



County of Sacramento

RECEIVED
October 28, 2013
COMMISSION ON
STATE MANDATES

October 28, 2013

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

Dear Ms. Halsey:

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

Dear Ms. Halsey,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Alice Jarboe, Claimant Representative
Assistant Registrar of Voters
Sacramento County

cc: Julie Valverde, Sacramento County Auditor/Controller

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

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