit is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the ~~29~~15th day prior to the election.

At page two of the test claim filing, claimant alleges that these statutory amendments, lengthening the period prior to an election that voter registrations must be processed, "has substantial repercussions on the management and operation of the county elections office. Staffed during elections season with temporary employees, the increased workload and shortened time line to perform the work results in an increase in the number of employees needed to staff the election."

In response to the test claim allegations, DOF argues:

> [C]laimants cite ... costs for voters who registered between the 28th day and the 15th day prior to the election, necessitating additional staff, printing, processing and mailing costs. We have two objections with this assumption: First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29th day until after the 29th and before the 14th day prior to an election, as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.

The Commission finds that the code sections as amended do not mandate a new program or higher level of service on county elections officials within the meaning of article XIII B, section 6 as determined by the courts. Processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code. County elections officials have been required to perform these activities long before the enactment of Statutes 2000, chapter 899.[21]

[21] The voter registration timelines were last substantively amended following the decision in *Young v. Gnoss* (1972) 7 Cal.3d 18, in which the California Supreme Court found the 54-day residency requirement and corresponding voter registration deadlines unconstitutional and

The test claim allegations generally request reimbursement for increased staffing expenses, developing and conducting training, and holding planning meetings; these are not new *activities* directly required by the test claim legislation, but instead are *costs* that the claimant is associating with the changed timeframes. The Commission does not dispute the claimant's allegations that the changed timeframes impose a burden on the way business is conducted by elections officials during the weeks before an election, and that there are likely associated costs; but the test claim legislation itself did not require the activities alleged in the manner required for reimbursement under mandates law.

The courts have consistently held that increases in the *cost* of an existing program, are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of article XIII B, section 6.

In 1987, the California Supreme Court decided *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, and, for the first time, defined a " new program or higher level of service" within the meaning of article XIII B, section 6. Counties were seeking the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits to their employees as private individuals or organizations. The Supreme Court recognized that workers' compensation is not a new program and, thus, determined whether the legislation imposed a higher level of service on local agencies. Although the court defined a "program" to include "laws which, to implement a state policy, impose unique requirements on local governments," the court emphasized that a new program or higher level of service requires "state mandated increases in the services provided by local agencies in existing programs."[22]

> Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs."[23]

Applying these principles, the court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required by the California Constitution. The court stated the following:

> Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.[24]

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declared 30 days to be the maximum voter registration restriction permissible under a reasonableness standard.

[22] *County of Los Angeles, supra*, 43 Cal.3d 46, 56-57.

[23] *Ibid.*

[24] *Id.* at 57-58.

In 1998, the Third District Court of Appeal decided *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1196 and found:

> Increasing the cost of providing services cannot be equated with requiring an increased level of service under a[n] [article XIII B,] section 6 analysis.

Seventeen years later, the Supreme Court summarized and maintained its earlier holding in *County of Los Angeles* and stated that although "[t]he law increased the cost of employing public servants, … it did not in any tangible manner increase the level of service provided by those employees to the public."[25] Thus, the courts have found that a new program or higher level of service requires something more than increased costs experienced uniquely by local government.

Claimant alleges the following new activities were required by the test claim statute, and seeks reimbursement for "[holding] planning meetings with both its own staff, as well as other elections officials and the Secretary of State, to make sure that the new changes were implemented properly. These meetings resulted in the implementation of the following new procedures, as well as redesign and publication of forms and other voting materials[:]"

1. To accommodate the change in dates, the elections software had to be redesigned.
2. Staffing needs to address the increased workload as a result of this legislation were evaluated, and additional staff had to be hired.
3. For voters who registered between the 28th day and up to and including the 15th day prior to the election, the legislation necessitated the printing, processing and mailing of postcards; and/or printing, processing and mailing of additional sample ballot pamphlets.[26]
4. An increase number of voters needed assistance either in person or on the telephone.
5. A methodology was developed for addressing voter complaints concerning registration.
6. It was necessary to change the method by which rosters are delivered to the polls, including express delivery and dispatch.
7. Because of the substantial changes, regular, temporary permanent employees, and poll workers had to be retrained. This resulted in the coordination and planning for the training, training instruction for the trainers, conducting the training classes, revising training videos, producing training aids, and revising the training manual.
8. In order that voters not be confused about the changes, press releases were prepared, development of educational material for the sample ballot pamphlet and audio visual instructions to both voters and staff.

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[25] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 875.

[26] This activity appears to be connected to Elections Code sections 2155, 13303, and 13306, which are discussed separately below.

The plain language[27] of Elections Code sections 2035, 2102, 2107, 2119, and 2154, as amended by the test claim statute, do not require counties to carry out any of the new activities as alleged.[28] Instead, counties are required to perform the same activities they have long performed – accepting new voter registrations and changes of address. If the test claim legislation explicitly required any *new* activities to be performed on the part of county elections officials, alleged activities such as training, preparing press releases, and hiring additional employees could be examined at the parameters and guidelines phase of the test claim process to determine whether they are a reasonable method of complying with the mandate.[29] However, there must *first* be a finding of a reimbursable state-mandated activity based on the statutory language of the test claim legislation in order to reach the other issues in the parameters and guidelines. The Commission finds that the amendments by Statutes 2000, chapter 899 to Elections Code sections 2035, 2102, 2107, 2119, and 2154 do not mandate a new program or higher level of service on counties.

Elections Code Section 2155:

Elections Code section 2155 requires county elections officials to send voter notification forms to the voter "[u]pon receipt of a properly executed affidavit of registration or address correction notice." One sentence on this form was changed by Statutes 2000, chapter 899 to read "you may vote in any election held 15 or more days after the date shown on the reverse side of this card." If county elections officials had to change these cards in response to the test claim legislation, this would have met the legal standards for finding a new program or higher level of service, at least for a one-time activity of amending and reprinting the cards.

However, the very next section in the code, Elections Code section 2156, requires that:

> The Secretary of State shall print, or cause to be printed, the blank forms of the voter notification prescribed by Section 2155. The Secretary of State shall supply the forms to the county elections official in quantities and at times requested by the county elections official.

Therefore the Commission finds that Elections Code section 2155, as amended by the test claim statute, does not mandate a new program or higher of service, because the only activity required of the county is the same as required by prior law – sending a newly registered or re-registered voter a notification form.

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[27] "If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs." (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.)

[28] *County of Los Angeles, supra*, 110 Cal.App.4th 1176, 1189.

[29] California Code of regulations, title 2, section 1183.1, subdivision (a)(4).

Elections Code Section 13300:

Elections Code section 13300, subdivision (a), as repealed and reenacted[30] by Statutes 2000, chapter 899, requires that "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." This is unchanged from prior law following the United States Supreme Court decision in *California Democratic Party v. Jones* (2000) 530 U.S. 567, which found the 1996 amendments to the code section by Proposition 198, the "Open Primary Act," unconstitutional, and therefore void.[31] Subdivision (b), also unchanged from prior law, provides that "The sample ballot shall be identical to the official ballots, except … [that they] shall be printed on paper of a different texture … ."

The amendments to subdivision (c) are indicated in underline and strikethrough, as follows:

> (c) One sample ballot of the party to which the voter belongs, 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 intending to affiliate with any of the parties participating in the primary election, provided that on election day any such 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.

Modified Primary Election (01-TC-13) is a test claim on Statutes 2000, chapter 898 (SB 28) that was heard and decided at the July 28, 2006 Commission hearing. The Legislature largely amended the Elections Code back to the state of the law before Proposition 198 through the adoption of Statutes 2000, chapter 898. Elections Code section 13300 was also amended by Statutes 2000, chapter 898, but that amendment did not take effect when Statutes 2000, chapter 899 (AB 1094) passed in the same session. The legislation specified that in the event that both statutes were chaptered, *and* Assembly Bill 1094 was the one enacted last, section 11.5 of Statutes 2000, chapter 899 prevailed.

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[30] The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meet the criteria for finding a reimbursable state mandate. This is consistent with long-standing case law: "Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time." (*In re Martin's Estate* (1908) 153 Cal. 225, 229. See also 15 Ops.Cal.Atty.Gen. 49 (1950).)

[31] Before the amendments by Statutes 2000, chapters 898 and 899, the changes to the Elections Code made by Proposition 198 reverted to prior law because of the legal principles of *Cummings v. Morez* (1974) 42 Cal.App.3d 66, 73: "A statute which violates either [US or California] Constitution is to that extent void and, '[i]n legal contemplation, a void act is as inoperative as though it had never been passed. ...'." For legal purposes, there was no gap in the law because the law treats Proposition 198 as though it never existed; meaning prior law was continuous in effect.

In *Modified Primary Election*, the Commission found that Elections Code section 13102, subdivision (b), as amended by Statutes 2000, chapter 898, requires county elections officials to engage in a new activity to "Allow voters who declined to state a party affiliation to vote a party ballot if the political party, by party rule duly noticed to the Secretary of State, authorizes such a person to do so." Any activity required by Elections Code section 13300, subdivision (c), for allowing decline-to-state voters to request partisan primary ballots at the polls, is already part of the test claim on the earlier-enacted Statutes 2000, chapter 898, and is therefore not *new*. Activities can be attributed to Elections Code section 13102, subdivision (b), and reimbursement can be sought under the *Modified Primary Election* parameters and guidelines, when adopted. Therefore, the Commission finds that the amendment to Elections Code section 13300 by Statutes 2000, chapter 899, does not mandate a new program or higher level of service.

Elections Code Section 13303:

Elections Code section 13303 follows, as amended by Statutes 2000, chapter 899 -- indicated in underline and strikethrough below:

> (a) For each election, each appropriate elections official shall cause to be printed, on plain white paper or tinted paper, without watermark, at least as many copies of the form of ballot provided for use in each voting precinct as there are voters in the precinct. These copies shall be designated "sample ballot" upon their face and shall be identical to the official ballots used in the election, except as otherwise provided by law. A sample ballot shall be mailed, postage prepaid, ~~to each voter~~ not more than 40 nor less than 21 days before the election to each voter who is registered at least 29 days prior to the election.
>
> (b) The elections official shall send notice of the polling place to each voter with the sample ballot. Only official matter shall be sent out with the sample ballot as provided by law.
>
> (c) The elections official shall send notice of the polling place to each voter who registered after the 29th day prior to the election and is eligible to participate in the election. The notice shall also include information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

At page 4 of the test claim filing, claimant alleges that "Those who registered late were entitled to notification, and an additional mailing was required." DOF did not dispute this allegation in its comments on the test claim filing.

The prior law of Elections Code section 13303, subdivision (b), already required that an "elections official shall send notice of the polling place to each voter with the sample ballot." In addition, Elections Code section 13306, discussed further below, has long provided that "*Notwithstanding Sections* 13300, 13301, *13303*, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, *but all of these voters shall receive polling place notices … .*" [Emphasis added.] Therefore under prior law, elections official were required to send polling place notices to voters who registered after the 54th day prior to an election. Elections Code section 13303, subdivision (c), as added

by Statutes 2000, chapter 899, added information to the polling place notice, which provides a higher level of service to the public within an existing program.

The Commission finds that Elections Code section 13303, subdivision (c) mandates a new program or higher level of service for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

Elections Code Section 13306:

Elections Code section 13306 follows, as amended by Statutes 2000, chapter 899 -- indicated in underline and strikethrough below:

> Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but all of these voters shall receive polling place notices and state ballot pamphlets. A state ballot pamphlet is not required to be mailed to a voter who registered after the 29th day prior to an election. Each of these voters shall receive a notice in bold print that states: "Because you are a late registrant, you are not receiving a sample ballot or candidates' statements."

The addition of a sentence clarifying that state ballot pamphlets are not required to be mailed out to voters who register after the 29th day prior to an election in fact makes the code section identical to prior law, and does not require any activities on the part of county elections officials.

In "Response to Department of Finance," received July 29, 2002, claimant alleges that they "were unable to mail sample ballot pamphlets to those voters who registered between the 29th and 15th days prior to the election. This resulted in an increase in telephone calls from voters inquiring as to why they did not receive a sample ballot pamphlet. This required additional staff time to explain to the voters why they did not receive the sample ballot pamphlet."

First, the Commission notes that the test claim legislation does not *prohibit* counties from sending the ballot pamphlets to these registrants; it just does not require it. Receiving phone calls from the public is not "mandated" by the test claim legislation; it is part of the business of being a public agency. If the test claim legislation explicitly required any new activities to be performed on the part of county elections officials, responding to public inquiries could be examined at the parameters and guidelines phase to determine whether the requested activities are a reasonable method of complying with the mandate. (Cal. Code of Regs., tit. 2, § 1183.1, subd. (a)(4).) However, there must first be a finding of a reimbursable state-mandated activity in order to reach the issue in parameters and guidelines. The Commission finds that the plain language of the amendment to Elections Code section 13306 does not mandate a new program or higher level of service on county elections officials.

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant estimated costs of $200 or more for the test claim allegations, which was the statutory threshold at the time the test claim was filed. The claimant also stated that none of the Government Code section 17556 exceptions apply. For the one-time activity listed in the conclusion below, the Commission agrees and finds accordingly that it imposes costs mandated by the state upon counties within the meaning of Government Code section 17514.

CONCLUSION

The Commission concludes that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)[32]

The other amendments by Statutes 2000, chapter 899, are not subject to article XIII B, section 6 of the California Constitution, or do not mandate a new program or higher level of service, and are denied.

[32] As amended by Statutes 2000, chapter 899, operative January 1, 2001.