

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM

Elections Code Sections 21530, 21531,
21532, 21533, 21534, and 21535 as added by

Statutes 2016, Chapter 781 (SB 958)

Filed on June 26, 2020

County of Los Angeles, Claimant

Case No.: 19-TC-04

*County of Los Angeles Citizens Redistricting
Commission*

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

(Adopted May 28, 2021)

(Served June 8, 2021)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on May 28, 2021.



Heather Halsey, Executive Director

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<p>IN RE TEST CLAIM</p> <p>Elections Code Sections 21530, 21531, 21532, 21533, 21534, and 21535 as added by Statutes 2016, Chapter 781 (SB 958)</p> <p>Filed on June 26, 2020</p> <p>County of Los Angeles, Claimant</p>	<p>Case No.: 19-TC-04</p> <p><i>County of Los Angeles Citizens Redistricting Commission</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted May 28, 2021)</i></p> <p><i>(Served June 8, 2021)</i></p>
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DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 28, 2021. Fernando Lemus appeared as the representative of and Lucia Gonzalez appeared as a witness for the County of Los Angeles (claimant). Chris Hill appeared on behalf of the Department of Finance (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 sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to partially approve the Test Claim by a vote of 6-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Spencer Walker, Representative of the State Treasurer	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice-Chairperson	Yes

Summary of the Findings

This Test Claim, which was timely filed by the County of Los Angeles (claimant), addresses Statutes 2016, Chapter 781, which added Elections Code sections 21530 through 21535 to require the claimant to create, staff, and fund the independent County of Los Angeles Citizens Redistricting Committee (CRC) to adjust the boundary lines of the supervisorial districts in the County of Los Angeles in the year following the year of the decennial federal census.

Under prior law, the claimant's board of supervisors were required to perform the supervisorial redistricting.¹ Before adjusting the boundaries, the board was required to hold at least one public hearing on the proposed district lines prior to the public hearing at which the board votes to approve or deny the proposal.²

The Commission finds that the following activities required by Elections Code sections 21532 and 21534, as added by the test claim statute, mandate a new program or higher level of service on the claimant:

- The county shall create a CRC in each year ending in the number zero.³
- The elections official shall review the applications, select 60 applicants, publish the list of the 60 applicants, and create a subpool for each supervisorial district.⁴
- The Auditor-Controller randomly draws eight commissioners.⁵
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting and to provide access to the public.⁶

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities required by Elections Code sections 21532 and 21534 to be performed by the CRC mandate a new program or higher level of service on the claimant:

- The eight commissioners shall appoint six applicants to the CRC.⁷
- Conduct at least seven public hearings before drafting a map.⁸

¹ Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36; Elections Code sections 21501-21506 as added by Statutes 1994, chapter 920; and Elections Code section 21507 as added by Statutes 2014, chapter 873.

² Elections Code section 21507 as added by Statutes 2014, chapter 873.

³ Elections Code section 21532(a).

⁴ Elections Code section 21532(e)-(g).

⁵ Elections Code section 21532(g).

⁶ Elections Code section 21534(c)(7).

⁷ Elections Code section 21532(h).

⁸ Elections Code section 21534(c)(2).

- Post the draft map for public comment on the County website and conduct one public hearing on the draft map.⁹
- Comply with the Ralph M. Brown Act.¹⁰
- Make available to the public a calendar of all public hearings.¹¹
- Arrange for the live translation of a hearing in an applicable language upon timely request.¹²
- Encourage county residents to participate in the redistricting.¹³
- Issue a report that explains the basis on which the CRC made its decisions.¹⁴

However, Elections Code sections 21530, 21533, and 21535 do not impose any state-mandated requirements on the claimant, but rather generally define terms and limit the hiring of consultants by the CRC to help with the adjustment of district boundaries. Although the claimant is required by Elections Code section 21534(c)(8) to provide reasonable funding to the CRC, which may include paying for a consultant hired by the CRC, the courts have made it clear that “[n]othing in article XIII B prohibits the shifting of costs between local governmental entities.”¹⁵

Moreover, the requirements imposed by Elections Code sections 21531 and 21534(a), (c)(9), and (d)(1)-(3) to adjust supervisorial boundary lines, adopt a redistricting plan every ten years; and to comply with the Public Records Act are not new and do not impose a new program or higher level of service on the claimant.¹⁶

The Commission also finds that all of the new state-mandated activities impose costs mandated by the state pursuant to Government Code section 17514, *except* for the activities required by Elections Code section 21534(c)(1) and (c)(4)(B) to comply with the Ralph M. Brown Act for the public hearings conducted by the CRC. These activities are expressly exempted from the reimbursement requirement by article XIII B, section 6(a)(4). Article XIII B, section 6(a)(4) states that “the Legislature may, but need not, provide a subvention of funds for the following

⁹ Elections Code section 21534(c)(3)(A)-(B).

¹⁰ Elections Code sections 21534(c)(1); 21534(c)(4)(B).

¹¹ Elections Code section 21534(c)(4)(A).

¹² Elections Code section 21534(c)(5).

¹³ Elections Code section 21534(c)(6).

¹⁴ Elections Code section 21534(d)(4).

¹⁵ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1815.

¹⁶ California Constitution, article I, sections 3(b) and 7; California Constitution, article II, section 2.5; California Constitution, article XIII B, section 6(a); Elections Code sections 14025-14032 as added by Statutes 2002, chapter 129; Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36; Elections Code section 21507 as added by Statutes 2014, chapter 873; Government Code section 6252 as last amended by Statutes 2015, chapter 537; and *Reynolds v. Sims* (1964) 377 U.S. 533, 566.

mandates: . . . Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.” Article I, section 3(b) of the California Constitution requires local agencies to comply with the Ralph M. Brown Act, beginning with Government Code section 54950. The Brown Act applies to all local agencies and “any other local body created by state statute,” and therefore applies to the CRC.¹⁷ Accordingly, the activities required by Elections Code section 21534(c)(1) and (c)(4)(B) to comply with the Ralph M. Brown Act do not impose costs mandated by the state pursuant to article XIII B, section 6(a)(4) of the California Constitution.

In conclusion, the Commission partially approves this Test Claim and finds that Elections Code sections 21532 and 21534 as added by the test claim statute impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following activities:

- The county shall create a CRC no later than December 31, 2020, and in each year ending in the number zero thereafter.¹⁸
- The elections official shall review the applications and eliminate applicants who do not meet the specified qualifications, select 60 of the most qualified applicants, publish the list of qualified applicants for 30 days, and create a subpool for each of the five existing supervisorial districts of the board.¹⁹
- At a regularly scheduled meeting of the board, the Auditor-Controller conducts a random drawing to select one commissioner from each of the five subpools, then another random drawing from all of the remaining applicants to select three additional commissioners.²⁰
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC.²¹

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities mandated by Elections Code sections 21532 and 21534 impose a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution on the claimant:

- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.²²

¹⁷ Government Code section 54952(a).

¹⁸ Elections Code section 21532(a).

¹⁹ Elections Code section 21532(e)-(g).

²⁰ Elections Code section 21532(g).

²¹ Elections Code section 21534(c)(7).

²² Elections Code section 21532(h).

- Conduct at least seven public hearings before drafting a map, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.²³
- Post the draft map for public comment on the website of the County of Los Angeles and conduct one public hearing on the draft map (in addition to the one hearing required under prior law, which is not reimbursable).²⁴
- Establish and make available to the public a calendar of all public hearings.²⁵
- Arrange for the live translation of a hearing in an applicable language (defined as “a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county”) if a request for translation is made at least 24 hours before the hearing.²⁶
- Take steps to encourage county residents to participate in the redistricting public review process.²⁷
- Issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.²⁸

All other code sections added by the test claim statute and activities alleged to be mandated in the Test Claim are denied.

COMMISSION FINDINGS

I. Chronology

01/01/2017 The effective date of the test claim statute.²⁹

06/26/2020 The claimant filed the Test Claim.³⁰

12/28/2020 The Department of Finance (Finance) filed comments on the Test Claim.³¹

²³ Elections Code section 21534(c)(2).

²⁴ Elections Code section 21534(c)(3)(A)-(B).

²⁵ Elections Code section 21534(c)(4)(A).

²⁶ Elections Code section 21534(c)(5).

²⁷ Elections Code section 21534(c)(6).

²⁸ Elections Code section 21534(d)(4).

²⁹ Statutes 2016, chapter 781.

³⁰ Exhibit A, Test Claim, filed June 26, 2020, page 1.

³¹ Exhibit B, Finance’s Comments on the Test Claim, filed December 28, 2020, page 1.

02/26/2021 The claimant filed late rebuttal comments.³²

03/15/2021 Commission staff issued the Draft Proposed Decision.³³

04/05/2021 The claimant filed comments on the Draft Proposed Decision.³⁴

II. Background

A. A History of Redistricting in California

1. The Creation of the California Citizens Redistricting Commission to Adjust District Lines for the State Assembly, Senate, and Board of Equalization, and for Congress.

Redistricting is the apportionment of legislative representation based on population.³⁵ The right to vote, guaranteed by the Fourteenth and Fifteenth Amendments of the United States Constitution, requires equal legislative representation through periodic redistricting.³⁶ Each state has the discretion to choose a specific methodology to use for redistricting,³⁷ however, the Fourteenth Amendment restricts the use of race as the predominant criterion in drawing district lines.³⁸

The Voting Rights Act of 1965 was enacted by Congress to further protect the right to vote.³⁹ The Act prohibits states and their political subdivisions from using voting qualifications, prerequisites to voting, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or membership in a "language minority group."⁴⁰ After the Supreme Court held that this provision prohibited only intentional discrimination,⁴¹ Congress amended the Act to forbid any act having a disparate impact on minority voting strength. "Thus, after the 1982 amendment, the Voting Rights Act can be violated by both intentional discrimination in the drawing of district lines and facially neutral apportionment schemes that have the effect of diluting minority votes."⁴²

³² Exhibit C, Claimant's Late Rebuttal Comments, filed February 26, 2021.

³³ Exhibit D, Draft Proposed Decision, issued March 15, 2021.

³⁴ Exhibit E, Claimant's Comments on the Draft Proposed Decision, filed April 5, 2021.

³⁵ United States Constitution, article I, sections 2 and 4.

³⁶ *Reynolds v. Sims* (1964) 377 U.S. 533 [state legislative districts]; *Kirkpatrick v. Preisler* (1969) 394 U.S. 526 [congressional districts].

³⁷ *Reynolds v. Sims* (1964) 377 U.S. 533, 583.

³⁸ *Shaw v. Reno* (1993) 509 U.S. 630.

³⁹ 52 U.S. Codes section 10101 et seq. formerly 42 U.S. Codes section 1971.

⁴⁰ 52 U.S. Codes sections 10101(a), 10103(f)(2).

⁴¹ *City of Mobile v. Bolden* (1980) 446 U.S. 55.

⁴² *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 766.

California enacted its own Voting Rights Act⁴³ in 2002 which implements the equal protection⁴⁴ and the right to vote⁴⁵ guarantees in the California Constitution by proscribing “the dilution or the abridgment of the rights of voters who are members of a protected class.”⁴⁶

California required the Legislature to adjust district lines for the Assembly, Senate, and Board of Equalization in the year following the federal census.⁴⁷ This process was fraught with partisan issues and gerrymandering for decades, however, solutions were slow in coming.⁴⁸ In the 1980s alone, California voters defeated four redistricting reform initiatives.⁴⁹ Finally, on November 4, 2008, California voters approved Proposition 11, the Voters FIRST Act, which amended Article XXI of the California Constitution taking the authority for the creation of district lines away from the Legislature and instead created the California Citizens Redistricting Commission to establish district lines for the Assembly, Senate, and Board of Equalization.⁵⁰ The 14 Commission members, chosen randomly by the State Auditor, are made up of five Democrats, five Republicans, and four members who are registered with neither of those political parties.⁵¹ This entirely independent commission redistricting system was the first in the nation.⁵² In 2010, the voters approved Proposition 20, the Voters FIRST Act for Congress, which further amended Article XXI giving the California Citizens Redistricting Commission the authority to establish district lines for U.S. congressional districts.⁵³

⁴³ Statutes 2002, chapter 129 codified at Elections Code sections 14025-14032.

⁴⁴ California Constitution, article I, section 7.

⁴⁵ California Constitution, article II, section 2.5.

⁴⁶ Elections Code sections 14027 and 14031.

⁴⁷ California Constitution, article XXI.

⁴⁸ Exhibit F, Quinn, *Carving Up California: A History of Redistricting, 1951-1984* (Ph.D. diss.), Rose Institute of State and Local Government, Claremont McKenna College, <https://s10294.pcdn.co/wp-content/uploads/2014/02/Carving-Up-California.pdf> (accessed on December 22, 2020).

⁴⁹ Exhibit F, Heslop, *Governing California in the 21st Century - Redistricting Reform in California*, pages 1-5, <http://roseinstitute.org/wp-content/uploads/2014/02/Redistricting-Reform-in-CA.pdf> (accessed on December 24, 2020).

⁵⁰ Government Code sections 8251-8253.6.

⁵¹ *Vandermost v. Bowen* (2012) 53 Cal.4th 421, 442-448.

⁵² Exhibit F, Rose Institute of State and Local Government, *Redistricting in America, A State-by-State Analysis*, pages 44-46, <https://s10294.pcdn.co/wp-content/uploads/2016/05/Redistricting-in-America-for-Print.pdf> (accessed on December 24, 2020).

⁵³ Government Code sections 8251-8253.6.

2. Supervisorial Redistricting for the County of Los Angeles Under Prior Law.

Under the California Constitution, charter counties are not free to establish their own redistricting process.⁵⁴ As the County of Los Angeles is a charter county, it was obligated to follow the existing statutes regarding redistricting. Similar to the initial state system, supervisorial redistricting is performed by the legislative body of each county, the board of supervisors.⁵⁵

In 2016, at the time that the test claim legislation was being considered, the process began after each decennial federal census. A county board of supervisors was required to adjust its supervisorial boundaries in compliance with the Voting Rights Act of 1965 so that the districts were nearly equal in population. The board was required to use the census data as a basis for the adjustment. The board had the option to consider the factors of topography; geography; cohesiveness, contiguity, integrity, and compactness of territory; and communities of interest.⁵⁶ The board also had the option to appoint an advisory committee of residents to study changing the boundaries. This committee would report its findings on the need for change of boundaries and the recommended changes to the board. These recommendations were advisory only.⁵⁷ Before adjusting the boundaries, the board was required to hold at least one public hearing on the proposed district lines prior to the public hearing at which the board votes to approve or deny the proposal.⁵⁸ If the board failed to complete the redistricting before the first day of November, a supervisorial redistricting commission, consisting of the county district attorney, the county assessor, and an elected county elections official, an elected county superintendent of schools, or the sheriff, was assembled to complete the redistricting.⁵⁹ Once established, the new district boundaries would take effect at the next election.⁶⁰ Between federal censuses, the board could redistrict based on a county census or use population estimates by the State Department of Finance, the county planning department, or county planning commission.⁶¹ However, any person could bring suit claiming that the estimates did not reflect the current population more accurately than the most recent census data and seek declaratory relief from a court.⁶²

⁵⁴ California Constitution, article XI, section 4(a).

⁵⁵ Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36; Elections Code sections 21501-21506 as added by Statutes 1994, chapter 920; and Elections Code section 21507 as added by Statutes 2014, chapter 873.

⁵⁶ Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36.

⁵⁷ Elections Code section 21505 as added by Statutes 1994, chapter 920.

⁵⁸ Elections Code section 21507 as added by Statutes 2014, chapter 873.

⁵⁹ Elections Code sections 21501 and 21502 as added by Statutes 1994, chapter 920.

⁶⁰ Elections Code section 21506 as added by Statutes 1994, chapter 920.

⁶¹ Elections Code section 21503 as added by Statutes 1994, chapter 920.

⁶² Elections Code section 21504 as added by Statutes 1994, chapter 920.

The claimant has had a history of racial discrimination in its supervisorial redistricting process.⁶³ In 1988, Hispanic groups in Los Angeles County, joined by the United States of America, filed a voting rights action seeking a redrawing of the districts for the Los Angeles County Board of Supervisors.⁶⁴ They alleged that the existing boundaries, which had been drawn after the 1980 census, were intentionally gerrymandered boundaries that diluted Hispanic voting strength. They sought redistricting in order to create a district with a Hispanic majority for the 1990 Board of Supervisors election.⁶⁵ The federal district court found “that the Board [of Supervisors] had engaged in intentional discrimination in redistrictings that it undertook in 1959, 1965 and 1971” and “the 1981 redistricting was calculated at least in part to keep the effects of those prior discriminatory reapportionments in place, as well as to prevent Hispanics from attaining a majority in any district in the future.”⁶⁶ The district court determined that the county’s district boundaries violated the federal Voting Rights Act of 1965.⁶⁷ The Ninth Circuit Court of Appeal affirmed the lower court’s decision and further found that the county had violated both the Voting Rights Act of 1965 and the equal protection guarantee of the 14th Amendment when drawing supervisorial districts.⁶⁸ The U.S. Supreme Court did not take up the county’s appeal.⁶⁹ The parties settled the matter by entering into a stipulation requiring the county to submit future redistricting plans to the U.S. Department of Justice for review. The stipulation terminated on December 31, 2002.⁷⁰ As a result of the court’s decision, a special election for supervisor was held in 1991 for the newly redrawn First Supervisorial District.⁷¹ The 2010 redistricting plan, the first not to require review under the stipulation, was not challenged in court.⁷²

⁶³ *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 765-766.

⁶⁴ *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 765.

⁶⁵ *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 765-766.

⁶⁶ *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 767.

⁶⁷ *Garza v. County of Los Angeles* (Cal. 1990) 756 F.Supp. 1298, 1303-1304.

⁶⁸ *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 771.

⁶⁹ *County of Los Angeles v. Garza* (1991) 498 U.S. 1028.

⁷⁰ *County of Los Angeles v. State of California* (Jan. 14, 2020, B290091) [nonpub. opn.], page 6.

⁷¹ Exhibit F, Farrell, *Vote Marks New Era for 1st District: County Board: For the Plaintiffs Who Sued Over Bias Against Latinos, the Balloting is the Real Victory*, L.A. Times (Feb. 20, 1991), <https://www.latimes.com/archives/la-xpm-1991-02-20-me-1513-story.html> (accessed on March 9, 2021).

⁷² *County of Los Angeles v. State of California* (Jan. 14, 2020, B290091) [nonpub. opn.], pages 6-10.

B. The Test Claim Statute, Statute 2016, Chapter 781, Added Sections 21530 through 21535 to the Elections Code to Establish an Independent Citizens Redistricting Commission for the County of Los Angeles.

The test claim statute was characterized by the author as “a good government proposal for the citizens of Los Angeles County” which would “align the Los Angeles County Board of Supervisors’ redistricting policy with the statewide movement toward independent redistricting.”⁷³ Legislative history of the statute noted that the state of California has a redistricting commission as does the County of San Diego through legislation requested by the county.⁷⁴ Without such statutory authority, counties are powerless to create commissions on their own.⁷⁵ The legislative history concluded that the successful establishment of an independent redistricting commission in San Diego County, the second most populous county in California, boded well for the success of an independent commission in Los Angeles County, the state’s most populous county and “one of the most geographically and ethnically diverse counties in the state.”⁷⁶

The test claim statute provides that the CRC will adjust the boundary lines of the supervisorial districts in the County of Los Angeles in the year following the year of the decennial federal census.⁷⁷ The 14-member CRC must be created no later than December 31, 2020, and in each year ending in the number zero thereafter.⁷⁸ The process for the selection of members is designed to produce a CRC that is independent from the influence of the board and is reasonably representative of the county’s diversity.⁷⁹ The members’ political party preferences must be as proportional as possible to the total number of voters who are registered with each political party in the county. At least one member must reside in each of the five existing supervisorial districts.⁸⁰ Members are required to meet all of the following qualifications:

- Be a resident of the county,
- Be a voter who has been continuously registered in the county who has not changed their political party affiliation for five or more years,
- Have voted in at least one of the last three statewide elections,

⁷³ Exhibit F, Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading of Senate Bill 958 (2015-2016 Reg. Sess.), August 30, 2016, page 5.

⁷⁴ Exhibit F, Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading of Senate Bill 958 (2015-2016 Reg. Sess.), August 30, 2016, page 5.

⁷⁵ California Constitution, article XI, section 4.

⁷⁶ Exhibit F, Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading of Senate Bill 958 (2015-2016 Reg. Sess.) August 30, 2016, pages 5 and 8.

⁷⁷ Elections Code section 21531.

⁷⁸ Elections Code section 21532(a) and (c).

⁷⁹ Elections Code section 21532(b).

⁸⁰ Elections Code section 21532(c).

- Within the last 10 years, neither the applicant nor an immediate family member, has been appointed to, elected to, or have been a candidate for office; served as an employee of, or paid consultant for, an elected representative, candidate, or political party; or been a registered state or local lobbyist,
- Possess experience that demonstrates relevant analytical skills and an ability to comprehend and apply legal requirements,
- Possess experience that demonstrates an ability to be impartial, and
- Possess experience that demonstrates an appreciation for the diverse demographics and geography of the county.⁸¹

Those individuals who meet the qualifications may submit an application to the county elections official who is required to review the applications and eliminate applicants who do not meet the qualifications.⁸² During the selection process, the official is barred from communicating with a member of the board, or an agent for a member of the board, about any matter related to the nomination process or applicants. The official selects 60 of the most qualified applicants and makes public a list of their names for at least 30 days.⁸³ During this time, the official may eliminate any of the previously selected applicants if the official becomes aware that the applicant does not meet the qualifications.⁸⁴ After the 30 days, the official creates a subpool for each of the five existing supervisorial districts.⁸⁵ At a regularly scheduled meeting of the board, the Auditor-Controller of the county randomly draws to select one commissioner from each of the five subpools and then, randomly draws from all of the remaining applicants, without respect to subpools, to select three additional commissioners.⁸⁶ The eight selected commissioners review the remaining applicants and appoint six commissioners based on relevant experience, analytical skills, ability to be impartial, political party preference, and to ensure that the CRC reflects the county's diversity.⁸⁷

The commissioners' terms expire upon the appointment of the first member of the succeeding CRC.⁸⁸ Nine commissioners are a quorum.⁸⁹ Each commissioner is a designated employee for purposes of conflicts of interest and is required to apply these statutes impartially to reinforce public confidence in the integrity of the process.⁹⁰ The CRC cannot retain a consultant — a

⁸¹ Elections Code section 21532(d).

⁸² Elections Code section 21532(e).

⁸³ Elections Code section 21532(f)(1).

⁸⁴ Elections Code section 21532(f)(2).

⁸⁵ Elections Code section 21532(g)(1).

⁸⁶ Elections Code section 21532(g)(2).

⁸⁷ Elections Code section 21532(h).

⁸⁸ Elections Code section 21533(b).

⁸⁹ Elections Code section 21533(c).

⁹⁰ Elections Code section 21533(a) and (e).

person retained, paid or unpaid, to advise the CRC or a commissioner regarding any aspect of the redistricting process — who would not be qualified as an applicant.⁹¹ After appointment, a commissioner is ineligible to hold elective public office for five years and ineligible to hold appointive office, to serve as paid staff or paid consultant to, the Board of Equalization, the Congress, the Legislature, or any legislator, or to register as a lobbyist in the state for three years.⁹²

The CRC shall use the following criteria, in the order of priority, in its mapping process:

- (1) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with the other districts, except where deviation is required to comply with the federal Voting Rights Act of 1965⁹³ or allowable by law.
- (2) Districts shall comply with the federal Voting Rights Act of 1965.
- (3) Districts shall be geographically contiguous.
- (4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible. A community of interest is defined as a contiguous population that shares common social and economic interests that should be included within a single district for effective and fair representation, but does not include political parties or candidates.
- (5) To the extent practicable, districts shall be drawn to encourage geographical compactness.⁹⁴

The CRC shall not consider the place of residence of any incumbent or political candidate in the creation of a map; nor shall districts be drawn to favor or discriminate against an incumbent, political candidate, or political party.⁹⁵

The CRC is required to comply with the Ralph M. Brown Act.⁹⁶ The CRC must establish a calendar of all public hearings and make it available to the public. The hearings are to be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible. The CRC shall post the hearing agenda at least seven days before the hearing dates.⁹⁷ The CRC shall arrange for the live translation of a hearing if a request for translation is made at least 24 hours before the hearing.⁹⁸ This applies to any language for which the number of county residents who are members of a language minority is

⁹¹ Elections Code section 21533(d).

⁹² Elections Code section 21535.

⁹³ United States Code, title 52, section 10101 et seq.

⁹⁴ Elections Code section 21534(a).

⁹⁵ Elections Code section 21534(b).

⁹⁶ Elections Code section 21534(c)(1).

⁹⁷ Elections Code section 21534(c)(4).

⁹⁸ Elections Code section 21534(c)(5).

greater than or equal to three percent of the total voting age residents of the county.⁹⁹ Before drawing a draft map, the CRC shall conduct at least seven public hearings, over no fewer than 30 days, with at least one public hearing held in each supervisorial district.¹⁰⁰ After drawing a draft map, the CRC shall post the map for public comment on the county website,¹⁰¹ include the map with the posted agenda,¹⁰² and conduct at least two public hearings over no fewer than 30 days before adoption of the final plan and map.¹⁰³

The CRC shall take steps to encourage residents to participate in the redistricting public review process. These steps may include:

- Providing information through media, social media, and public service announcements.
- Coordinating with community organizations.
- Posting information on the county website explaining the redistricting process, including a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the CRC.¹⁰⁴

The board of supervisors shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting and that procedures are in place to provide the public with ready access to redistricting data and computer software equivalent to what is available to the CRC.¹⁰⁵ The board shall provide reasonable funding and staffing for the CRC.¹⁰⁶ All records of the CRC relating to redistricting are public records.¹⁰⁷

The CRC is required to adopt a redistricting plan adjusting the boundaries of the supervisorial districts and file the plan with the county elections official before August 15 of the year after the census.¹⁰⁸ The plan shall be effective 30 days after filing and shall be subject to referendum in the same manner as ordinances.¹⁰⁹ The CRC shall issue, with the final map, a report that explains the basis on which the CRC made its decisions.¹¹⁰

⁹⁹ Elections Code section 21534(c)(5)(B).

¹⁰⁰ Elections Code section 21534(c)(2).

¹⁰¹ Elections Code section 21534 (c)(3)(A).

¹⁰² Elections Code section 21534 (c)(4)(B).

¹⁰³ Elections Code section 21534(c)(3).

¹⁰⁴ Elections Code section 21534(c)(6).

¹⁰⁵ Elections Code section 21534(c)(7).

¹⁰⁶ Elections Code section 21534(c)(8).

¹⁰⁷ Elections Code section 21534(c)(9).

¹⁰⁸ Elections Code section 21534(d)(1).

¹⁰⁹ Elections Code section 21534(d)(2)-(3).

¹¹⁰ Elections Code section 21534(d)(4).

III. Positions of the Parties

A. County of Los Angeles

The claimant alleges that the test claim statute results in state-mandated reimbursable costs incurred by two departments: the Registrar-Recorder/County Clerk (RR/CC) and the Commission Services Division of the Executive Office of the Board. Specifically, the claimant alleges that the following activities are imposed on the RR/CC:

- To educate and inform the public, through digital, print, radio, social, and earned media outreach on the importance of the Commission and how the public can apply and become a commission member¹¹¹
- To create an application process, receive and review applications, and select the 60 most-qualified applicants.¹¹² The county Auditor-Controller is required to randomly select eight commissioners from those 60. Those eight commissioner choose the remaining six commissioners.¹¹³

And, once the CRC is formed, the claimant asserts that the county is mandated to:

- Provide reasonable funding and staffing for the Commission, so that the Commission may fulfill its obligations to redraw supervisorial districts, conduct public hearings, and encourage public participation in the process.¹¹⁴
- Take all reasonable steps to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide the public with ready access to redistricting data and computer software equivalent to what is available to the Commission.¹¹⁵

Additionally, the claimant alleges that “Elections Code section 21533, enables the County to retain a consultant in order to advise the newly formed Commission on issues related to redistricting, provided that the consultant meets all of the qualification requirements of the Commission members.”¹¹⁶

The claimant alleges costs were first incurred on July 1, 2019.¹¹⁷ The claimant incurred \$35,533.18 for the RR/CC staff meeting to create the application process and \$1,268.91 to design

¹¹¹ Exhibit A, Test Claim, filed June 26, 2020, page 20.

¹¹² Exhibit A, Test Claim, filed June 26, 2020, pages 9-10.

¹¹³ Exhibit A, Test Claim, filed June 26, 2020, page 10.

¹¹⁴ Exhibit A, Test Claim, filed June 26, 2020, page 13.

¹¹⁵ Exhibit A, Test Claim, filed June 26, 2020, page 10.

¹¹⁶ Exhibit A, Test Claim, filed June 26, 2020, page 20.

¹¹⁷ Exhibit A, Test Claim, filed June 26, 2020, page 28 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

and develop the application process, create internal working documents, and design and set up a website for the CRC.¹¹⁸

The claimant projects costs of \$100,000 for the RR/CC to review and track applications, answer phone calls, send emails, and direct the application process pursuant to Elections Code sections 21532(f)(1)(2) and 21532(e); \$250,000 to run a media campaign “to promote the application process and educate the public on the redistricting process” pursuant to Elections Code section 21532(b); \$5,000 to staff redistricting workshops pursuant to Elections Code sections 21532(a)-(e); and \$50,000 for County Counsel advice and miscellaneous expenses.¹¹⁹

The claimant also projects costs to the Commission Services Division of \$184,000 to find and reserve CRC meeting locations, schedule meetings, and prepare agendas, minutes, and supporting documents pursuant to Elections Code section 21534(c)(8); \$439,000 for a computerized database for CRC and public use pursuant to Elections Code section 21534(c)(7); and \$250,000 to launch and engage in a media campaign to encourage residents to participate in the redistricting public review process pursuant to Elections Code section 21534(c)(6).¹²⁰

The claimant projects additional costs of \$4,620 to secure public address systems, audio equipment, translation services, and assisted-hearing devices at public hearings pursuant to Elections Code section 21534(c); and \$250,000 to “procure a consultant to guide the CRC and ensure it meets timelines for final map submission” pursuant to Elections Code section 21534(d)(1)(2).¹²¹ The claimant projects a total of \$1,127,620 in costs for FY 2020-21.¹²²

In its rebuttal to Finance’s comments, the claimant reasserts that the test claim statute mandates compliance with a new program.¹²³ The claimant also argues that the two cases relied upon by Finance are not applicable to defeat the Test Claim. Both *City of Anaheim v. State of California*¹²⁴ and *San Diego Unified School District v. Commission on State Mandates*¹²⁵ involve

¹¹⁸ Exhibit A, Test Claim, filed June 26, 2020, pages 28-30 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

¹¹⁹ Exhibit A, Test Claim, filed June 26, 2020, pages 20-21 and pages 28-30 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

¹²⁰ Exhibit A, Test Claim, filed June 26, 2020, page 21 and pages 32-34 (Declaration of Twila Kerr, Chief of the Commission Services Division at the Executive Office of the Board of Supervisors).

¹²¹ Exhibit A, Test Claim, filed June 26, 2020, page 21 and pages 32-34 (Declaration of Twila Kerr, Chief of the Commission Services Division at the Executive Office of the Board of Supervisors).

¹²² Exhibit A, Test Claim, filed June 26, 2020, pages 32-34 (Declaration of Twila Kerr, Chief of the Commission Services Division at the Executive Office of the Board of Supervisors).

¹²³ Exhibit C, Claimant’s Late Rebuttal Comments, filed February 26, 2021, page 2.

¹²⁴ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.

¹²⁵ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

increased costs in an existing program whereas, the test claim statute creates a new program with activities that were not required of the claimant prior to the enactment of the test claim statute.¹²⁶

Finally, although the claimant agrees with the conclusion of the Draft Proposed Decision to approve the Test Claim, the claimant disagrees with the denial of reimbursement for the hiring of consultants. The claimant argues that the hiring of consultants is part of the requirement under Elections Code section 21534(c)(8) for the county to provide reasonable funding for the CRC. The claimant notes that Elections Code section 21533, which places a limit on who can be a consultant, demonstrates that the law “contemplates the engagement of consultants to support the CRC.”¹²⁷ Further, the claimant points to Elections Code section 21534(a), (b), and (d)(4), which requires the CRC to issue a report that explains the basis for the CRC’s decisions to ensure that the mapping process achieves compliance with the designated criteria, which are: the United States Constitution; the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.); geographic contiguity; geographic integrity of cities, neighborhoods, or communities of interest; and geographical compactness without regard to any incumbent, political candidate, or political party. As the claimant explains, “Each of the criteria set forth in (a) and (b) of Elections Code section 21534 requires an understanding of applicable law, legal and geographical concepts and practical applications, and subject matter expertise that compels the engagement of consultants in order to comply with the reporting requirements of Elections Code section 21534(d)(4).”¹²⁸ Moreover, the claimant states that the current CRC has already approved a solicitation for one consultant and is considering retaining another to perform the state-mandated activities. Thus the county must provide funding pursuant to Elections Code section 21534(c)(8) for consultants who are essential to the CRC in performing its work, which has been complicated by the delay in acquiring data due to the COVID-19 pandemic. To not provide reimbursement for such funding, places the CRC at risk not completing its redistricting and will leave the process open to legal challenge.¹²⁹

B. Department of Finance

Finance asserts that the test claim statute is not a reimbursable state mandate as the costs are not the result of a new program or higher level of service, but rather are merely increased costs for redistricting; an activity for which the claimant has always been responsible. Finance requests that reimbursement should be denied under *City of Anaheim v. State of California*,¹³⁰ holding increased costs alone do not result in a reimbursable state mandate and *San Diego Unified School*

¹²⁶ Exhibit C, Claimant’s Late Rebuttal Comments, filed February 26, 2021, pages 2-3.

¹²⁷ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed April 5, 2021, page 2.

¹²⁸ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed April 5, 2021, page 2.

¹²⁹ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed April 5, 2021, pages 2-3.

¹³⁰ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.

District v. Commission on State Mandates,¹³¹ holding reimbursement is not required if a statute merely implements a change that increases costs.¹³²

Finance argues that certain costs alleged by the claimant are not mandated by the test claim statute. The claimant’s projected costs of \$250,000 for a media campaign by the RR/CC and \$250,000 for a media campaign by the board are not required by the text of the test claim statute. Rather, Elections Code section 21534(c)(6)(A)-(C) addresses the steps the claimant may take to inform the public including “(p)roviding information through media, social media, and public service announcements.”¹³³ Also, Elections Code section 21533(d)(1) and (2) sets forth the qualifications for a consultant, but the test claim statute does not require the claimant to retain a consultant and the claimed cost of \$250,000 for the consultant should be denied.¹³⁴

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service....

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹³⁵ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government]”¹³⁶

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.¹³⁷
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or

¹³¹ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

¹³² Exhibit B, Finance’s Comments on the Test Claim, filed December 28, 2020, pages 1-2.

¹³³ Exhibit B, Finance’s Comments on the Test Claim, filed December 28, 2020, page 2.

¹³⁴ Exhibit B, Finance’s Comments on the Test Claim, filed December 28, 2020, pages 2-3.

¹³⁵ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹³⁶ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹³⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

- b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹³⁸
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.¹³⁹
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.¹⁴⁰

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.¹⁴¹ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁴² In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁴³

A. The Test Claim Was Timely Filed Pursuant to Government Code Section 17551 and Section 1183.1(c) of the Commission’s Regulations Because the Test Claim Was Filed Within Twelve Months of the Claimant First Incurring Costs to Comply with the Test Claim Statute.

Government Code section 17551(c) states: “test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations, effective April 1, 2020, clarifies that

any test claim or amendment filed with the Commission must be filed not later than 12 months (365 days) following the effective date of a statute or executive

¹³⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

¹³⁹ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁴⁰ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹⁴¹ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

¹⁴² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹⁴³ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 (citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817).

order, or within 12 months (365 days) of first incurring increased costs as a result of a statute or executive order, whichever is later.¹⁴⁴

The test claim statute became effective on January 1, 2017.¹⁴⁵ The claimant filed a declaration under penalty of perjury from the Finance Manager of the County Clerk's Office stating that the county first incurred costs to comply with the test claim statute on July 1, 2019.¹⁴⁶ The claimant filed this Test Claim on June 26, 2020, within 12 months of first incurring costs to comply with the test claim statute.¹⁴⁷

Accordingly, this Test Claim was timely filed pursuant to Government Code section 17551.

B. The Test Claim Statute Imposes a Reimbursable State-Mandated Program on the County of Los Angeles.

1. Elections Code Sections 21531, 21532, and 21534, as Added by the Test Claim Statute, Impose State-Mandated Requirements on the County of Los Angeles.

The test claim statute divests the claimant's board of supervisors of the authority to adjust supervisorial district lines and establishes and vests the authority with the CRC. The claimant is required by the test claim statute to create the CRC as follows:

- The CRC shall be created no later than December 31, 2020, and in each year ending in the number zero thereafter.¹⁴⁸
- The county elections official shall review the applications and eliminate applicants who do not meet the specified qualifications.¹⁴⁹
- From the pool of qualified applicants, the county elections official shall select 60 of the most qualified applicants, taking into account the requirements described in Elections Code section 21532(c) — that the political party preferences of the CRC members shall be as proportional as possible to the total number of voters who are registered with each political party in the county. The county elections official shall make public the names of the 60 most qualified applicants for at least 30 days.
- Thereafter, the county elections official shall create a subpool for each of the five existing supervisorial districts of the board.¹⁵⁰

¹⁴⁴ California Code of Regulations, title 2, section 1183.1(c), Register 2020, No. 4 (eff. April 1, 2020).

¹⁴⁵ Statutes 2016, chapter 781.

¹⁴⁶ Exhibit A, Test Claim, filed June 26, 2020, page 28 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

¹⁴⁷ Exhibit A, Test Claim, filed June 26, 2020, page 1.

¹⁴⁸ Elections Code section 21532(a).

¹⁴⁹ Elections Code section 21532(e).

¹⁵⁰ Elections Code section 21532(f).

- At a regularly scheduled meeting of the board, the Auditor-Controller of the County of Los Angeles shall conduct a random drawing to select one commissioner from each of the five subpools established by the county elections official.
- After completing the random drawing of commissioners from each of the five subpools as set forth above, the Auditor-Controller, at the same meeting of the board, shall conduct a random drawing from all of the remaining applicants, without respect to subpools, to select three additional commissioners.¹⁵¹
- The board shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC members.¹⁵²

In addition, the claimant is required to “provide for reasonable funding and staffing for the commission,”¹⁵³ and, thus, the requirements imposed on the CRC must be met at the expense of the claimant. These are as follows:

- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.¹⁵⁴
- In the year following the year in which the decennial federal census is taken, the CRC shall adjust the boundary lines of the supervisorial districts of the board in accordance with this chapter.¹⁵⁵ The CRC shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:
 - (1) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or allowable by law.
 - (2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).
 - (3) Districts shall be geographically contiguous.
 - (4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible without violating the requirements of paragraphs (1) to (3), inclusive. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of

¹⁵¹ Elections Code section 21532(g).

¹⁵² Elections Code section 21534(c)(7).

¹⁵³ Elections Code section 21534(c)(8).

¹⁵⁴ Elections Code section 21532(h).

¹⁵⁵ Elections Code section 21531.

its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where this does not conflict with paragraphs (1) to (4), inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.¹⁵⁶ The CRC shall adopt a redistricting plan adjusting the boundaries of the supervisorial districts and shall file the plan with the county elections official before August 15 of the year following the year in which each decennial federal census is taken.¹⁵⁷

- Before the CRC draws a map, the CRC shall conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.¹⁵⁸
- After the CRC draws a draft map, the CRC shall do both of the following:
 - Post the map for public comment on the website of the County of Los Angeles.
 - Conduct at least two public hearings to take place over a period of no fewer than 30 days.¹⁵⁹
- The CRC shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) when conducting these public hearings.¹⁶⁰
- The CRC shall establish and make available to the public a calendar of all public hearings described in Elections Code section 21534(c)(2) and (3).¹⁶¹
- Notwithstanding section 54954.2 of the Government Code — which requires the posting of an agenda 72 hours before a public meeting — the CRC shall post the agenda for the public hearings described in Elections Code section 21534(c)(2) and (3) at least seven days before the hearings. The agenda for a meeting required by Elections Code section 21534(c)(3) shall include a copy of the draft map.¹⁶²
- The CRC shall arrange for the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing. An “applicable language” means a language for which the number of residents

¹⁵⁶ Elections Code section 21534(a).

¹⁵⁷ Elections Code section 21534(d)(1).

¹⁵⁸ Elections Code section 21534(c)(2).

¹⁵⁹ Elections Code section 21534(c)(3).

¹⁶⁰ Elections Code section 21534(c)(1).

¹⁶¹ Elections Code section 21534(c)(4)(A).

¹⁶² Elections Code section 21534(c)(4)(B).

of the County of Los Angeles who are members of a language minority is greater than or equal to three percent of the total voting age residents of the county.¹⁶³

- The CRC shall take steps to encourage county residents to participate in the redistricting public review process.¹⁶⁴
- The CRC shall issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the criteria described in Elections Code section 21534(a) and (b).¹⁶⁵ Section 21534(a) is the criteria for the mapping process, listed above. Section 21534(b) states: “The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party.”

In addition, Elections Code section 21534(c)(9) states that “All records of the commission relating to redistricting, and all data considered by the commission in drawing a draft map or the final map, are public records.” Thus, the CRC, at the claimant’s expense pursuant to Elections Code section 21534(c)(8), is required to comply with the Public Records Act pursuant to Government Code section 6250 et seq., upon receipt of a public records request for these documents.

These requirements are mandated by the state. The county has no discretion and is forced to comply with these requirements.¹⁶⁶

Finance argues, however, that certain costs alleged by the claimant to encourage county residents to participate in the redistricting public review process are not mandated by the state. In particular, Finance questions the claimant’s projected costs of \$250,000 for a media campaign by the Registrar-Recorder/County Clerk and \$250,000 for a media campaign by the board, and asserts that these costs are not mandated by the test claim statute.¹⁶⁷ Finance’s interpretation of the statute is wrong. The statute states the following:

The commission shall take steps to encourage county residents to participate in the redistricting public review process. These steps may include:

(A) Providing information through media, social media, and public service announcements.

(B) Coordinating with community organizations.

(C) Posting information on the Internet Web site of the County of Los Angeles that explains the redistricting process and includes a notice of each public

¹⁶³ Elections Code section 21534(c)(5).

¹⁶⁴ Elections Code section 21534(c)(6).

¹⁶⁵ Elections Code section 21534(d)(4).

¹⁶⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹⁶⁷ Exhibit B, Finance’s Comments on the Test Claim, filed December 28, 2020, page 2.

hearing and the procedures for testifying during a hearing or submitting written testimony directly to the commission.¹⁶⁸

The statute uses the term “may” regarding the types of steps that the CRC can take, but uses the word “shall” regarding the requirement for the CRC to take steps. So, while the CRC has the option of which steps to take, it has no choice but to take steps to encourage participation as mandated by the state.

Accordingly, Elections Code sections 21531, 21532, and 21534 impose state-mandated requirements on the claimant.

2. Elections Code Sections 21530, 21533, and 21535 Do Not Impose Any Requirements or State-Mandated Costs on the Citizens Redistricting Commission or the Claimant and Thus the Costs Incurred to Comply with These Code Sections Are Not Eligible for Reimbursement.

Elections Code sections 21530, 21533, and 21535 impose no requirements on the claimant. Elections Code section 21530 contains only definitions of “Board,” “Commission,” and “Immediate family member.”

Elections Code section 21533 sets forth the terms of office, rules for establishing a quorum, designates CRC members as employees for purposes of the conflict of interest code adopted by the County of Los Angeles, and imposes limits on the hiring of consultants by the CRC (by stating that “[t]he commission shall not retain a consultant who would not be qualified as an applicant pursuant to paragraph (4) of subdivision (d) of Section 21532.”) The claimant requests reimbursement for the costs incurred for consultants retained by the CRC and argues that having consultants is essential to the CRC completing its work timely, accurately, and in compliance with the requirements of Elections Code section 21534(a), (b), and (d)(4).¹⁶⁹ Elections Code section 21534(a) requires the CRC to establish single-member supervisorial districts every ten years for the board pursuant to a mapping process, which complies with the U.S. Constitution, the federal Voting Rights Act, and other requirements to ensure that the geographic compactness and the integrity of any city be respected. Elections Code section 21534(b) states the following: “The place of residence of any incumbent or political candidate shall not be considered in the creation of a map.” Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party.” And section 21524(d)(4) requires the CRC to “issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.”

Elections Code section 21533, however, does not require the CRC to hire consultants and leaves that decision to the discretion of the CRC. Although the claimant is required by Elections Code section 21534(c)(8) to provide reasonable funding to the CRC, which may include paying for a consultant hired by the CRC to help with the adjustment of district boundaries, the courts have made it clear that “[n]othing in article XIII B prohibits the shifting of costs between local

¹⁶⁸ Elections Code section 21534(c)(6).

¹⁶⁹ Exhibit A, Test Claim, filed June 26, 2020, pages 20-21; Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed April 5, 2021, pages 2-3.

governmental entities.”¹⁷⁰ In this respect, the *City of San Jose* case is instructive. *City of San Jose* involved the City’s request for reimbursement to comply with Government Code section 29550. Section 29550 states in relevant part: “Notwithstanding any other provision of law, a county may impose a fee upon a city, [or other local entity], for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee of that city, ... where the arrested persons are brought to the county jail for booking or detention.”¹⁷¹ The court found that although the city may be required to incur costs it did not formerly incur if the county exercised its authority, the court could not read a mandate into language which is plainly discretionary.¹⁷² The court also found that the financial and administrative responsibility associated with the operation of county jails and detention of prisoners was historically borne entirely by the county and not by the state and, therefore, the shift of costs to the city was from the county and not the state.¹⁷³

Similarly, Elections Code section 21533 and the remaining test claim code sections do not mandate the CRC to hire consultants. If the CRC does hire consultants, it is required to comply with the limitation in Elections Code section 21533 to make sure the consultant would be qualified as a commission member of the CRC (“The commission shall not retain a consultant who would not be qualified as an applicant pursuant to paragraph (4) of subdivision (d) of Section 21532.”). And as explained in the next section, the requirements to adopt a redistricting proposal and adjust the supervisorial boundaries in accordance with the law every ten years, even with the help of consultants, are not new. Local agencies have long been required to perform these activities.¹⁷⁴

Therefore, hiring consultants is not mandated by the state. The claimant, however, may request consultant costs for inclusion in the Parameters and Guidelines. If such a request is supported by substantial evidence in the record showing the activity to hire consultants is “reasonably necessary for the performance of the state-mandated program,” in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5, the activity may be considered and approved.

Elections Code section 21535 provides for a period of ineligibility to hold elected or appointed public offices after their term on the CRC has ended and imposes no requirements on the claimant or the CRC.

Accordingly, Elections Code sections 21530, 21533, and 21535 do not impose any requirements or state-mandated costs on the CRC or the claimant and, thus, any costs incurred to comply with these code sections are not eligible for reimbursement.

¹⁷⁰ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1815.

¹⁷¹ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1808.

¹⁷² *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1815-1816.

¹⁷³ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1812-1813.

¹⁷⁴ Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36; Elections Code section 21507 as added by Statutes 2014, chapter 873.

3. Many State-Mandated Activities Imposed by Elections Code Sections 21532 and 21534 Constitute a New Program or Higher Level of Service. However, the Requirements and Costs Imposed by Elections Code Sections 21531 and 21534(a), (c)(9), and (d)(1)-(3) to Adjust the Supervisorial Boundaries and Adopt a Redistricting Plan Every Ten Years, and Comply with the Public Records Act Are Not New and Do Not Impose a New Program or Higher Level of Service.

For a statute to be subject to subvention, the mandated activity must constitute a “program” that either a) carries out the governmental function of providing a service to the public; or b) imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹⁷⁵ A mandated activity is new when the statute in question is compared with the legal requirements in effect immediately before the enactment of the statute and the activity increases the level of service provided to the public.¹⁷⁶

- a. Elections Code Sections 21532 and 21534 Impose New Mandated Activities on the Claimant. However, the Requirements Imposed by Elections Code Sections 21531 and 21534(a), (c)(9), and (d)(1)-(3) to Adjust the Supervisorial Boundaries, Adopt a Redistricting Plan, and Comply with the Public Records Act Are Not New.

Under prior law, the claimant’s board of supervisors adjusted the district boundary lines every ten years.¹⁷⁷ As a result of the test claim statute, the claimant is now required to create the CRC to perform the supervisorial redistricting. The new mandated activities imposed on the claimant in forming the CRC are as follows:

- The county shall create a CRC no later than December 31, 2020, and in each year ending in the number zero thereafter.¹⁷⁸
- The elections official shall review the applications and eliminate applicants who do not meet the specified qualifications, select 60 of the most qualified applicants, publish the list of qualified applicants for 30 days, and create a subpool for each of the five existing supervisorial districts of the board.¹⁷⁹

¹⁷⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 [reaffirming *County of Los Angeles* (1987) 43 Cal.3d 46, 56]; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537-538.

¹⁷⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁷⁷ Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36.

¹⁷⁸ Elections Code section 21532(a).

¹⁷⁹ Elections Code section 21532(e)-(g).

- At a regularly scheduled meeting of the board, the Auditor-Controller conducts a random drawing to select one commissioner from each of the five subpools, then another random drawing from all of the remaining applicants to select three additional commissioners.¹⁸⁰
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC.¹⁸¹
- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.¹⁸²

These requirements mandated by Elections Code sections 21532 and 21534(c)(7) to create the CRC, to ensure a computerized database is available for redistricting, and to provide the public ready access to the redistricting data and computer software equivalent to what is available to the CRC, were not required by prior law and are newly imposed on the claimant itself and through the CRC since the county board of supervisors is required by Elections Code section 21534(c)(8) to fund and provide staff for the CRC.

However, some of the activities required to adopt a plan and adjust boundary lines of the supervisorial districts every ten years are the same as prior law and are *not* new. The test claim statute requires:

- In the year following the year in which the decennial federal census is taken, the CRC shall adjust the boundary lines of the supervisorial districts of the board in accordance with this chapter.¹⁸³
- The CRC shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:
 - (1) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or allowable by law.
 - (2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).
 - (3) Districts shall be geographically contiguous.
 - (4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible without violating the requirements of paragraphs (1) to (3), inclusive.

¹⁸⁰ Elections Code section 21532(g).

¹⁸¹ Elections Code section 21534(c)(7).

¹⁸² Elections Code section 21532(h).

¹⁸³ Elections Code section 21531.

(5) To the extent practicable, and where this does not conflict with paragraphs (1) to (4), inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.¹⁸⁴

- The CRC shall adopt a redistricting plan adjusting the boundaries of the supervisorial districts and shall file the plan with the county elections official before August 15 of the year following the year in which each decennial federal census is taken.¹⁸⁵
- All records of the CRC relating to redistricting, and all data considered by the CRC in drawing a draft map or the final map, are public records and subject to the Public Records Act.¹⁸⁶

Under prior law, the claimant was also required to adopt a redistricting proposal and adjust the district boundaries every ten years. Prior law required the following:

- Following each decennial federal census, and using that census as a basis, the board shall adjust the boundaries of any or all of the supervisorial districts of the county so that the supervisorial districts shall be as nearly equal in population as may be and shall comply with the applicable provisions of Section 10301 of Title 52 of the United States Code, as amended. In establishing the boundaries of the supervisorial districts the board may give consideration to the following factors: (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the supervisorial districts.¹⁸⁷
- Before adjusting the boundaries of a district pursuant to Section 21500, 21503, or 21504, or for any other reason, the board shall hold at least one public hearing on the proposal to adjust the boundaries of the district prior to the public hearing at which the board votes to approve or defeat the proposal.¹⁸⁸

Both prior law and the test claim statute require adjustment of the boundaries of the supervisorial districts in the year following the federal census. Both set forth criteria that must be met, but the stated criteria are somewhat different. In comparing them, the first requirement under prior law and the test claim statute is equality of population in each district which is required by *Reynolds v. Sims*¹⁸⁹ where the U.S. Supreme Court held that “the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators” and dilution of the vote “impairs basic constitutional rights under the Fourteenth Amendment.”¹⁹⁰ The

¹⁸⁴ Elections Code section 21534(a).

¹⁸⁵ Elections Code section 21534(d).

¹⁸⁶ Elections Code section 21534(c)(9).

¹⁸⁷ Elections Code section 21500 as added by Statutes 1994, chapter 920 and amended by Statutes 2015, chapter 732, section 36.

¹⁸⁸ Elections Code section 21507 as added by Statutes 2014, chapter 873.

¹⁸⁹ *Reynolds v. Sims* (1964) 377 U.S. 533.

¹⁹⁰ *Reynolds v. Sims* (1964) 377 U.S. 533, 566.

second requirement under prior law and the test claim statute is the same for both: compliance with the Voting Rights Act of 1965. The test claim statute includes three requirements — geographically contiguous districts; districting that respects the geographic integrity of cities, local neighborhoods, or local communities of interest; and geographically compact districts — similar to the prior law’s considerations of topography, geography, cohesiveness, contiguity, integrity, and compactness of territory, and communities of interest. Each of these, whether requirements or considerations, is a step toward ensuring compliance with the Voting Rights Act of 1965 and away from gerrymandering. Despite the small variance in language, both the prior law and the test claim statute set forth the process of redistricting using the mapping process to ensure compliance with the Voting Rights Act.

Thus, the requirements imposed by Elections Code sections 21531 and 21534(a) and (d)(1)-(3) to adjust the supervisorial boundaries and adopt a redistricting plan are not new.

In addition, the claimant was subject to the Public Records Act under prior law and, thus, the activity and costs to comply with the Public Records Act for the records of the CRC relating to redistricting, and all data considered by the CRC in drawing a draft map or the final map pursuant to Elections Code section 21534(c)(9), are not new. The Public Records Act defines “public records” broadly to include “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”¹⁹¹ Moreover, even if the Public Records Act requirements were found to be new, on June 3, 2014, before the test claim statute was enacted, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution to require local agencies “to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250).” Proposition 42 also amended section 6(a) of article XIII B of the California Constitution, by adding paragraph 4 to provide “that the Legislature may, but need not, provide a subvention of funds for . . . legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of section 3 of article I.” Thus, the costs would not be eligible for reimbursement in any event.

Nevertheless, the test claim statute mandates the CRC to conduct more hearings before adopting a redistricting plan than were required under prior law, and mandates some additional activities as part of the redistricting process.

Under prior law, the board of supervisors was required to have one public hearing before the hearing in which the board was scheduled to vote and adopt the proposal:

Before adjusting the boundaries of a district pursuant to Section 21601, 21603, or 21604, or for any other reason, the council shall hold at least one public hearing on the proposal to adjust the boundaries of the district prior to the public hearing at which the council votes to approve or defeat the proposal.¹⁹²

The test claim statute mandates the CRC, at the expense of the claimant, to conduct at least eight more hearings before adopting the final plan and map, and mandates the CRC to perform the following additional activities as part of the redistricting process:

¹⁹¹ Government Code section 6252 as last amended by Statutes 2015, chapter 537.

¹⁹² Elections Code section 21507 as added by Statutes 2014, chapter 873.

- Conduct at least seven public hearings before drafting a map, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.¹⁹³
- Post the draft map for public comment on the website of the County of Los Angeles and conduct at least two more public hearings on the draft map (one more than prior law).¹⁹⁴
- Comply with the Ralph M. Brown Act for these public hearings¹⁹⁵ and yet, notwithstanding the Ralph M. Brown Act, the CRC shall post the agenda for the public hearings at least seven days before the hearing.¹⁹⁶
- Establish and make available to the public a calendar of all public hearings.¹⁹⁷
- Arrange for the live translation of a hearing in an applicable language (defined as “a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county”) if a request for translation is made at least 24 hours before the hearing.¹⁹⁸
- Take steps to encourage county residents to participate in the redistricting public review process.¹⁹⁹
- Issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.²⁰⁰

As indicated above, the hearings conducted by the CRC are subject to the Ralph M. Brown Act. The Ralph M. Brown Act requires local government to ensure that their meetings are noticed and open to the public. The Act requires that an agenda be posted 72 hours prior to the meeting in a location that is freely accessible to members of the public and on the local agency’s website, and which includes a brief general description of each item of business to be transacted or discussed.²⁰¹

At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including

¹⁹³ Elections Code section 21534(c)(2).

¹⁹⁴ Elections Code section 21534(c)(3)(A)-(B).

¹⁹⁵ Elections Code section 21534(c)(1).

¹⁹⁶ Elections Code section 21534(c)(4)(B).

¹⁹⁷ Elections Code section 21534(c)(4)(A).

¹⁹⁸ Elections Code section 21534(c)(5).

¹⁹⁹ Elections Code section 21534(c)(6).

²⁰⁰ Elections Code section 21534(d)(4).

²⁰¹ Government Code section 54954.2.

items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.²⁰²

The Ralph M. Brown Act applies to “legislative bodies” which includes “[t]he governing body of a local agency or *any other local body created by state or federal statute.*”²⁰³ Thus, the Ralph M. Brown Act would have applied to the CRC whether or not the test claim statute stated as such. The Ralph M. Brown Act applied to all meetings held by the board of supervisors under prior law, including the public hearings on redistricting. But under prior law, the board of supervisors was only required to have one public hearing before the adoption of the redistricting plan.²⁰⁴ Although the requirements of the Ralph M. Brown Act are not new on their face, the test claim statute mandates at least eight more hearings than were required under prior law. The Ralph M. Brown Act requirements associated with those additional required hearings are new and are newly imposed on the claimant by the state since the county board of supervisors is required by Elections Code section 21534(c)(8) to fund and provide staff for the CRC.

Similarly, the CRC is required by the test claim statute to arrange for the live translation of a hearing in an applicable language if a request for translation is made at least 24 hours before the hearing. Under existing law, the Dymally-Alatorre Bilingual Services Act places requirements on state and local government to provide services in languages other than English.²⁰⁵ Specifically, local public agencies, “serving a substantial number of non-English-speaking people” are required to employ “qualified bilingual persons in public contact positions or as interpreters to assist those in such positions.”²⁰⁶ Local public agency is defined to include “a county, . . . or any board, commission or agency thereof, or any other local public agency.”²⁰⁷ Although the CRC is a separate entity from the claimant, it would still fall under the catch-all “any other local public agency” of the Dymally-Alatorre Bilingual Services Act. The Act does not specifically require translation services as set forth in the test claim statute for public hearings. Assuming, however, that the requirement to employ bilingual persons to act as

²⁰² Government Code section 54954.2(a)(1).

²⁰³ Government Code section 54952(a). Emphasis added.

²⁰⁴ Elections Code section 21507 as added by Statutes 2014, chapter 873.

²⁰⁵ Government Code section 7290 et seq.

²⁰⁶ Government Code section 7293.

²⁰⁷ Government Code section 54951.

interpreters indirectly requires translation services at public hearings, the CRC is only required to provide such services to the extent that the CRC serves a “substantial number” of non-English speakers. The Act does not quantify a “substantial number” for local public agencies, but instead leaves the agency to make that determination.²⁰⁸ The Act does provide that state agencies must provide services in languages other than English when the non-English speakers comprise five per cent or more of the population being served.²⁰⁹ Even if this were applicable to the CRC, the test claim statute requires “the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing” where “an ‘applicable language’ means a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county.”²¹⁰ Although the requirements of the Dymally-Alatorre Bilingual Services Act are not new on their face, the test claim statute requires at least eight more hearings than were required under prior law and as part of those additional hearings, the CRC is required to arrange for the live translation of a hearing in an applicable language if a request for translation is made at least 24 hours before the hearing. These requirements are new and are newly mandated on the claimant since the county board of supervisors is required by Elections Code section 21534(c)(8) to fund and provide staff for the CRC.

Accordingly, Elections Code sections 21532 and 21534, as added by the test claim statute, impose the following new mandated activities on the claimant:

- The county shall create a CRC no later than December 31, 2020, and in each year ending in the number zero thereafter.²¹¹
- The elections official shall review the applications and eliminate applicants who do not meet the specified qualifications, select 60 of the most qualified applicants, publish the list of qualified applicants for 30 days, and create a subpool for each of the five existing supervisorial districts of the board.²¹²
- At a regularly scheduled meeting of the board, the Auditor-Controller conducts a random drawing to select one commissioner from each of the five subpools, then another random drawing from all of the remaining applicants to select three additional commissioners.²¹³
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the

²⁰⁸ Government Code sections 7293 and 7295.

²⁰⁹ Government Code section 7596.2.

²¹⁰ Government Code section 21534(c)(5).

²¹¹ Elections Code section 21532(a).

²¹² Elections Code section 21532(e)-(g).

²¹³ Elections Code section 21532(g).

public ready access to redistricting data and computer software equivalent to what is available to the CRC.²¹⁴

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities mandated by Elections Code sections 21532 and 21534 are newly imposed on the claimant:

- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.²¹⁵
- Conduct at least seven public hearings before drafting a map, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.²¹⁶
- Post the draft map for public comment on the website of the County of Los Angeles and conduct one public hearing on the draft map (in addition to the one hearing required under prior law, which is not reimbursable).²¹⁷
- Comply with the Ralph M. Brown Act for these public hearings.²¹⁸ This includes posting an agenda seven days prior to the hearing in a location that is freely accessible to members of the public and on the website, and which includes a brief general description of each item of business to be transacted or discussed in accordance with Government Code section 54954.2.
- Establish and make available to the public a calendar of all public hearings.²¹⁹
- Arrange for the live translation of a hearing in an applicable language (defined as “a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to three percent of the total voting age residents of the county”) if a request for translation is made at least 24 hours before the hearing.²²⁰
- Take steps to encourage county residents to participate in the redistricting public review process.²²¹

²¹⁴ Elections Code section 21534(c)(7).

²¹⁵ Elections Code section 21532(h).

²¹⁶ Elections Code section 21534(c)(2).

²¹⁷ Elections Code section 21534(c)(3)(A)-(B).

²¹⁸ Elections Code sections 21534(c)(1); 21534(c)(4)(B).

²¹⁹ Elections Code section 21534(c)(4)(A).

²²⁰ Elections Code section 21534(c)(5).

²²¹ Elections Code section 21534(c)(6).

- Issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.²²²

b. The New Mandated Activities Imposed by Elections Code Sections 21532 and 21534 Are Unique to Government and Provide a Service to the Public and Therefore Impose a New Program or Higher Level of Service.

As set forth above, the test claim statute imposes new activities on the claimant necessary to create, staff, and fund the CRC. For the test claim statute to constitute a new program or higher level of service, it must either a) carry out the governmental function of providing a service to the public; or b) or impose unique requirements on local government that do not apply generally to all residents and entities in the state.²²³ The term “program,” therefore, has “two alternative meanings,” and “only one of these [alternatives] is necessary to trigger reimbursement.”²²⁴

In this case, the test claim statute meets both alternative tests. The test claim statute carries out the government function of redistricting and requires an independent redistricting commission. The purpose of redistricting is protection of the voters’ rights under the U.S. Constitution, the California Constitution, and the federal and state Voting Rights Acts. Redistricting by the CRC serves the county residents by ensuring fair representation and that their vote is not diluted to favor any particular group or political party.²²⁵ Further, the test claim statute only applies to the County of Los Angeles, a political subdivision of the State of California. It does not apply to any other residents or entities in the state. Thus, the test claim statute satisfies the requirement of being a new program or higher level of service.

Finance asserts that the test claim statute does not impose a new program or higher level of service, but rather merely increased costs for redistricting, an activity for which the claimant has always been responsible. Finance relies on *City of Anaheim v. State of California*,²²⁶ holding increased costs alone do not result in a reimbursable state mandate and *San Diego Unified School District v. Commission on State Mandates*,²²⁷ holding reimbursement is not required if a statute merely implements a change that increases costs.²²⁸ Finance’s reliance on these cases is misplaced.

In *City of Anaheim v. State of California*, the city sought to obtain reimbursement from a change in law that required the Public Employees’ Retirement System (PERS) to increase pension

²²² Elections Code section 21534(d)(4).

²²³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 [reaffirming the test set forth in *County of Los Angeles* (1987) 43 Cal.3d 46, 56].

²²⁴ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

²²⁵ Exhibit F, Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading of Senate Bill 958 (2015-2016 Reg. Sess.), August 30, 2016, page 5.

²²⁶ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.

²²⁷ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

²²⁸ Exhibit B, Finance’s Comments on the Test Claim, filed December 28, 2020, pages 1-2.

payments to retired public employees. The city claimed that it had to contribute to the fund at a higher rate as a result of PERS' compliance with the new law. The city's case failed because the change in law did not impose any mandated activities upon the city and the city experienced only increased costs in the absence of having to provide a new program or higher level of service.²²⁹ Here, the test claim statute imposes a number of new mandated activities on the claimant as set forth above. There was no requirement in prior law that the claimant create the CRC charged with redistricting.

In *San Diego Unified School District v. Commission on State Mandates*, the school district sought to obtain reimbursement for the increased costs to comply with the requirements for mandatory and discretionary expulsion of students.²³⁰ The court explained "that simply because a state law or order may *increase the costs* borne by local government *in providing services*, this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting 'service to the public' under article XIII B, section 6, and Government Code section 17514."²³¹ With regard to discretionary expulsions, the court held that the statutes merely implemented federal law and, to the extent that the state added requirements, the costs to comply with them were de minimis and should be considered part of the underlying federal mandate.²³² *San Diego Unified* does not apply here. The test claim statute imposes a new state mandated program on the claimant to establish and fund an independent redistricting commission, which provides a service to the public, as explained above, by ensuring fair representation and that a vote is not diluted to favor any particular group or political party.

Accordingly, the new activities mandated by Elections Code Sections 21532 and 21534 constitute a new program or higher level of service.

4. The Activities Mandated by Elections Code Section 21534(c)(1) and (c)(4)(B) to Comply with the Brown Act Do Not Impose Costs Mandated by the State Pursuant to Article XIII B, Section 6(a)(4) of the California Constitution. The Remaining New Activities Mandated by Elections Code Section 21532 and 21534 Impose Increased Costs Mandated by the State Pursuant to Article XIII B, Section 6, and Government Code Section 17514.

Government Code section 17514 defines "costs mandated by the state" as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim shall be made nor shall any payment be made unless the claim exceeds \$1,000.

²²⁹ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1482.

²³⁰ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 866.

²³¹ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877. Emphasis in the original.

²³² *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 889-890.

The claimant claims costs of \$35,533.18 “related to planning the CRC’s application and selection process” and \$1,268.91 for having “designed and developed the CRC application process, created internal working documents, and designed and set up a CRC website.”²³³

The application and selection process of the CRC is a requirement mandated on the claimant by the test claim statute. The costs incurred by this requirement far exceed the required \$1,000, and are supported by substantial evidence in the record.

Article XIII B, section 6(a)(4) of the California Constitution states, however, that:

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)]

(4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.

And, Article I, section 3(b)(7) provides:

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the *California Public Records Act* (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the *Ralph M. Brown Act* (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.²³⁴

The Ralph M. Brown Act applies to all local agencies and “any other local body created by state statute,” and therefore applies to the CRC.²³⁵ Therefore, costs incurred to comply with the California Public Records Act and the Brown Act are specifically exempted from the subvention requirement by the California Constitution.

Therefore, there are *no* costs mandated by the state pursuant to article XIII B, section 6(a)(4), and reimbursement is not required for the following activities required by Elections Code sections 21534(c)(1); 21534(c)(4)(B):

²³³ Exhibit A, Test Claim, filed June 26, 2020, page 20 and pages 28-30 (Declaration of Albert Navas, Departmental Finance Manager, Registrar-Recorder/County Clerk).

²³⁴ Emphasis added.

²³⁵ Government Code section 54952(a).

- Comply with the Ralph M. Brown Act when conducting the additional public hearings.²³⁶ This includes posting an agenda seven days prior to the hearing in a location that is freely accessible to members of the public and on the website, and which includes a brief general description of each item of business to be transacted or discussed in accordance with Government Code section 54954.2.

Accordingly, the Commission finds that the following new state-mandated activities required by Elections Code sections 21532 and 21534 impose increased costs mandated by the state pursuant to article XIII B, section 6 and Government Code section 17514:

- The county shall create a CRC no later than December 31, 2020, and in each year ending in the number zero thereafter.²³⁷
- The elections official shall review the applications and eliminate applicants who do not meet the specified qualifications, select 60 of the most qualified applicants, publish the list of qualified applicants for 30 days, and create a subpool for each of the five existing supervisorial districts of the board.²³⁸
- At a regularly scheduled meeting of the board, the Auditor-Controller conducts a random drawing to select one commissioner from each of the five subpools, then another random drawing from all of the remaining applicants to select three additional commissioners.²³⁹
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC.²⁴⁰

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities mandated by Elections Code sections 21532 and 21534 impose increased costs mandated by the state on the claimant:

- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.²⁴¹
- Conduct at least seven public hearings before drafting a map, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.²⁴²

²³⁶ Elections Code sections 21534(c)(1); 21534(c)(4)(B).

²³⁷ Elections Code section 21532(a).

²³⁸ Elections Code section 21532(e)-(g).

²³⁹ Elections Code section 21532(g).

²⁴⁰ Elections Code section 21534(c)(7).

²⁴¹ Elections Code section 21532(h).

²⁴² Elections Code section 21534(c)(2).

- Post the draft map for public comment on the website of the County of Los Angeles²⁴³ and conduct one public hearing on the draft map (in addition to the one hearing required under prior law, which is not reimbursable).²⁴⁴
- Establish and make available to the public a calendar of all public hearings.²⁴⁵
- Arrange for the live translation of a hearing in an applicable language (defined as “a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county”) if a request for translation is made at least 24 hours before the hearing.²⁴⁶
- Take steps to encourage county residents to participate in the redistricting public review process.²⁴⁷
- Issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.²⁴⁸

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this Test Claim and finds that Elections Code sections 21532 and 21534 as added by the test claim statute impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following activities:

- The county shall create a CRC no later than December 31, 2020, and in each year ending in the number zero thereafter.²⁴⁹
- The elections official shall review the applications and eliminate applicants who do not meet the specified qualifications, select 60 of the most qualified applicants, publish the list of qualified applicants for 30 days, and create a subpool for each of the five existing supervisorial districts of the board.²⁵⁰

²⁴³ Elections Code section 21534(c)(3)(A).

²⁴⁴ Elections Code section 21534(c)(3)(B).

²⁴⁵ Elections Code section 21534(c)(4)(A).

²⁴⁶ Elections Code section 21534(c)(5).

²⁴⁷ Elections Code section 21534(c)(6).

²⁴⁸ Elections Code section 21534(d)(4).

²⁴⁹ Elections Code section 21532(a).

²⁵⁰ Elections Code section 21532(e)-(g).

- At a regularly scheduled meeting of the board, the Auditor-Controller conducts a random drawing to select one commissioner from each of the five subpools, then another random drawing from all of the remaining applicants to select three additional commissioners.²⁵¹
- The board shall take all steps necessary to ensure a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the CRC.²⁵²

In addition, based on Elections Code section 21534(c)(8), which requires the claimant to provide reasonable funding and staffing to the CRC, the following activities mandated by Elections Code sections 21532 and 21534 impose increased costs mandated by the state on the claimant:

- The eight selected commissioners shall review the remaining names in the subpools of applicants and shall appoint six additional applicants to the CRC.²⁵³
- Conduct at least seven public hearings before drafting a map, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.²⁵⁴
- Post the draft map for public comment on the website of the County of Los Angeles and conduct one public hearing on the draft map (in addition to the one hearing required under prior law, which is not reimbursable).²⁵⁵
- Establish and make available to the public a calendar of all public hearings.²⁵⁶
- Arrange for the live translation of a hearing in an applicable language (defined as “a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county”) if a request for translation is made at least 24 hours before the hearing.²⁵⁷
- Take steps to encourage county residents to participate in the redistricting public review process.²⁵⁸

²⁵¹ Elections Code section 21532(g).

²⁵² Elections Code section 21534(c)(7).

²⁵³ Elections Code section 21532(h).

²⁵⁴ Elections Code section 21534(c)(2).

²⁵⁵ Elections Code section 21534(c)(3)(A)-(B).

²⁵⁶ Elections Code section 21534(c)(4)(A).

²⁵⁷ Elections Code section 21534(c)(5).

²⁵⁸ Elections Code section 21534(c)(6).

- Issue a report that explains the basis on which the CRC made its decisions in achieving compliance with the redistricting criteria required to comply with the Voting Rights Act.²⁵⁹

All other code sections added by the test claim statute and activities alleged to be mandated in the Test Claim are denied.

²⁵⁹ Elections Code section 21534(d)(4).

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 June 8, 2021, I served the:

- **Decision adopted May 28, 2021**

County of Los Angeles Citizens Redistricting Commission, 19-TC-04
Elections Code Sections 21530, 21531, 21532, 21533, 21534, and 21535 as added by
Statutes 2016, Chapter 781 (SB 958)
County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 8, 2021 at Sacramento, California.



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Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/8/21

Claim Number: 19-TC-04

Matter: County of Los Angeles Citizens Redistricting Commission

Claimant: County of Los Angeles

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, § 1181.3.)

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