BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM: Elections Code Sections 2001, 2151, 13102, 13203, 13230, 13300, 13301 and 13302; Statutes 2000, Chapter 898; Filed on April 18, 2002, by County of Orange, Claimant.	No. 01-TC-13 *Modified Primary Election* 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 on July 28, 2006)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

Paula Higashi
PAULA HIGASHI, Executive Director

August 7, 2006
Date

Hearing Date: July 28, 2006
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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Elections Code Sections 2001, 2151, 13102, 13203, 13230, 13300, 13301 and 13302;

Statutes 2000, Chapter 898;

Filed on April 18, 2002, by County of Orange, Claimant.

Case No.: 01-TC-13

Modified Primary Election

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

(Adopted on July 28, 2006)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on July 28, 2006. Pamela Stone of Maximus, and Suzanne Slupsky, Assistant Registrar of Voters, appeared on behalf of claimant, County of Orange. Susan Geanacou appeared on behalf of the Department of Finance.

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 the staff analysis to partially approve this test claim at the hearing by a vote of 7-0.

Summary of Findings

This test claim deals with changes to the partisan primary system in California. In 1996 and earlier, California had a closed primary system in which registered voters who were declared members of any political party could only vote for members of their own party in partisan primary contests, and any voters who declined to state a party affiliation could only vote on non-partisan matters at a primary election. This changed in 1996 when Proposition 198, the "Open Primary Act," was approved by the California voters. However, Proposition 198 was challenged and litigated up to the United States Supreme Court in *California Democratic Party v. Jones* (2000) 530 U.S. 567, which found the law unconstitutional.

Statutes 2000, chapter 898 largely repealed and reenacted the code sections that had been amended by Proposition 198--generally restoring the language to the law that was in place immediately prior to Proposition 198. However, by amending a few of the Elections Code

sections, the test claim legislation altered the prior closed primary system to one in which those voters who decline to state a political party affiliation may choose any political party's partisan primary ballot, if that political party allows it. This created a form of open primary.

The Commission concludes that Statutes 2000, chapter 898, as it amended Elections Code sections 2151, 13102, subdivision (b), 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 specific new activities:

- Add information to the voter registration card stating that voters who declined to state a party affiliation shall be entitled 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. (Elec. Code, § 2151.)
- 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. (Elec. Code, §§ 2151 and 13102, subd. (b).)

The Commission concludes that Statutes 2000, chapter 898, as it repealed, reenacted, or amended Elections Code sections 13203, 13230, 13301 and 13302, does not mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution.

Regarding the two additional code sections pled by the claimant: Elections Code section 2001 was repealed in its entirety by Statutes 2000, chapter 898, and therefore did not mandate a new program or higher level of service; and Elections Code section 13300 was not amended by Statutes 2000, chapter 898, but by Statutes 2000, chapter 899.

BACKGROUND

This test claim deals with changes to the partisan primary system in California. In 1996 and earlier, California had a closed primary system. Elections Code section 2151 provided:

> At the time of registering and of transferring registration, each elector may declare the name of the political party with which he or she intends to affiliate at the ensuing primary election. The name of that political party shall be stated in the affidavit of registration and the index.
>
> The voter registration card shall inform the affiant that any elector may decline to state a political affiliation, but *no person shall be entitled to vote the ballot of any political party at any primary election unless he or she has stated the name of the party with which he or she intends to affiliate*. The voter registration card shall include a listing of all qualified political parties.
>
> 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 designated in his or her registration, except as provided by Section 2152.

(Emphasis added.)

In other words, registered voters who were declared members of any political party could only vote for members of their own party in partisan primary contests, and any voters who declined to

state a party affiliation could only vote on non-partisan matters at a primary election, such as initiatives, bond measures, or local, non-partisan races (e.g. school board, city council.) This changed in 1996 when Proposition 198, the "Open Primary Act," was approved by the California voters. The act added Elections Code section 2001, as follows:

> *All persons entitled to vote*, including those not affiliated with any political party, *shall have the right to vote*, except as otherwise provided by law, at any election in which they are qualified to vote, *for any candidate regardless of the candidate's political affiliation.*

In addition, Proposition 198 amended Elections Code sections 2151, 13102, 13203, 13206, 13230, 13301, and 13302 to conform the prior closed primary system, to the new blanket primary provisions. The title of Proposition 198, "*Open* Primary Act," was a misnomer, as the initiative actually created a "blanket" primary system. The proposition was challenged up to the United States Supreme Court in *California Democratic Party v. Jones* (2000) 530 U.S. 567, 576, which described the difference between open and blanket primaries, at footnote 6:

> An open primary differs from a blanket primary in that, although as in the blanket primary any person, regardless of party affiliation, may vote for a party's nominee, his choice is limited to that party's nominees for all offices. He may not, for example, support a Republican nominee for Governor and a Democratic nominee for attorney general.

The Supreme Court found that the law placed a "severe and unnecessary" burden on the First Amendment rights of political association for the petitioner political parties, and therefore found a partisan blanket primary, as established by Proposition 198, unconstitutional. The Supreme Court decision was issued on June 26, 2000.

> California's blanket primary violates the principles set forth in these cases. Proposition 198 forces political parties to associate with--to have their nominees, and hence their positions, determined by--those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival. In this respect, it is qualitatively different from a closed primary. Under that system, even when it is made quite easy for a voter to change his party affiliation the day of the primary, and thus, in some sense, to "cross over," at least he must formally *become a member of the party*; and once he does so, he is limited to voting for candidates of that party.
>
> > FN8. In this sense, the blanket primary also may be constitutionally distinct from the open primary, see n. 6, *supra*, in which the voter is limited to one party's ballot. ... This case does not require us to determine the constitutionality of open primaries.[1]

(Emphasis in original.)

Statutes 2000, chapter 898 was chaptered on September 29, 2000; it amended Elections Code section 3006, repealed Elections Code section 2001, and repealed and reenacted Elections Code

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[1] *California Democratic Party v. Jones*, *supra*, 530 U.S. 567, 577.

sections 2151, 13102, 13203, 13206, 13230, 13300, 13301, and 13302.[2] The test claim statute largely repealed and reenacted the code sections that had been amended by Proposition 198--generally restoring the language to the law that was in place immediately prior to Proposition 198. However, by amending a few of the Elections Code sections, the test claim legislation altered the prior closed primary system to one in which those voters who decline to state a political party affiliation may choose any political party's partisan primary ballot, if that political party allows it. This created a form of open primary. So now, for example, a registered Democrat in California will be given a primary ballot with only Democrats listed for partisan offices. But, if the political parties permit it, at each primary election, a decline-to-state voter--one who is not registered with any party--may choose *one* partisan primary ballot to vote, be it Republican, Democratic, or any other qualified party.[3]

Claimant's Position

Claimant, County of Orange, filed this test claim on April 18, 2002.[4] Claimant contends that "The specific sections which contain the mandated activities are Elections Code, Sections 2001, 2151, 13102, 13203, 13230, 13300, 13301, and 13302." Claimant asserts that these code sections, as amended by Statutes 2000, chapter 898 to change the primary system in California, constitute a reimbursable state-mandated program. Following are some of the reimbursable activities or costs asserted by the claimant:

- have planning meetings in order to obtain information from the Secretary of State as to which political parties allow voters who have not designated their political party to vote in primary elections of given political parties;
- have meetings within the elections department in order to ascertain what activities are necessary to implement the legislation;

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[2] Elections Code sections 3006 and 13206 were not named in the test claim pleading.

[3] In the Voter Information Guide for the June 6, 2006 Primary Election, the Secretary of State's Office published the following information (also available at <http://www.ss.ca.gov/elections/vig_06/vig_pdf/dts_voters.pdf> as of May 22, 2006):

> The following political parties are allowing voters who are not registered with a political party to request and vote their party's ballot at the June 6, 2006 Primary Election:
>
> • American Independent Party (all candidates except county central committee candidates)
>
> • Democratic Party (all candidates except county central committee candidates)
>
> • Republican Party (all candidates except county central committee candidates)
>
> You may NOT request more than one party's ballot. If you do not request a specific ballot, you will be given a nonpartisan ballot containing only the names of candidates for nonpartisan offices and the measures to be voted upon at the June 6, 2006 Primary Election.

[4] 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. (c).)

- develop new policies and procedures;
- redesign and republish the sample ballot and absentee voter application;
- redesign and implement new election software;
- provide additional trained poll workers;
- hand process absentee voter requests;
- retrain personnel on new program, including revising training program and manuals.

In response to DOF's June 2002 comments on the test claim filing, described below, claimant disputes DOF's disagreements with the reimbursable activities identified, and reasserts that all of activities identified are necessary to implement the test claim legislation, or are the most reasonable method to comply.

No comments were received on the draft staff analysis from the claimant or interested parties.

Department of Finance's Position

DOF filed comments on June 28, 2002, addressing the allegations stated in the test claim. The comments state: "the claimant has identified a number of new activities related to the State's modified primary law, which it asserts are reimbursable state mandates. While we agree that the test claim statute may have resulted in a State mandated program, we do not concur with all of the activities identified by the claimant." DOF then describes claimant-identified activities that should either be designated as "one-time" activities, or denied altogether.

No comments were received on the draft staff analysis from DOF.

Secretary of State's Position

The Secretary of State's Office, Elections Division, filed comments on July 31, 2002, agreeing with the test claim allegations that Statutes 2000, chapter 898 "does constitute a mandate that is reimbursable by the State." The letter states that "While the language of the bill sounds simple – permit "decline to state" voters to vote in party primary elections, if the political party allows it – the actual administration of this requirement added layers of complexity and cost to the conduct of elections." The letter continues:

> Specifically, in order to plan for this new requirement, counties met together for months to hammer out the specifics of implementation. These meetings exposed issues of complexity and implementation that were then transmitted to all county elections officials via printed implementation manuals as well as on-site visits with virtually every county to ensure uniform implementation throughout the state.
>
> I want to stress that this uniformity is absolutely critical to the State's interest in a fair election, and without the planning undertaken by the counties there could have been serious equal protection and other legal issues arising over this issue. The planning stage was essential.

The letter concludes by describing how counties were required to:

- review and adapt printed materials, as well as software and computer processes to count and tabulate votes;

- provide notice to voters of the options available for "decline-to-state" voters;
- adapt pollworker training programs and polling place procedures; and
- train office staff in the elections department on the new law, because providing accurate information "is critical to the integrity of the process and the confidence the public feels in the conduct and administration of elections."

No comments were received on the draft staff analysis from the Secretary of State's Office.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution[5] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[6] "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."[7] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[8] 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.[9]

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.[10] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared

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[5] 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.

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

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

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

[9] *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)*.

[10] *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.)

with the legal requirements in effect immediately before the enactment of the test claim legislation.[11] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[12]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[13]

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.[14] 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."[15]

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

As a preliminary matter, the test claim alleges Elections Code section 13300, as amended by Statutes 2000, chapter 898, imposes a reimbursable state-mandated program. This amendment was never operative upon the subsequent adoption of Statutes 2000, chapter 899.[16] Statutes 2000, chapter 899, including amendments to Elections Code section 13300, was pled in another test claim, *Fifteen Day Close of Voter Registration* (01-TC-15.) Therefore, any future references to "test claim legislation" do not include Elections Code section 13300.

In order for the 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.[17] The court has held that only one of these findings is necessary.[18]

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

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

[13] *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.

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

[15] *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.

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

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

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

The Commission finds that administering partisan primary elections 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 vote in primary elections. 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.

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.[19] 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."[20] 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.[21]

As discussed above, Proposition 198, the "Open Primary Act," was found to create an unconstitutional blanket primary by the Supreme Court in *California Democratic Party v. Jones*, *supra*, 530 U.S. 567. Statutes 2000, chapter 898 was the solution reached by the California Legislature to create a constitutional open primary. The bill analysis by the Senate Committee on Elections and Reapportionment from August 30, 2000, states: "According to the author, this bill is necessary because the Court's decision leaves California with obsolete statutes that arguably do not provide the statutory mechanism for any primary system, although the California Constitution requires primary elections for partisan offices."[22] The argument that without action

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

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

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

[22] The bill analysis refers to California Constitution, article 2, section 5, subdivision (a), which begins, "The Legislature shall provide for primary elections for partisan offices, including an open presidential primary... ." On November 2, 2004, Proposition 60 was enacted, amending article 2, section 5, to add subdivision (b): "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

by the Legislature, California would have been left without a legal primary system is not quite accurate. In *Cummings v. Morez* (1974) 42 Cal.App.3d 66, 73, the Court found that "A statute which violates either [California or US] Constitution is to that extent void and, '[i]n legal contemplation, a void act is as inoperative as though it had never been passed. ...'." Therefore, the voiding of Proposition 198 by the Court left the law exactly as it was prior to the enactment of Proposition 198 -- with a closed primary system. The problem that the Legislature needed to address was that the earlier statutes were no longer physically on the books, which could lead to confusion.

Test Claim Legislation:[23]

Elections Code Section 2001:

First, Statutes 2000, chapter 898,[24] repealed Elections Code section 2001 entirely, which was the section added by Proposition 198 to create a blanket primary system. The repeal of this law, in accordance with the decision of the Court, did not mandate a new program or higher level of service.

Elections Code Sections 2151 and 13102:

Elections Code section 2151, prior to the 1996 initiative, provided that no decline-to-state voter could vote a partisan primary ballot. Proposition 198 removed this restriction, explicitly allowing all voters—party members and "decline-to-state" alike—to vote "for any candidate for each office regardless of political affiliation and without a declaration of political faith or allegiance." Again, such a requirement was found to be an unconstitutional violation of political parties' right of political association.

Most of the language of Elections Code section 2151 was restored to prior law, consistent with the Supreme Court decision, with one significant addition: allowing decline-to-state voters to

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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."

[23] Claimant has identified a number of reimbursable activities in the test claim filing that are disputed by DOF. In its letter dated June 28, 2002, DOF identifies 14 separate activities that it asserts should either be identified as one-time activities, or excluded from reimbursement altogether [see exh. B]. The Commission can consider claimant's requests for activities that are not expressly included in the test claim legislation at the parameters and guidelines stage, 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).)

[24] The Legislature repealed and reenacted the test claim Elections Code sections, (except section 2001, which was repealed entirely). "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).) 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.

vote the partisan primary ballot of any party that chooses to allow it. Elections Code section 2151, follows, with changes to prior law (pre-Proposition 198) indicated in underline and strikeout:

> At the time of registering and of transferring registration, each elector may declare the name of the political party with which he or she intends to affiliate at the ensuing primary election. The name of that political party shall be stated in the affidavit of registration and the index.
>
> The voter registration card shall inform the affiant that any elector may decline to state a political affiliation, but no person shall be entitled to vote the ballot of any political party at any primary election unless he or she has stated the name of the party with which he or she intends to affiliate or unless he or she has declined to state a party affiliation and the political 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 ballot of that political party. The voter registration card shall include a listing of all qualified political parties.
>
> 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 designated in his or her registration, except as provided by Section 2152 or unless he or she has declined to state a party affiliation 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.

Elections Code section 13102, as amended by Statutes 2000, chapter 898 follows,[25] with changes to prior law indicated in underline and strikeout:

> (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 as intending to affiliate 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 state a party affiliation to vote the ballot of that political party. The nonpartisan ballot shall contain only the names of all candidates for nonpartisan offices and measures to be voted for at the primary election. Each voter registered as intending to affiliate with a political party participating in the election shall be furnished only a ballot of the political party with which he or she is registered and the nonpartisan ballot, both of which shall be printed together as one ballot in the form prescribed by Section 13207.

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[25] Elections Code section 13102 has been subsequently amended, but those statutes were not included in this test claim, and none of the amendments affect the outcome to this test claim.

(c) A political party may adopt a party rule in accordance with subdivision (b) that authorizes a person who has declined to state a party affiliation to vote the ballot of that political party at the next ensuing partisan primary election. The political party shall notify the party chairman immediately upon adoption of that party rule. The party chairman shall provide written notice of the adoption of that rule to the Secretary of State not later than the 60th day prior to the partisan primary election at which the vote is authorized.

Although new, Elections Code section 13102, subdivision (c), does not mandate a new program or higher level of service, because the requirements are entirely vested in political party officials and the Secretary of State, not local agencies.

However, as to the other amendments by Statutes 2000, chapter 898, the Commission finds that holding any form of an open primary was neither the law prior to Proposition 198, nor required by the Court in *California Democratic Party v. Jones*, *supra*, 530 U.S. 567, when it invalidated Proposition 198. Therefore, the Commission finds that amendments to Elections Code sections 2151, and 13102, subdivision (b), mandate a new program or higher level of service, for the following new activities:

- Add information to the voter registration card stating that voters who declined to state a party affiliation shall be entitled 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.
- 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.

Elections Code Sections 13203, 13230, 13301 and 13302:

Elections Code sections 13203, 13301 and 13302, describing the printing requirements of partisan primary ballots, including things such as typefaces and paper, were restored to prior law, conforming to the order of the Court invalidating Proposition 198. Using Elections Code section 13203 as an example, here is how the law was changed by Proposition 198 in 1996, indicated by underline and strikethrough:

> Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words "OFFICIAL BALLOT." However, if the ballot is no wider than a single column, the words "OFFICIAL BALLOT" may be as small as 24-point. Beneath this heading, in the case of an official ~~partisan~~ primary election, shall be printed in 18-point boldfaced gothic capital type ~~the official party designation or~~ the words "OFFICIAL PRIMARY ~~NONPARTISAN~~ BALLOT". Beneath the heading line or lines, there shall be printed, in boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election.

Then, after the law was voided by the Supreme Court decision issued on June 26, 2000, the Legislature restored the law on the books exactly to the prior law, by Statutes 2000, chapter 898. But even before the operative date of Statutes 2000, chapter 898 – this was the actual law in California because of the legal principles of *Cummings v. Morez* (1974) 42 Cal.App.3d 66, 73: "A statute which violates either 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 is continuous in effect.

So here is the law as it exists today, word for word the same as before Proposition 198:

> Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words "OFFICIAL BALLOT." However, if the ballot is no wider than a single column, the words "OFFICIAL BALLOT" may be as small as 24-point. Beneath this heading, in the case of a partisan primary election, shall be printed in 18-point boldface gothic capital type the official party designation or the words "NONPARTISAN BALLOT" as applicable. Beneath the heading line or lines, there shall be printed, in boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election.

Therefore, the Commission finds that Elections Code sections 13203, 13301 and 13302, as repealed and reenacted by Statutes 2000, chapter 898, do not mandate a new program or higher level of service.

In addition to reenacting the language of prior law, subdivision (c) was added to Elections Code section 13230, defining "partisan voters" as including persons who have declined to state a party affiliation but have chosen to vote a party ballot, if allowed by the political party. The Commission finds that this definition, in and of itself, does not require any new activities of county elections officials. Therefore, the Commission finds that Elections Code sections 13230, as amended by Statutes 2000, chapter 898, does not mandate a new program or higher level of service.

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 activities listed in the conclusion below, the Commission agrees and finds accordingly that they impose costs mandated by the state upon counties within the meaning of Government Code section 17514.

CONCLUSION

The Commission concludes that Statutes 2000, chapter 898, as it amended Elections Code sections 2151, 13102, subdivision (b), 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 specific new activities:

- Add information to the voter registration card stating that voters who declined to state a party affiliation shall be entitled 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. (Elec. Code, § 2151.)[26]
- 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. (Elec. Code, §§ 2151 and 13102, subd. (b).)[27]

The Commission concludes that Statutes 2000, chapter 898, as it repealed, reenacted, or amended Elections Code sections 13203, 13230, 13301 and 13302, does not mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution.

Regarding the two additional code sections pled by the claimant: Elections Code section 2001 was repealed in its entirety by Statutes 2000, chapter 898, and therefore did not mandate a new program or higher level of service; and Elections Code section 13300 was not amended by Statutes 2000, chapter 898, but by Statutes 2000, chapter 899. Statutes 2000, chapter 899 was pled in another test claim, *Fifteen Day Close of Voter Registration* (01-TC-15), which will be heard by the Commission as a separate item.

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[26] As amended by Statutes 2000, chapter 898, operative January 1, 2001.

[27] As amended by Statutes 2000, chapter 898, operative January 1, 2001.