

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: via Zoom
December 3, 2021

Present: Member Gayle Miller, Chairperson
Representative of the Director of the Department of Finance
Member Yvette Stowers
Representative of the State Controller, Vice Chairperson
Member Lee Adams
County Supervisor
Member Natalie Kuffel
Representative of the Director of the Office of Planning and Research
Member Renee Nash
School District Board Member
Member Sarah Olsen
Public Member
Member Spencer Walker
Representative of the State Treasurer

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Chairperson Miller called the meeting to order at 10:04 a.m. Chairperson Miller welcomed new Member Renee Nash, board member of the Eureka Union School District, to the Commission and announced Member Nash's education and experience. Member Nash thanked Chairperson Miller for her warm introduction. Executive Director Heather Halsey called the roll. Members Adams, Kuffel, Miller, Nash, Olsen, Stowers, and Walker all indicated that they were present.

APPROVAL OF MINUTES

Chairperson Miller asked if there were any objections or corrections to the September 24, 2021 minutes. Member Olsen made a motion to adopt the minutes. With a second by Member Adams, the Commission voted to adopt the September 24, 2021 hearing minutes by a vote of 6-0 with Member Nash abstaining.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

Chairperson Miller asked if there was any public comment. There was no response.

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

Executive Director Halsey swore in the parties and witnesses participating in the Article 7 portion of the hearing.

CONSENT CALENDAR

INFORMATIONAL HEARINGS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 8 (action)

STATEWIDE COST ESTIMATES

Item 6* *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21

Los Angeles Regional Water Quality Control Board Order No. 01-182;
Permit CAS004001, Part 4Fc3

Executive Director Halsey stated that Item 6 was proposed for consent and asked if there were any objections to the Consent Calendar. There was no response.

Member Olsen made a motion to adopt the Consent Calendar. Member Walker seconded the motion. The Commission voted to adopt the Consent Calendar by a vote of 7-0.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)

Item 2 Appeal of Executive Director Decisions

There were no appeals to consider for this hearing.

TEST CLAIMS

Item 3 *Extended Conditional Voter Registration*, 20-TC-02

Elections Code Section 2170 as Amended by Statutes 2019, Chapter 565 (SB 72)

County of San Diego, Claimant

Commission Counsel Elizabeth McGinnis presented this item and recommended that the Commission adopt the Proposed Decision to deny this Test Claim.

Christina Snider and Cynthia Paes appeared on behalf of the claimants. Ms. Snider stated that Ms. Paes had not turned on her video for the swearing in. Ms. Paes turned on her video, stood, and was sworn in. Chris Hill appeared on behalf of the Department of Finance.

Following statements by Ms. Snider, Mr. Hill, and discussion between Chairperson Miller, Chief Legal Counsel Camille Shelton, Member Olsen, Ms. Snider, Commission Counsel McGinnis, and Member Adams, Chairperson Miller made a motion to adopt the staff recommendation. With a second by Member Walker, the Commission voted to adopt the staff recommendation by a vote of 5-2 with Member Adams and Member Olsen voting no.

PARAMETERS AND GUIDELINES

Item 4 *County of Los Angeles Citizens Redistricting Commission*, 19-TC-04

Elections Code Sections 21532(a) and (e)-(h) and 21534(c)(2), (c)(3)(A)-(B), (c)(4)(A), (c)(5)-(8), and (d)(4); Statutes 2016, Chapter 781 (SB 958)

County of Los Angeles, Claimant

Senior Commission Counsel Juliana Gmur presented this item and recommended that the Commission adopt the Proposed Decision and Parameters and Guidelines.

Fernando Lemus and Eva Chu appeared on behalf of the claimant. Assistant Executive Director Heidi Palchik and Chairperson Miller asked if Mr. Lemus and Ms. Chu had been sworn in and Executive Director Halsey stated that they were not. Mr. Lemus and Ms. Chu turned on their video, stood, and were sworn in. Chris Hill appeared on behalf of the Department of Finance.

Following statements by Mr. Lemus, Ms. Chu, and Mr. Hill, and discussion between Senior Commission Counsel Gmur, Ms. Chu, and Chief Legal Counsel Shelton, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Stowers, the Commission voted to adopt the staff recommendation by a vote of 7-0.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 2 (info/action)

- Item 5 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

Executive Director Halsey stated that no SB 1033 applications have been filed.

REPORTS

- Item 7 Legislative Update (info)

Program Analyst Jill Magee presented this item.

- Item 8 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Shelton presented this item.

- Item 9 Executive Director: Proposed Strategic Plan, Workload Update, and Tentative Agenda Items for the January 2022 and March 2022 Meetings (info/action)

Executive Director Halsey presented and recommended that the Commission adopt the Proposed 2022-2023 Strategic Plan. Chairperson Olsen made a motion to adopt the staff recommendation. With a second by Member Walker, the Commission voted to adopt the staff recommendation by a vote of 7-0. Executive Director Halsey continued presenting this item and described the Commission's pending caseload.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (info/action)

The Commission adjourned into closed executive session at 11:31 a.m., pursuant to Government Code section 11126(e). The Commission met in closed session to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e):

Trial Courts:

1. *County of San Diego v. Commission on State Mandates, Department of Finance, State Controller*
San Diego County Superior Court, Case No. 37-2020-00009631-CU-WM-CTL
(*Youth Offender Parole Hearings (17-TC-29)*)

Courts of Appeal:

1. ***On Remand from the Third District Court of Appeal, Case No. C070357***
State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al. (petition and cross-petition)
Third District Court of Appeal, Case No. C092139
Sacramento County Superior Court Case No. 34-2010-80000604
[*Discharge of Stormwater Runoff*, Order No. R9-207-000 (07-TC-09), California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g, F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
2. *City of San Diego v. Commission on State Mandates, State Water Resources Control Board, Department of Finance*
Third District Court of Appeal, Case No. C092800
Sacramento County Superior Court, Case No. 2019-80003169
(*Lead Sampling in Schools: Public Water System No. 3710020 (17-TC-03)*)

California Supreme Court:

1. *Coast Community College District, et al. v. Commission on State Mandates*, California Supreme Court, Case No. S262663
(Petition for Review Filed June 10, 2010)
Third District Court of Appeal, Case No. C080349
Sacramento County Superior Court, Case No. 34-2014-80001842
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022,

51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

B. POTENTIAL LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

C. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1).

RECONVENE IN PUBLIC SESSION

At 11:39 a.m., the Commission reconvened in open session.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Miller reported that the Commission met in closed executive session pursuant to Government Code section 11126(e). The Commission conferred with and received advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and conferred with and received advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

ADJOURNMENT

Hearing no further business, Chairperson Miller requested a motion to adjourn the meeting. Member Nash moved to adjourn the meeting. Chairperson Miller seconded the motion. The Commission adopted the motion to adjourn the December 3, 2021 meeting by a vote of 7-0 at 11:40 a.m.



Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC MEETING

FRIDAY, DECEMBER 3, 2021

10:04 A.M.

MEETING HELD

VIA ZOOM

A VIDEO COMMUNICATIONS PLATFORM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

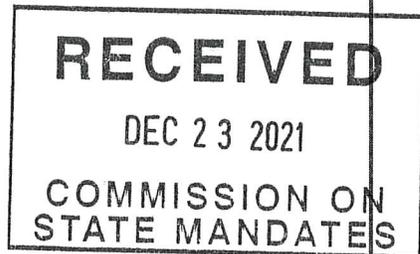
ORIGINAL

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A P P E A R A N C E S

(All attendees appeared remotely, via Zoom.)

COMMISSIONERS PRESENT

GAYLE MILLER
Representative for KEELY BOSLER, Director
Department of Finance
(Chair of the Commission)

YVETTE STOWERS
Representative for BETTY T. YEE
State Controller
(Vice Chair of the Commission)

SPENCER WALKER
Representative for FIONA MA
State Treasurer

NATALIE KUFFEL
Representative for SAMUEL ASSEFA, Director
Office of Planning & Research

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

SARAH OLSEN
Public Member

RENEE C. NASH
Eureka Union School District
School District Board Member

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COMMISSION STAFF

JULIANA GMUR
Senior Commission Counsel

HEATHER A. HALSEY
Executive Director

JILL MAGEE
Program Analyst

ELIZABETH MCGINNIS
Commission Counsel

1 *A P P E A R A N C E S C O N T I N U E D*

2

3 *COMMISSION STAFF CONTINUED*

4 HEIDI PALCHIK
Assistant Executive Director

5 CAMILLE N. SHELTON
6 Chief Legal Counsel

7

8 *PUBLIC PARTICIPANTS*

9 EVA CHU
County of Los Angeles

10 CHRIS HILL
11 Department of Finance

12 FERNANDO LEMUS
County of Los Angeles

13 CYNTHIA PAES
14 City of San Diego

15 CHRISTINA SNIDER
16 City of San Diego

17 ---o0o---

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1 FRIDAY, DECEMBER 3, 2021, 10:04 A.M.

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3 CHAIRPERSON MILLER: Good morning, everyone, and
4 sorry for our late start. I had internet issues this
5 morning. It's 10:04, and the meeting on the Commission
6 on State Mandates will come to order.

7 In response to the COVID-19 pandemic, as we all
8 know, the Executive Order N-29-20 temporarily suspended,
9 on an emergency basis, pursuant to the California
10 Government Code section 8571, certain requirements for
11 public meetings until September 30th, 2021. And then,
12 further amended by Chapter 165, the Bagley-Keene Open
13 Meeting Act extended the suspension of these
14 requirements until January 31st, 2022. Accordingly,
15 requiring physical presence of board members at meetings
16 and providing a physical space for members of the public
17 to observe and participate have been suspended until
18 January 31st, 2022, so long as we have made it possible,
19 like we have here, for members of the public to observe
20 and address the meeting remotely.

21 And the Commission is committed, obviously, to
22 ensuring that our public meetings are accessible to the
23 public and that the public has the opportunity to
24 observe the meeting and participate by providing verbal
25 and written comment on all Commission matters. During

1 these times, as we explore new ways of doing business,
2 we thank you for your patience, as we -- I proved by
3 being late.

4 Please note that the materials for today's meeting,
5 including the notice, agenda, and witness list are all
6 available on our website. And that's www.csm.ca.gov
7 under the "Hearings" tab.

8 And we're thrilled to today welcome our newest
9 Commission member, Renee Nash, board member of the
10 Eureka Union School District. Thank you so much for
11 being here. We're thrilled. Ms. Nash began her career
12 as a newspaper reporter after graduating from
13 UC Davis -- "Go Aggies" -- with a degree in history.

14 She spent several years working for daily
15 newspapers in Northern California. And Ms. Nash went to
16 law school at the McGeorge School of Law in Sacramento
17 where she graduated with great distinction and was
18 admitted to the Order of the Coif.

19 Ms. Nash retired from the full-time practice of law
20 in 2018 to focus on her true passion, and we're so
21 grateful for that: Public education. And her time is
22 focused -- improving public education at both the local
23 and state level. She is a passionate advocate for
24 public education, including ensuring adequate funding
25 and serving the needs of all students in this state.

1 Welcome, Ms. Nash.

2 Do you want to say hi to the Commission members?

3 MEMBER NASH: I'm just honored to be here and look
4 forward to serving with all of you. So thank you very
5 much for that warm introduction.

6 CHAIRPERSON MILLER: Great. Thank you so much.

7 Ms. Halsey, will you please call the role to
8 establish a quorum.

9 MS. HALSEY: Sure. Mr. Adams.

10 MEMBER ADAMS: Here.

11 MS. HALSEY: Ms. Kuffel.

12 MEMBER KUFFEL: Here.

13 MS. HALSEY: Ms. Miller.

14 CHAIRPERSON MILLER: Here.

15 MS. HALSEY: Ms. Nash.

16 MEMBER NASH: Here.

17 MS. HALSEY: Ms. Olsen.

18 MEMBER OLSEN: Here.

19 MS. HALSEY: Ms. Stowers.

20 MEMBER STOWERS: Here.

21 MS. HALSEY: Mr. Walker.

22 MEMBER WALKER: Here.

23 CHAIRPERSON MILLER: Great. Thank you very much.

24 We have a quorum.

25 Next is Item Number 1. Are there any objections or

1 corrections to our September 24th, 2021, minutes?

2 MEMBER OLSEN: Move adoption.

3 CHAIRPERSON MILLER: Thank you, Ms. Olsen.

4 Any public comment on this matter?

5 MEMBER ADAMS: I would second, Madam Chair.

6 CHAIRPERSON MILLER: Thank you, Mr. Adams.

7 We have a motion by Ms. Olsen; a second by

8 Mr. Adams.

9 We -- may we please have a roll call vote on this,
10 Ms. Halsey.

11 MS. HALSEY: Mr. Adams.

12 MEMBER ADAMS: Aye.

13 MS. HALSEY: Ms. Kuffel.

14 MEMBER KUFFEL: Aye.

15 MS. HALSEY: Ms. Miller.

16 CHAIRPERSON MILLER: Aye.

17 MS. HALSEY: Ms. Nash.

18 MEMBER NASH: Abstain.

19 MS. HALSEY: Ms. Olsen.

20 MEMBER OLSEN: Aye.

21 MS. HALSEY: Ms. Stowers.

22 MEMBER STOWERS: Aye.

23 MS. HALSEY: Mr. Walker.

24 MEMBER WALKER: Aye.

25 MS. HALSEY: Thank you.

1 CHAIRPERSON MILLER: Great. Our minutes are
2 adopted. Thank you very much.

3 We'll now move to public comment, Ms. Halsey.

4 MS. HALSEY: Now we would take up public comment
5 for matters that are not on the agenda. Please note
6 that the Commission cannot take action on items not on
7 the agenda. However -- sorry. However, it can schedule
8 issues raised by the public for consideration at future
9 hearings.

10 CHAIRPERSON MILLER: Great. Thank you very much.

11 Is there any public comment? Anyone wishing to
12 comment on any matter not on the agenda?

13 Ms. Palchik, anyone raising their hand, that you
14 can see?

15 MS. PALCHIK: I see none, Madam Chair.

16 CHAIRPERSON MILLER: Great. Thank you very much.

17 We will now -- seeing no public comment, we will
18 move on to the next item, please.

19 MS. HALSEY: Next item is the swearing in. Will
20 the parties and witnesses for Items 3 and 4 please turn
21 on your video and unmute your microphones and please
22 rise.

23 (Parties/witnesses stood to be sworn or
24 affirmed.)

25 MS. HALSEY: Thank you. Please be seated and turn

1 off your video and mute your microphone.

2 Item 6 is proposed for consent.

3 Are there any objections to the proposed consent
4 calendar? Is there -- are there any objections to the
5 proposed consent calendar? Sorry.

6 CHAIRPERSON MILLER: It's okay.

7 (No response.)

8 CHAIRPERSON MILLER: Great. Thank you very much.

9 Is there a motion for the proposed consent
10 calendar, please?

11 MEMBER OLSEN: So moved.

12 CHAIRPERSON MILLER: Thank you, Ms. Olsen.

13 MEMBER WALKER: Second.

14 CHAIRPERSON MILLER: Thank you, Mr. Walker.

15 Any public comment on our consent calendar?

16 (No response.)

17 CHAIRPERSON MILLER: No? And moved by Ms. Olsen;
18 seconded by Mr. Walker.

19 Ms. Halsey, will you call the roll, please.

20 MS. HALSEY: Sure. Mr. Adams.

21 MEMBER ADAMS: Aye.

22 MS. HALSEY: Ms. Kuffel.

23 MEMBER KUFFEL: Aye.

24 MS. HALSEY: Ms. Miller.

25 CHAIRPERSON MILLER: Aye.

1 MS. HALSEY: Ms. Nash.

2 MEMBER NASH: Aye.

3 MS. HALSEY: Ms. Olsen.

4 MEMBER OLSEN: Aye.

5 MS. HALSEY: Ms. Stowers.

6 MEMBER STOWERS: Aye.

7 MS. HALSEY: Mr. Walker.

8 MEMBER WALKER: Aye.

9 CHAIRPERSON MILLER: Thank you very much. Our
10 consent calendar is approved.

11 Next is Item 4, please, Ms. Halsey.

12 MS. HALSEY: Next is Item 3.

13 Ms. McGinnis will please turn on her video and
14 unmute her microphone and present a Proposed Decision on
15 a Test Claim on Extended Conditional Voter Registration.

16 MS. MCGINNIS: Good morning. This test claim
17 involves a statute that amended Elections Code 2170 by
18 expanding the locations at which county elections
19 officials provide conditional voter registration and
20 related provisional voting.

21 Staff finds that the test claim statute does not
22 mandate a new program or higher level of service on
23 county elections officials, and, thus, does not impose a
24 reimbursable state-mandated program.

25 The requirement to provide conditional voter

1 registration and related provisional voting at vote
2 centers and satellite county elections offices is not
3 mandated by the state. State law does not require
4 county elections officials to participate in the Voter's
5 Choice Act and have vote centers or to establish
6 satellite offices.

7 Furthermore, under the test claim statute, county
8 elections officials are simply performing the same
9 activities to provide conditional registration and
10 provisional voting to any voter that requests them
11 during the same time period as required under
12 preexisting law. No new activities are required.

13 In addition, the costs incurred to conduct
14 elections, including those to provide conditional voter
15 registration and provisional voting, have always been
16 borne by local elections officials, and these costs have
17 not been shifted by the State.

18 Accordingly, staff recommends that the Commission
19 adopt the proposed decision to deny this test claim, and
20 authorize staff to make any technical, nonsubstantive
21 changes following the hearing.

22 Thank you.

23 MS. HALSEY: At this time, we invite the parties
24 and witnesses for Item 3 to please turn on their video
25 and unmute their microphones.

1 CHAIRPERSON MILLER: Thank you. And thank you for
2 that, Ms. McGinnis.

3 For the parties and witnesses, if you could please
4 state your name for the record. Ms. Snider and
5 Ms. Paes.

6 MS. PAES: "Paes."

7 CHAIRPERSON MILLER: "Paes." I'm so sorry.

8 If you could please state your names for the
9 record.

10 MS. SNIDER: Yes. I am Christina Snider, senior
11 deputy county counsel for the County of San Diego.

12 CHAIRPERSON MILLER: Thank you.

13 MS. PAES: And I am Cynthia Paes, the registrar for
14 the County of San Diego.

15 CHAIRPERSON MILLER: Great. Thank you both for
16 being here.

17 Would you like -- would you like to begin?
18 Ms. Snider?

19 MS. SNIDER: Sure. Sure.

20 And just a quick administrative matter: I think
21 Ms. Paes didn't realize she needed to turn on her video,
22 so if she needs to be sworn in again and actually do the
23 stand, she can do that now, so we can just get it out of
24 the way before she speaks.

25 CHAIRPERSON MILLER: Okay. Great.

1 MS. HALSEY: Yes. We do need to do that. So thank
2 you so much for drawing that to our attention.

3 (Cynthia Paes stood to be sworn or
4 affirmed.)

5 MS. HALSEY: Thank you. Please be seated.

6 CHAIRPERSON MILLER: Thank you.

7 Ms. Snider, would you like to begin, or would
8 Ms. Paes like to begin?

9 MS. SNIDER: I will start.

10 CHAIRPERSON MILLER: Thank you.

11 MS. SNIDER: Thank you.

12 So this is an unusual test claim, perhaps, because
13 there is not a lot of money at stake. I think we can
14 all see that. Just our fiscal statewide estimate was
15 between \$300,000 and \$700,000 a year, and that's only
16 for the counties that have not implemented Voter Choice
17 Act. We are not talking about a lot of money, I realize
18 that.

19 But there is a unique and -- maybe not unique.
20 There is an important point of law that the Commission
21 is looking at here, that I think just can't be
22 understated, because this could impact other opinions in
23 the future where there's a lot more money at stake.
24 There are way more significant activities and
25 requirements that we're dealing with. This is a really

1 important nuance, but it's a very important point of
2 law. And that is, what exactly is a higher level of
3 service?

4 And I think it's a big question, and I know that
5 the Commission deals with these sort of thoughtful,
6 nebulous questions often. It seems like every time I'm
7 here, I'm digging into cases. You know, like 15
8 different cases, none of which really deal with the one
9 issue, and they all kind of dance around it, and it's
10 all very nebulous and ambiguous. And I get that.

11 But I think "what is a higher level of service" is
12 critically important, because there will be a test claim
13 down road where there are millions of dollars at stake.
14 And I know the Commission doesn't consider its past
15 opinions to be precedential, but the Commission does
16 look back at the past rationale for obvious reasons, and
17 say, "Well, this is how we thought about it earlier, so
18 what are we going to do in the future."

19 So it's not binding. I realize that. But it's
20 still -- even in this opinion, the Commission referred
21 back to a 2015 opinion dealing with voting and used the
22 rationale of the 2015 opinion. So it's important to get
23 this right -- whatever "right" may be in the
24 Commission's mind -- but it is important to get this
25 right now.

1 What is a higher level of service? And so that's
2 really the legal question we're faced with. How it
3 actually applies to the facts, we can deal with next.
4 But, first, let's talk about, what is a higher level of
5 service?

6 So -- and I will -- I have to say, though, I mean,
7 we could argue this is also a new program, but I'm not
8 going to do that today. We have done that in our
9 briefs. You know, we can rest on that to the extent we
10 can read it later, but let's just talk about higher
11 level of service.

12 So the Supreme Court in the San Diego Unified case
13 said -- and I have to scroll down. I'm sorry.

14 (As read), "A higher level of service exists when
15 the requirements [in the law] are new in comparison with
16 the preexisting scheme, in view of the circumstance that
17 they did not exist prior to the enactment of [the law].
18 And, number two, the requirements were intended to
19 provide an enhanced service to the public," is what the
20 Supreme Court had said.

21 In that case, the Supreme Court also said that a
22 higher level of service is an increase in the actual
23 level or quality of services provided.

24 Now, the Commission, in its proposed decision, has
25 referenced the word "activities" a lot. These are not

1 new activities that the -- the registrars already had to
2 provide CVR. The activity was already there.
3 Registrars across the state already had to do it. I
4 don't think that's the most important word. The word
5 that the Supreme Court has used to explain what a higher
6 level of service is the word "requirements." What are
7 the requirements? It may seem like a distinction
8 without a difference, but I don't think it is. Because
9 if you just look at "activities," you can look at
10 something very broad and say, sure, we had to do CVR all
11 along; this is just more CVR; same activity; we're done.

12 This is not what we're looking at. We're looking
13 at new requirements imposed on what conceivably is the
14 same activity.

15 It's still CVR. But what is the new requirement?
16 It is to take CVR out to all of the polling places,
17 which is a huge new requirement. It is not an
18 insubstantial requirement. It was a very significant,
19 new requirement imposed on the activity of CVR. It was
20 a new thing imposed on the level of service and the
21 services -- I'm sorry, the services that the registrar
22 was already providing.

23 That is what -- exactly what a higher level of
24 service is, is a new, additional requirement.

25 And I think the Carmel Valley case is really going

1 to be helpful in demonstrating this. And I know it's
2 not perfect because it was -- it happened in 1978, so we
3 don't have all the records that I wish we had. But I
4 think that Carmel Valley case is a really good
5 demonstration of what a higher level of service is,
6 because, in that case, there was an executive order,
7 which I think gave rise to regulations requiring the
8 firefighters have certain specified equipment.

9 And the case that I have cited, that described that
10 requirement, said that this was -- they called it a "new
11 program." But they said it was a new program because
12 they were required to provide updated -- "updated" is
13 the court's word, not mine. Updated firefighting
14 equipment.

15 What is updated firefighter equipment? Well, the
16 Commission, in the proposed decision, said that we
17 have -- we have cited nothing to show that -- I guess
18 that it didn't exist previously, because, obviously,
19 this had to be a new requirement or else it wouldn't
20 have been deemed a reimbursable state mandate.

21 But I have three reasons as to why there was
22 firefighting equipment that was required to -- that the
23 people were -- the firefighters were required to have
24 previously, and that all that this did was update and
25 impose new requirements on the firefighting equipment.

1 Three reasons:

2 First, just common sense, because even in 1978, I'm
3 confident that local governments were not sending their
4 firefighters out with no equipment at all. So,
5 certainly, they had to be providing equipment to the
6 firefighters before this executive order came down; they
7 had to be providing something. That's just common
8 sense.

9 Second, the court itself used the word "updated."
10 I didn't come up with that term. They said "updated"
11 firefighting equipment. That's number two.

12 And number three. I hope I can do this. I'm going
13 to do something novel. And I don't know that this has
14 been done since you started the Zoom. I would like to
15 enter an exhibit, which are the parameters and
16 guidelines for the State Board of Control opinion back
17 in 1978. I'm going to try to share my screen. We'll
18 see if it works. Oh, except the host has disabled
19 participant screen sharing. So in order to introduce
20 that --

21 MS. PALCHIK: One moment, please. One moment,
22 please.

23 MS. SNIDER: Okay. Great.

24 CHAIRPERSON MILLER: Do you want to continue,
25 Ms. Snider, while we get you set up for that, please.

1 MS. SNIDER: Sure. And I'll just give you an
2 overview of what it says.

3 CHAIRPERSON MILLER: Yep. Please. We'll let you
4 know when you are set up. Ms. Palchik will.

5 MS. SNIDER: So the overview of what these
6 parameters and guidelines say -- and, again, this is the
7 Board of Control, it's pre-Commission, 1978. We don't
8 have the test claim opinion anymore. We don't have the
9 test claim filings anymore, which is unfortunate, but we
10 do have the Ps and Gs.

11 MS. PALCHIK: Ms. Snider. I'm sorry, Ms. Snider,
12 you may share now. Sorry to interrupt.

13 MS. SNIDER: Thank you. Let's see how this goes.

14 CHAIRPERSON MILLER: Ms. Snider, give me one
15 second, just to -- if the Board could just kind of give
16 a thumbs-up. Everyone okay? Can everyone see the
17 screen? And I hope all of our public can see it as
18 well.

19 And just, in the future, I would really
20 encourage -- I just hope this is -- just that we share
21 this in advance, but I think we're good for now. Thank
22 you, Ms. Snider. Just so the public has a chance to...

23 MS. SNIDER: I understand completely.

24 And I even thought about that this morning. Well,
25 is there any way to show it to the people out there? So

1 I think what we'll --

2 CHAIRPERSON MILLER: Just in your -- it's just the
3 process we have for the rebuttals and filing information
4 with the Commission is specifically for this purpose.
5 But please go ahead with this. And I hope -- if members
6 of the public need anything, please, please be sure to
7 let us know, and we'll get it to you.

8 MS. SNIDER: And I can give the citation as well,
9 because it is on the Commission website. And this is
10 the parameters and guidelines for the Firefighters
11 Safety Clothing and Equipment Test Claim from 1978.

12 So -- and I will tell you, I did not find this
13 before I had filed my rebuttal comments as well, so this
14 was -- this was new to me as well.

15 So this is -- as you can see, this is the
16 Firefighting Safety and Equipment opinion that was dealt
17 with in that Carmel Valley case. These are the -- these
18 are the -- these are the -- this is the administrative
19 regulation that the Carmel Valley case dealt with. So
20 there's no question, this is the right one.

21 And I'm going to move to page 5, and, here, we have
22 the reimbursable costs. So it says, "Costs of the
23 following types of equipment and clothing purchased
24 subsequent to September 1st, 1978."

25 And it lists various pieces of equipment that are

1 reimbursable if the local governments purchased them
2 pursuant to the executive order.

3 Now, look at number 2, which I think is
4 fascinating: "The cost of Items A through E must be
5 reduced by the cost of similar equipment which was
6 purchased prior to the entry of those executive orders."
7 It has to be adjusted by an annual inflationary factor.

8 And then look at 3: "The cost of Items F and G may
9 be claimed in full since specific items were not
10 required prior to September 1st, 1978."

11 4A says something similar to 2, so I don't have to
12 go through that again.

13 But let's look back up at the items.

14 So what they are saying is, A through E, you had to
15 do this previously: You had to provide the gloves, the
16 helmet, the goggles, previously. Now you might have to
17 do something updated. Maybe it's fancy goggles.
18 Previously you had standard goggles. Now you have fancy
19 goggles. So this administrative order is requiring you
20 to provide fancy goggles.

21 Okay. So what we do is we take what you had to buy
22 previously, we subtract that from what you have to buy
23 now, because these are higher level of service as the
24 new kind of purchase. And that's what you get
25 reimbursed for, is the extra cost of this new, fancy

1 goggle.

2 And here, if it wasn't required prior to the
3 administrative -- the new reg, then you get the entire
4 cost, because you never had to do this previously.

5 And I know there's a little bit of deduction here,
6 because it never says that anywhere. We don't have the
7 test claim. We don't have the opinion. I realize that.
8 But I think we can fairly deduce from this parameters
9 and guidelines that there was some sort of a requirement
10 prior to 1978, to provide many of these items. The
11 goggles, for example. And then, in 1978, they were
12 required to provide the fancy goggles, if you will.

13 And I'm going to stop my screen sharing at this
14 point. But I'm happy to put it back up later if anybody
15 has any questions about this particular exhibit.

16 CHAIRPERSON MILLER: I'm going to ask -- if you
17 could stop. And then, Ms. Palchik, I think we'll -- if
18 we could just disable screen sharing just for Zoom
19 safety.

20 I do -- for the record, Ms. Snider, the -- you did
21 submit additional comments on the County of San Diego
22 that we did share on November 24th. And just as a
23 reminder, there's actually no process for commenting on
24 proposed decisions. Rather, the comment periods,
25 which -- which are clear and consistent, are on the

1 filing, the rebuttal, and the draft proposed decision.

2 So I do -- I just want Ms. Shelton, if you would,
3 Ms. Shelton, just to clarify the -- for the Board, the
4 process by which we introduce new documents, new
5 information, and new comments because this is -- it's an
6 important point when we're making decisions because of
7 how our process works. So, Ms. Shelton, would you
8 please comment on that, and then we will continue,
9 Ms. Snider.

10 MS. SHELTON: Okay. Certainly. In this case, I
11 don't think it's a problem because she is referencing
12 something on the Commission's website, which is
13 available to take official notice of. If it was another
14 type of exhibit, then the regulations require that we
15 receive those before the hearing, before the Commission
16 would even consider them.

17 The written comments, that were late, were
18 submitted and provided to the Commission members and are
19 available on the hearing page, if you would like to
20 review those.

21 CHAIRPERSON MILLER: Great. Thank you very much.
22 I appreciate that clarification, Ms. Shelton.

23 Okay. Please proceed, Ms. Snider.

24 MS. SNIDER: Okay. And I will say, just as a
25 procedural matter, while I realize that there was no

1 place for the proposed -- there's no actual rule
2 allowing proposed comments on the final proposed
3 decision, when the final proposed decision says new
4 things, then the only opportunity that we have to
5 discuss that is here, at the hearing.

6 And there is an opportunity -- and the regulation
7 themselves do say that documents provided to the
8 commission at least five days in advance, the Commission
9 will endeavor to put them in a binder. And so this is
10 weird, because it's virtual. But they were provided at
11 least five business days in advance. So there is that
12 provision.

13 And then with regard to the exhibit today, I know I
14 did not tell anybody in advance. However, again, it's
15 odd, because it's virtual. So if we were all at a
16 hearing, I would be distributing the exhibits to you.
17 But, obviously, this is my best attempt to distribute
18 the exhibits to everybody, is to show them on the
19 screen.

20 CHAIRPERSON MILLER: I appreciate that. I just
21 want to make sure we're all clear and that the public
22 has equal access. You know -- and patience with this
23 new virtual setting, but I do appreciate that. And your
24 comments on the proposed decision were included in our
25 virtual binders as well.

1 MS. SNIDER: Which I appreciate.

2 CHAIRPERSON MILLER: So with that process paused,
3 please continue with the substance.

4 MS. SNIDER: Okay. Great.

5 But I think everybody gets the gist of what I'm
6 saying, which is, in Carmel Valley, with this updated
7 firefighting equipment, that it is true, I don't have
8 anything that I can point to that specifically says,
9 "They had to provide goggles before this 1978 reg, and,
10 in 1978, they just had to provide updated goggles."

11 But I think that based on those three factors that
12 I just showed to you, I think we can fairly imply that
13 local governments had to provide firefighting equipment
14 to their firefighters before that regulation was
15 implemented. In 1978 they just had to provide updated
16 equipment to their firefighters.

17 That is what's happening here. That's exactly
18 what's happening here. Because if you look at the word
19 "activity" and you look at the actual activity of what
20 all of the registrars had to do, yes, they had to
21 provide CVR to people who came into the registrar's
22 office up until the date of the election. And that was
23 true prior to SB 72. So we had to do that activity.

24 Now we have to provide fancy goggles, as it were.
25 We have to provide CVR at the polling places. This is a

1 significant increase in work, labor. And it may not
2 seem like a significant increase in costs, but it was an
3 increase in costs to the counties to do this, because
4 these individual -- these poll workers, who are out
5 there at the polls, are amazing and they are
6 outstanding, but they are not full-time registrar staff.
7 And they deal with these elections maybe twice a year,
8 maybe, if there are even two elections a year. And so
9 they come in and they get trained for a period of time.
10 They are out there on the job doing their best, working
11 with the public for all these -- these days that they
12 are hosting the elections. But they need training on
13 exactly what CVR is and this whole new process. And
14 when they are sitting there interacting with the public
15 on Election Day, that -- it's a significant, new
16 burden -- not burden, but a new thing that they have to
17 do.

18 Because a person comes in and says, "Hi. I want to
19 vote."

20 The temporary -- the poll worker looks at the log
21 and says, "Well, you are not here. You are not on this
22 log. So what do we now?"

23 In the past, prior to SB 72, that person would just
24 get a provisional ballot, end of story. And then the
25 provisional ballot goes back to the registrar's office.

1 The registrar checks to see if that person was
2 registered, and if they were, great. Then the vote gets
3 counted.

4 Now it's a whole new level, whole new level of
5 service, because that temporary poll worker has to say,
6 "Well, wait a minute. Are you registered at all? Do
7 you think maybe you registered there? Did you register
8 two years ago, and you've forgotten? Hm. Do we
9 actually have to reregister you now? Do we register you
10 for the first time?" So have this conversation.

11 And then once they figure that out, then they
12 provide the CVR affidavit, if it's appropriate, and they
13 help the person fill out the affidavit as needed. And
14 then that goes into this CVR -- the ballot goes into the
15 new CVR envelope. That goes back to the registrar.

16 Once it gets to the register's office, then the
17 person back at the registrar's office has to register
18 that person in the computer.

19 I mean, it's this whole new -- whole new level of
20 work that the registrar did not previously have to do,
21 because this was only provided at the registrar's
22 office. Our satellite offices, which are de facto --
23 actually, it wasn't required to be provided at satellite
24 offices until SB 72 as well. But if it had been
25 provided at satellite offices, those are just extensions

1 of the register's office as well.

2 But, really, the crux of this test claim is the
3 fact that they push that requirement out to the polls,
4 poll workers, who are temporary workers, having to do
5 this for all these elections. Needed a lot of training.

6 We had to design new envelopes so it would be
7 distinguished from the old envelopes. And we had to
8 hire new people. There was more data processing.
9 Just -- "phew."

10 The public, that now had access to the CVR voting
11 at the polls, who previously didn't, maybe someone would
12 be deterred by having to go down to the one registrar's
13 office in the county. Most counties only have one
14 registrar's office. So maybe you live in Borrego
15 Springs, you don't want to drive all the way downtown
16 to -- in San Diego County. Maybe you are not going to
17 vote.

18 Now it's been pushed out to your polling place.
19 So, okay, I haven't registered yet. I forgot to
20 register. It's 12 days prior to the election. I get to
21 go register. I can go register and I can vote on the
22 day of the election. It's a wonderful thing.

23 But that means a lot more people would come in and
24 register on the day of the election, that may have been
25 deterred from doing so because they had to go all way

1 down to the registrar's office.

2 Higher level of service. Enhanced level of service
3 to the public. More work for the registrar. And an
4 increase in the labor that had to be performed.

5 And one -- one more point to make.

6 Oh, actually, I have an analogy first, which is, it
7 may not seem like a big deal in this particular test
8 claim, but I was trying to think of a time when it could
9 be a big deal. And I don't -- the State -- I don't know
10 if the State ever mandates that counties build
11 buildings. I actually don't know. I didn't research
12 it.

13 But let's pretend, for the sake of this
14 hypothetical, that you only have to have three buildings
15 in your county. And the State says, "You know what?
16 You now have to have 50. We want you to build 50
17 buildings, 50 county operation centers throughout your
18 county."

19 Well, it's the same if you talk about -- if we're
20 just talking about activities, well, that's the same
21 activity. It's just building a new building, right?
22 We've been required to build buildings all along, so
23 it's just one -- it's just 47 more buildings. We had
24 three. Now we need 50.

25 But if you think about it as a new requirement, an

1 enhanced level of service, a new level of service, that
2 is 47 new buildings that we have to pay for and build.
3 That could be a huge cost, a huge cost.

4 There could be other contexts in which a higher
5 level of service imposes a huge cost, whereas this did
6 not, concededly, but it could be significant in the
7 future.

8 And I also wanted to point out one thing that the
9 proposed decision mentions, is that because this mandate
10 did not actually transfer fiscal responsibility from the
11 State to the counties, that it's not a mandate, that the
12 counties have always had to pay for CVR, they have
13 always had to pay for elections. True.

14 That's not the only test of shifting fiscal
15 responsibility, though. As many courts have said, and
16 the Supreme Court said in that San Diego Unified case,
17 shifting fiscal responsibility doesn't just mean it used
18 to be a State thing; now the State is telling the county
19 to do it. It also can mean the State thinks this is a
20 good idea. The State tells the county to do it and
21 doesn't provide funding. That's what happened here.

22 It wasn't -- the State didn't use to host these
23 elections and provide CVR and not tell the county to do
24 it, but the State has said, "County, you do it." And so
25 that -- that is shifting fiscal responsibility as well.

1 And I will read the quote to you. I'm sorry to
2 bore you. And I apologize in advance to the reporter.

3 But this says, the concern -- this is the San Diego
4 Unified case (as read): "The concern which prompted the
5 inclusion of Section 6 in Article XIII B was the
6 perceived attempt by the State to enact legislation or
7 adopt administrative orders, creating programs to be
8 administered by local agencies" -- and here's the key
9 part -- "thereby transferring to those agencies the
10 fiscal responsibility for providing services which the
11 State believed should be extended to the public."

12 The point there is not that the State used to do it
13 and now it's telling the counties to do it. The point
14 there is that the State believes that this is a
15 necessary service, and tells the counties to do it.
16 Therefore, there's a transfer of fiscal responsibility.

17 So I think I have made all of my points and
18 hopefully not -- not too quickly. I know I tend to talk
19 fast.

20 But I think -- I think that's it. So thank you for
21 listening, and I hope that you will consider my
22 comments.

23 CHAIRPERSON MILLER: Thank you very much,
24 Ms. Snider. I appreciate that.

25 Tell me again -- I'm so sorry -- how to pronounce

1 your name? It's Paes? Am I saying that right? I
2 apologize. And you are muted.

3 MS. PAES: It's Paes.

4 CHAIRPERSON MILLER: Ms. Paes. Sorry. Please
5 accept my apologies.

6 MS. PAES: That's okay.

7 CHAIRPERSON MILLER: When you see the name on the
8 screen, sometimes it throws me.

9 Do you have anything further to add?

10 MS. PAES: I do not.

11 CHAIRPERSON MILLER: Okay. Thank you. Thank you
12 for being here.

13 Mr. Hill, for the Department of Finance, if you can
14 turn on your camera, please.

15 Do you have any comments?

16 MR. HILL: Good morning.

17 CHAIRPERSON MILLER: Good morning.

18 MR. HILL: Chris Hill, Department of Finance. The
19 Department of Finance concurs with the Commission
20 staff's proposed decision.

21 CHAIRPERSON MILLER: Great. Thank you, Mr. Hill.

22 So we'll now turn to the Board. Thank you for
23 that, and we certainly learned a lot.

24 Are there any questions from the Board we can
25 answer? I will ask Ms. McGinnis -- oh, Ms. McGinnis,

1 your camera isn't on. Thank you. Just to make sure
2 your camera is on.

3 And any -- Ms. Olsen -- please use, in the Zoom
4 feature, the raised hand, and I will call on board
5 members as you have questions.

6 Ms. Olsen, please again.

7 MEMBER OLSEN: Ms. Snider, I actually find your
8 comments and your arguments really compelling.

9 And I would like to ask Ms. McGinnis or Ms. Shelton
10 to respond to them.

11 MS. MCGINNIS: Yeah. I can start.

12 And thank you, Ms. Snider. Your comments were very
13 helpful.

14 And A lot of the points that were raised by
15 Ms. Snider just now were also included in the comments
16 on the draft proposed decision, and so when the proposed
17 decision was issued, we did include a more thorough
18 analysis of the cases that the claimant raised.

19 And I -- what I hear overall from Ms. Snider is
20 parsing of "activities" versus "requirements."

21 But when we look at the case -- the case law here,
22 starting with County of Los Angeles, and then what was
23 reaffirmed in the San Diego Unified School District, the
24 test for "higher level of service" is clear: You need
25 to have new activities or new requirements based on what

1 the statute is requiring in its plain language.

2 We don't have the -- the requirements that
3 Ms. Snider is proposing here are not within the plain
4 language of the statute.

5 Here, the statute was modified that the Elections
6 Code 2170(d) was modified by the test claim statute to
7 add that CVR and CVR provisional voting must be provided
8 at these additional locations, of satellite offices and
9 polling -- polling places. Excuse me. There's -- "D"
10 is then divided into (1) through (5). There are five
11 subpoints there or five subcategories or five
12 subrequirements.

13 The only modification here is where the activity or
14 the requirement of providing CVR and CVR provisional
15 voting must be done. So the activity of providing, as
16 well as all of the other activities that comprise
17 conditional voter registration and conditional voter
18 registration provisional voting have not been changed.

19 So in expanding the locations, Ms. Snider is
20 arguing that the county elections official is now
21 required to do additional things, such as hire more
22 workers, train these additional staff, but the actual
23 activities that the county elections official is
24 performing have not changed. They are continuing to
25 provide the exact same services that they were

1 previously providing and have been providing for some
2 time.

3 CHAIRPERSON MILLER: Thank you, Ms. McGinnis.

4 I'm going to -- Ms. Olsen, may I turn it over to
5 Ms. Shelton and then come back to you? Is that okay?

6 MEMBER OLSEN: Actually, I would like to do a
7 follow-up question very quickly.

8 CHAIRPERSON MILLER: Sure.

9 MEMBER OLSEN: So what you say, Ms. McGinnis,
10 suggests to me that there's an underlying belief that
11 the county, or counties, are able to shift where they
12 are doing this service, as opposed to them actually
13 having to add places where the service is done.

14 I mean, is it your contention that everybody could
15 have gone to the registrar's central office to do this,
16 but -- and, therefore, all the people who wanted to do
17 it did that, and now that it's being done out at polling
18 places, they are just dispersed? Because that doesn't
19 make sense to me.

20 MS. MCGINNIS: It's a little bit more -- there's a
21 little bit more to it than that, because the requirement
22 to provide CVR and CVR provisional voting, that does
23 apply to Voter's Choice Act counties and non-Voter's
24 Choice Act counties.

25 So under the Voter Choice Act, counties that

1 elected to participate in the Voter's Choice Act, they
2 were already performing CVR -- or, excuse me, providing
3 CVR and CVR provisional voting at vote centers. And
4 under the vote center model, they don't have polling
5 places. They have vote centers which are set up in a
6 different way, based on a different methodology or
7 algorithm. And for non-Voter's Choice Act counties,
8 they now have to provide these services at polling
9 places.

10 Previously -- if I'm understanding your question --
11 the county elections official here, the Registrar of
12 Voters, was the place where people would go to
13 conditionally register to vote. And the county
14 elections official had the ability to set up satellite
15 locations, as the County of San Diego did in some of the
16 prior elections that were discussed in their
17 declarations. They elected to have these additional
18 satellite locations because they felt, for their county,
19 that that was the most effective way for them to provide
20 these services as well as, you know, other county
21 election services.

22 CHAIRPERSON MILLER: Thank you, Ms. McGinnis.

23 I'm going to turn it over to Ms. Shelton, and then
24 come back to you, Ms. Olsen, for any follow-up.

25 Ms. Shelton, anything to add?

1 I do think that the important -- what I -- what I
2 would like to just have you comment on, as well, is why
3 increased costs alone don't create a higher level of
4 service.

5 MS. SHELTON: Okay. Let me try to clarify that
6 point first, if I can.

7 CHAIRPERSON MILLER: Yeah.

8 MS. SHELTON: Just going to the very first Supreme
9 Court case that analyzed Article XIII B, section 6,
10 which is the County of Los Angeles 1987 case, 43 Cal.
11 3d, page 46, and, particularly, page 54 to 56, that case
12 was dealing with a workers' comp issue.

13 But before even talking about the program, the
14 Court was analyzing what Article XIII B, section 6,
15 really requires in comparison to the relevant tax code
16 statutory scheme, which was a quasi-legislative scheme
17 that existed before the voters enacted Article XIII B,
18 section 6.

19 And there, the proponents in that case were trying
20 to get the Court to use a statutory definition of
21 "increased level of service," which was equated with
22 "increased costs."

23 And the Court said no, that's not what the voters
24 enacted. The voters did not -- they were well aware of
25 that statute and did not write Article XIII B, section

1 6, that way.

2 So increased costs does not mean a higher level of
3 service. So we know that to be true.

4 But what they said was, you have to read a "higher
5 level of service" in conjunction with a new program, and
6 both require an increase in the service provided by
7 local agencies.

8 Now, here, under prior law, counties were required
9 to provide CVR and provisional voting to any voter that
10 wanted them 14 days prior to the election and at
11 whatever cost was incurred to the county. That same
12 level of service is being provided now. Any voter who
13 wants a CVR registration and a provisional voting --
14 vote ballot is provided one, at any cost to the county.

15 This case is different than old and other test
16 claim decisions. And I did go through them too, in
17 preparation for this hearing, because I wanted to make
18 sure we had everything consistent with what we have done
19 in the past. And we have mentioned, in the decision,
20 the 15-day voter registration, which is very much like
21 this case.

22 But also, there was Permanent Absent Voter II,
23 which is the Commission's decision at 03-TC-11. And,
24 there, as well as -- well, there, the Legislature
25 expanded absentee voter ballots from just particular

1 categories of voters: Those with disabilities; those in
2 the military; and there were a few other categories
3 under prior law that were able to vote by absentee
4 ballot, to any voter.

5 And the Commission approved that claim, because, on
6 the face of the statute, they were providing new
7 services to new voters. On the face of the statute, the
8 number increased.

9 The same decision was done by the Commission in
10 Domestic Violence Arrests and Victim Assistance,
11 98-TC-14. In that case, a peace officer -- police
12 departments were required to give rape victim cards to
13 victims of certain sexual offenses. The test claim
14 statute increased the number of victims by adding new
15 sexual offenses for which the victim was required to
16 receive a victim card.

17 There, the Commission approved the test claim
18 because, on the face of the statute, the victim card had
19 to be provided to two new groups of people in the
20 population.

21 Here, the test claim statute does not require the
22 county to provide CVR and provisional voting to any new
23 group of people. Anybody that wanted CVR and
24 provisional voting ballots under prior law received the
25 same -- can do it the same way now. The county is still

1 required to provide those services.

2 Also, which is really important to note, that this
3 test claim statute imposes the duties on the county
4 elections official, not on the poll worker. However the
5 county finds they need to do this at polling places,
6 that's up to the county. And when you look at the
7 county's request for costs and for reimbursement on the
8 pdf page 26, all of those things are not mandated by the
9 statute. Those may be what we would consider reasonably
10 necessary costs, if this were to be approved, but none
11 of that is mandated by the statute. The same service
12 under prior law is still being performed now, under this
13 test claim statute.

14 CHAIRPERSON MILLER: Thank you, Ms. Shelton.

15 I'm going to see if Ms. Olsen has a follow-up. And
16 I will let you respond, Ms. Snider. I'm just wondering
17 if we can get to board questions first, if that's okay.

18 Ms. Olsen, any follow-up to Ms. Shelton or Ms.
19 McGinnis?

20 MEMBER OLSEN: I do not. I'm fine.

21 CHAIRPERSON MILLER: Okay. Great. Thank you.

22 Any other board questions? And then we'll go to
23 Ms. Snider.

24 Just seeing none right now, Ms. Snider, do you want
25 to comment on that? And then I'm going to turn it back

1 to the board.

2 MS. SNIDER: Okay. Great.

3 So Ms. McGinnis said the cases indicate that if
4 there are new activities, that that's a higher level of
5 service. She also said if the cases indicate there are
6 new requirements, that's a higher level of service. And
7 I see, in the cases, that they see "new requirements."
8 I do think that is -- that is a difference, and that's
9 how I started the comments. It's not that you have
10 to -- there's a higher level of service only if new
11 activities are required. There's a higher level of
12 service if new requirements are in the law.

13 And the cases, certainly, I'm sure, at some point,
14 they say "activities" as well. But I quoted it from the
15 Supreme Court, the 2004 case earlier, where it says the
16 requirements have to be new in the law, in order for
17 there to be a higher level of service.

18 Expanding the locations where this CVR must be
19 provided is a new requirement. Yes, the activity of CVR
20 does not change, but it has now been pushed into new
21 locations.

22 And as I have discussed, it had significant
23 practical implications that can't be disregarded by
24 thinking about this so hypertechnically that, oh, well,
25 you were doing CVR previously. The registrar provided

1 it to anybody who wanted it. All true. But now we have
2 a new requirement to provide it at multiple new
3 locations.

4 They -- they hire 10,000 temporary election
5 workers, and all of them had to be trained. For the
6 2020 elections, all of them had to be trained how to do
7 this because, all of a sudden, these individuals are
8 interacting with the public on this completely new thing
9 that they haven't done before. It is not easy.

10 So it's a new requirement, not necessarily a new
11 activity when you look at it in the broad activity
12 sense.

13 And I know Ms. Shelton said that there was no new
14 group of people to whom this is being provided. And I
15 appreciate that too, but that's -- that's not the test
16 in the law. The test is, is there a new requirement?
17 Yes. Providing this at new locations; that's the test.

18 And, oh, by the way, we're not referring to vote
19 center counties. Ms. McGinnis mentioned vote center
20 counties. That's fine. But we're not talking about --
21 we didn't seek reimbursement for any vote center county
22 in this test claim. This is only for counties that have
23 polling places still, which a lot of counties still do.
24 So this is not about vote centers.

25 And as far as the face of the statute, and what is

1 required on the face of the statute, I appreciate that
2 the statute does not say "train 10,000 new election
3 workers how to do CVR." It does not literally say that
4 in black and white letters.

5 But we have to be practical here. At a certain
6 point, if the state tells you to achieve X, and doesn't
7 list out every single thing that you have to do to
8 achieve X, you still have to do stuff to achieve X. So
9 our hands would be completely tied behind our backs if
10 we are not given reimbursement to do the things that
11 absolutely must be done. I'm not talking about
12 reasonably necessary, which kind of skates on the line.
13 Well, maybe you had to do that, maybe you didn't. We
14 have to do these things in order to effectuate the
15 purpose of this new statute.

16 Ms. Paes cannot go out to every single polling
17 place and provide -- provide CVR to every single voter
18 that comes in. It's impossible. So, yes, the
19 registrar -- the county elections official is required
20 to provide CVR at the polling places, but she physically
21 cannot be in that many places at once. Obviously, we
22 have to have people do this for her at the polls.

23 I mean, there's just -- we can't read the statutes
24 that literally and that technically, that if it's not
25 absolutely on the face of the statute, then it's not

1 mandated; that there's a mandatory requirement to
2 provide this at the polls. We couldn't do that without
3 poll workers.

4 And also with regard to the increased costs and the
5 fact that just mere increased costs do not constitute a
6 higher level of service, and they are not reimbursable,
7 I address that in my comments. The increased cost cases
8 are all cases where the government itself didn't have to
9 do something specific. They were workers' comp cases or
10 they were retirement -- retirement cases where there was
11 a new law, and it imposed new requirements on everybody
12 in the State, public and private alike.

13 And the courts all said, okay, government, you
14 don't get extra money here. You don't get reimbursed
15 because we imposed a new requirement on you. Yes, it's
16 a new requirement, but it was a new requirement
17 universally, for everybody. So that's just increased
18 costs. You don't get that.

19 However, that's not what we have here. In the
20 cases later distinguished that -- I think it was San
21 Diego Unified that later distinguished those increased
22 costs cases and said, it's not just increased costs if
23 you also have an enhanced higher level of service. If
24 there is an enhanced level of service, by the local
25 government alone, that's being required in this law,

1 that's not just an increased cost.

2 So I address that in my comments, so it's already
3 there, but let me be clear. This wasn't just an
4 increased cost because it wasn't something that was
5 asked of private and public alike and governments were
6 just incidentally impacted by it. This is something
7 only governments have to do. It was specifically
8 required of them so that they could provide this
9 enhanced level of service. The legislative history is
10 in my comments. It's very clear that they wanted people
11 to be able to register on the day of an election, to
12 expand voting services to everybody, which is great.
13 But it was more than just an incidental increased cost.
14 It was a higher level of service.

15 So I think that's it. And I respect everybody at
16 the Commission. I know this is very thoughtful and deep
17 stuff. So thank you, Ms. Shelton, and thank you,
18 Ms. McGinnis, for all the work you put into this.

19 CHAIRPERSON MILLER: Thank you, Ms. Snider.

20 Mr. Adams.

21 MEMBER ADAMS: Thank you, Madam Chair.

22 Like Ms. Olsen, I find these arguments compelling,
23 and I'm struggling with this. I'm seeing that if this
24 is truly requiring a county to do things in other
25 places, those new locations obviously have costs. And

1 if the counties can't opt out, I just don't understand
2 why this act is not a mandate.

3 What also worries me is if the county's only option
4 to avoid this is to start closing polling places and
5 pulling things back to one location, that really
6 troubles me as of us causing that in any way, shape, or
7 form.

8 Again, I see increased costs. I see increased
9 levels of service. If the county is doing this just
10 because they have more voters and expand it, that would
11 be one thing. But we -- in this instance, it appears
12 the State is requiring them to do this at existing
13 polling centers, and it -- and it just seems to me that
14 this is a new -- a new level of service, asking them to
15 do something in a location that they have never had to
16 do before.

17 And it has been argued, you know, one or two county
18 employees can't run to every place. They are obviously
19 having to train folks at this place.

20 So those are my comments for now, and I look
21 forward to other comments and responses from anyone.
22 Thank you.

23 CHAIRPERSON MILLER: Thank you, Mr. Adams.

24 Ms. Shelton, I do think it would be helpful
25 about -- you know, I think that the issue here, and we

1 have had this before, as a Commission, is the -- how we
2 have to analyze these test claims pursuant to mandate
3 law versus, sort of, maybe, how the Legislature could
4 have written better laws.

5 MS. SHELTON: That's a loaded question.

6 CHAIRPERSON MILLER: Exactly. I know.

7 But I do think that the -- I think when we have an
8 expanded program versus new duties. If you can maybe
9 address. I think that's what Mr. Adams's question goes
10 to directly.

11 MS. SHELTON: Let me try to clarify.

12 First, the issue of whether there's a reimbursable
13 state-mandated program is a pure question of law. It's
14 not a question of equity. It's not a but-for analysis.
15 You know, but for this statute, we wouldn't have
16 incurred those costs. Certainly, I'm sure they have
17 costs. That's not the issue.

18 The issue, when you are determining whether there
19 is a new program or a higher level of service -- and
20 we're not talking about a shift of a program from the
21 State to the county -- you have to first determine what
22 the activities or the requirements are and then
23 determine whether they are new.

24 And only then do the courts proceed to determine
25 whether that constitutes -- those requirements

1 constitute a program that is subject to Article XIII B,
2 section 6, and provide a governmental service to the
3 public and be unique to government.

4 So here, you have -- as we have indicated before,
5 under prior law, let's say the county had a hundred
6 thousand unregistered voters in 2017. All of those
7 100,000 unregistered voters could have gone to the
8 county office to get registered using CVR and then
9 received a provisional ballot at the polls.

10 Now, you know, in 2018, after the effective date of
11 this statute, you are heading also into -- they said
12 that they first implemented this during the presidential
13 election in 2020. A lot of increased voters because of
14 that, not necessarily because of this test claim
15 statute. There's no showing of that. But you still
16 have a hundred thousand voters that want CVR and
17 provisional voting. You are providing the same service.

18 So if you were to approve this claim, I'm not sure
19 what we are approving because the activities and costs
20 are something they have always had to do, and the
21 activities and costs that the claimant is identifying
22 are not mandated by the plain language of the statute.

23 We, the Commission -- neither the Commission nor
24 the courts have ever read a mandate to go beyond what
25 the State is legally requiring them to do. Certainly, I

1 understand the practical considerations here, but that's
2 not what a mandates analysis is. Not until you approve
3 a claim and get to parameters and guidelines does the
4 Commission have discretion to approve those types of
5 activities.

6 CHAIRPERSON MILLER: Thank you, Ms. Shelton.

7 Mr. Adams, a follow-up; and then Ms. Olsen; and
8 then I will turn it back to you, Ms. Snider.

9 MEMBER ADAMS: Yeah. Again, my frustration is just
10 the law requiring a different location. This is just
11 real frustrating, from my local government point of
12 view. You know, if they had said these folks still have
13 to go downtown, that's great, but as soon as they
14 require it in another location, this is just really
15 frustrating that, yes, I realize it's the same service.
16 But as soon as they moved it somewhere else, I think you
17 can argue it is a higher level of service.

18 But, again, I will shut up and continue to listen
19 now. Thanks.

20 CHAIRPERSON MILLER: Thank you, Mr. Adams.

21 Ms. Olsen.

22 MEMBER OLSEN: Yeah. As a long-time volunteer poll
23 worker, I think that there are probably very low costs
24 to this. And Ms. Snider actually mentioned that. But
25 the fact that they now have to train volunteers --

1 because that's really what you have. I mean, they are
2 paid, but they are paid minimally for the day's work, to
3 know how to do this. There's only so many volunteers
4 you can train at a time effectively. I have been in
5 volunteer programs for poll workers that had a hundred
6 people in them, and I can guarantee that 50 of those
7 didn't get what they needed to get in the training.

8 So I think there are, in fact, increased costs to
9 have put it into more environments. And I see that as,
10 you know, it's possible that the only increased costs
11 are getting training out to those volunteers.

12 I have no idea if there's -- what the resultant --
13 you know, if we find this is, in fact, a higher level of
14 service, a requirement for a higher level of service, I
15 don't know what the costs will ultimately be for that.
16 And they may be extraordinarily low.

17 But I do see it as, again, as somebody who has to
18 go through the training every time I do this, this kind
19 of training is much more complicated than the sitting in
20 the five positions at the table, you know, and doing
21 what everybody does every single time.

22 So I still think that there's a higher level of
23 service.

24 CHAIRPERSON MILLER: Thank you.

25 I think it's -- I do -- I think it's important to

1 draw the distinction between costs and service. But I
2 appreciate those comments.

3 Ms. Snider, did you want to comment before we turn
4 it back to Ms. McGinnis and Ms. Shelton?

5 MS. SNIDER: I do.

6 And I appreciate the difficulty of hewing closely
7 to -- as to Ms. Shelton's comments, I appreciate the
8 difficulty of hewing close to how the courts and the
9 State has required the Commission to interpret its laws
10 and say, does this actually impose a new, higher level
11 of service. I understand that.

12 But there's a difference between saying, is there a
13 new higher level of service on the face of the statute?
14 And saying, wait a minute, the words of the statute
15 say -- do not say "go train people." I mean, there -- I
16 think there's a difference there.

17 Because on the face of the statute, we have to
18 offer the service at polling places. That is on the
19 face of the statute. It's impossible for the
20 Legislature to write out every single little thing that
21 local government officials have to do in order to
22 effectuate that purpose. I mean, it is literally
23 impossible, and that cannot be what XIII B, section 6,
24 is meant to -- that can't be the results of that
25 constitutional provision, is that if the Legislature

1 doesn't write down every single thing that you have to
2 do, that it's not reimbursable. And that -- that would
3 not be the intent, voters' intent, on the cases that
4 have interpreted it. There have to be some things that
5 are not written there, that you have to do.

6 And, again, I'm not talking about reasonably
7 necessary. We could debate whether the satellite
8 offices are reasonably necessary. I will concede that.
9 I'm not even talking about that today. That's in our
10 papers. We won't worry about that today.

11 I'm talking about whether we had to train poll
12 workers; whether we had to hire some new ones who could
13 supervise and just be fully trained on this; whether we
14 had to design new envelopes.

15 That's something we haven't had to talk about
16 today, that even the State's CCROVs suggested that
17 registrars design new envelopes, because, all of a
18 sudden, you had poll workers out there who had to take
19 the CVR ballots and put them back into the ballot, and
20 then it could all be mixed up. And we had to have whole
21 new envelopes for the CVR ballots so that when they got
22 back to the register's office, they could distinguish
23 them and they could register these people in the
24 computer for the very first time.

25 There were several new things that just had to be

1 done in order to make this happen. And I think the
2 training is the easiest thing to point to. If that's
3 all that you give us reimbursement for today, because
4 you consider that a higher level of service, I will
5 still be thrilled, because that -- that was significant
6 for counties across the state, that received this
7 mandate. I think it came down -- it was effective
8 January 1st and we learned about it in late 2019. We
9 had a March 2020 election. We had to train people
10 really fast, update all the new training requirements.

11 And I think there are more higher levels of service
12 here, but if you only give us that, that would be -- you
13 know, we would be pleased with just that, because the
14 Legislature could not possibly write, "Oh, by the way,
15 you have to train, you know, poll workers. You have to
16 make sure that poll workers can do this." They are not
17 ever going to write that in statutes.

18 And if that is what is required for us to receive
19 reimbursement, is the Legislature writes every little,
20 nitty-gritty down, we're never going to get
21 reimbursement.

22 CHAIRPERSON MILLER: I'm going to turn over to
23 Ms. Shelton. That's certainly not what I meant to
24 suggest.

25 I do think that the issue with legislation, though,

1 this issue of an expanded program versus a new duty or a
2 higher level of service is the point I was trying to
3 make. So next time I will not make any trite comments
4 like that.

5 Ms. Shelton.

6 MS. SHELTON: Well, a little concern that it's
7 getting a little -- we're going off law. Because, you
8 know, the very first element of a reimbursable
9 state-mandated program is whether, you know, the
10 requirement is mandated by the State.

11 The courts have defined a mandate to either be
12 legally compelled by the State, on the four corners of
13 the statute; the activities, the requirements, have to
14 be spelled out in statute. That's the very first test.

15 And then even if they are spelled out and they are
16 not strictly required or legally compelled, then you go
17 to a practical compulsion argument. No court and the
18 Commission -- maybe the Board of Control, because that
19 was a quasi-legislative process under completely
20 different rules. The Commission has never approved a
21 test claim for activities that were not plainly required
22 by statute, and so that is very concerning.

23 The activities that are plainly required by
24 statute -- providing CVR and provisional voting -- are
25 not new. They have been provided and allowed to be

1 given to all voters since the 2012 statute, which I know
2 didn't go into effect until 2017. But no test claim was
3 filed on that 2012 statute. You could have. They could
4 have. And then it would have been, you know, reimbursed
5 under that 2012 statute.

6 But this statute does not impose any new services
7 or requirements, and that's how we have seen it.

8 So I don't even know what you would be reimbursing
9 if you were to approve it, because the activities
10 required by statute, which are requirements, are not
11 new.

12 CHAIRPERSON MILLER: Right. And just to be clear,
13 Ms. Shelton, it's not -- this Commission doesn't
14 determine which of these costs that Ms. Snider is
15 discussing could be reimbursed; is that correct? So
16 this idea that --

17 MS. SHELTON: The costs that Ms. Snider is talking
18 about are not something that can be brought up at this
19 legal stage. It would be something that would be
20 brought up if the Commission approved the test claim.

21 CHAIRPERSON MILLER: Right. So that's --

22 MS. SHELTON: Absolutely. These -- all of those
23 costs that she's identifying, I'm sure, would probably
24 be reasonably necessary if the requirements and the
25 services to voters were new.

1 But I also want to -- if it wasn't -- if I wasn't
2 clear before, I mean, there have been a couple of
3 programs where the activities were new, but the statute,
4 on its face, required the county to provide those
5 services to new voters or new people. That, on its
6 face, was approved, because the statute required it to
7 be provided to new people.

8 Here, the statute -- all voters have been allowed
9 to receive CVR and provisional voting both before and
10 after this test claim statute. That's not new. So
11 that's the key difference.

12 And also, remember the one we did cite in the
13 proposed decision, in 15-day voter registration, there,
14 the counties filed a test claim because the state
15 upped -- you used to be able to register to vote; you
16 had to do it at the 29th day before the election; and
17 then State moved it up to the 15th day. So it made the
18 county -- it went into effect immediately. It made the
19 county have to go through a bunch of hoops to train a
20 bunch of people, hire a lot of new staff, purchase a lot
21 of new supplies because of that additional -- they had
22 to do it faster, within that 14 days. All of the same
23 types of costs that are listed here. And the Commission
24 denied the claim there because --

25 CHAIRPERSON MILLER: Thank you, Ms. Shelton. Thank

1 you.

2 So I do think it's important that we keep the
3 conversation, Ms. Snider, to the test claim and not to
4 what -- not to the questions of what costs are
5 reimbursed.

6 But please -- the final comment, I'm going to turn
7 it back to the Board to see what their desire is.

8 MS. SNIDER: I appreciate that. I was talking
9 about the specifics because I had seen in past actual
10 opinions that they say these are the activities that are
11 new in the -- in the statute.

12 So if what you are deciding here today is only
13 whether there's a higher level of service, on the face
14 of the statute, then I think that is pretty simple,
15 because there's a new requirement in the statute to
16 provide CVR at new locations. That's a higher level of
17 service.

18 And that's the end of my comments.

19 CHAIRPERSON MILLER: Thank you.

20 Any final questions from the Board?

21 Seeing none, I am going to move the staff
22 recommendation.

23 Is there a second on that?

24 MEMBER WALKER: I will second that.

25 CHAIRPERSON MILLER: Thank you, Mr. Walker.

1 Ms. Halsey, will you call the roll on the motion to
2 approve the staff recommendation, please.

3 MS. HALSEY: Sure.

4 Mr. Adams.

5 MEMBER ADAMS: No.

6 MS. HALSEY: Ms. Kuffel.

7 MEMBER KUFFEL: Aye.

8 MS. HALSEY: Ms. Miller.

9 CHAIRPERSON MILLER: Aye.

10 MS. HALSEY: Ms. Nash.

11 MEMBER NASH: Aye.

12 MS. HALSEY: Ms. Olsen.

13 MEMBER OLSEN: No.

14 MS. HALSEY: Ms. Stowers.

15 MEMBER STOWERS: Aye.

16 MS. HALSEY: Mr. Walker.

17 MEMBER WALKER: Aye.

18 CHAIRPERSON MILLER: Great. Thank you.

19 I sincerely appreciate the conversation. That
20 motion does pass for the staff recommendation. I look
21 forward to continuing our conversations and offer
22 sincere gratitude to the County of San Diego for the
23 thoughtful and deliberate discussion today. Thank you
24 very, very much.

25 So now the motion is carried.

1 So now we will move to Item 4, please, Ms. Halsey.

2 MS. HALSEY: Item 4. For Item 4, Senior Commission
3 Counsel Juliana Gmur will please turn on her video and
4 unmute her microphone and present a proposed decision
5 and parameters and guidelines on County of Los Angeles
6 Citizens Redistricting Commission.

7 CHAIRPERSON MILLER: Good morning. Ms. Gmur,
8 please.

9 MS. GMUR: Good morning, Madam Chair,
10 Commissioners.

11 These parameters and guidelines address changes to
12 the Elections Code, which created the Los Angeles County
13 Citizens Redistricting Committee -- Commission, to
14 perform the supervisory redistricting required after
15 each federal sentence.

16 On May 28, 2021, the Commission adopted the test
17 claim decision finding that Elections Code section 21532
18 and 21534 impose a reimbursable state-mandated program
19 within the meaning of Article XIII B, section 6, of the
20 California Constitution.

21 The Commission denied all other code sections added
22 by this test claim statute and activities alleged to be
23 mandated in the test claim, and found that costs
24 incurred to comply with the Ralph M. Brown Act and the
25 Public Records Act are exempt from the reimbursement

1 requirement.

2 Staff finds that the activities relating to
3 establishing the CRC, replacing members who resign,
4 providing one-time training for each member on the rules
5 of order and ethics requirements, and encouraging county
6 residents to participate in the redistricting public
7 review process, are reasonably necessary to comply with
8 the state-mandated program based on the evidence in the
9 record.

10 Staff further recommends that activities outside
11 the scope of the mandated program and activities
12 unsupported by evidence be denied.

13 Accordingly, staff recommends that the Commission
14 adopt the proposed decision and parameters and
15 guidelines and authorize staff to make any technical,
16 nonsubstantive changes to the proposed decision
17 following the hearing.

18 CHAIRPERSON MILLER: Thank you, Ms. Gmur.

19 Would the parties and witnesses for Item 4 please
20 turn on your cameras and state your names for the
21 record.

22 I'm going to have Mr. Lemus and Ms. Chu for the
23 County of Los Angeles, please begin. Any comments?

24 MS. PALCHIK: Can I just -- I'm sorry. Let me just
25 interrupt for a minute. This is Ms. Palchik.

1 Did we see that Mr. Lemus and Ms. Chu were sworn
2 in?

3 CHAIRPERSON MILLER: Were you both sworn in?

4 MS. HALSEY: No. I believe not, so we might need
5 to administer the oath.

6 CHAIRPERSON MILLER: Thank you, Ms. Halsey. We are
7 going to stand while Ms. Halsey administers the oath,
8 please, Ms. Chu and Mr. Lemus.

9 (Fernando Lemus and Eva Chu stood to be
10 sworn or affirmed.)

11 CHAIRPERSON MILLER: Thank you very much.

12 Would one of you like to begin, please, for the
13 County of Los Angeles?

14 MR. LEMUS: Sure. My name is Fernando Lemus. I'm
15 with the County of Los Angeles at the Department of the
16 Auditor-Controller. And I am here to introduce to you
17 Eva Chu. She is with our Department of the County
18 Counsel. So I will kind of turn it over to Eva.

19 CHAIRPERSON MILLER: Great. Thank you very much,
20 Mr. Lemus.

21 Ms. Chu, please.

22 MS. CHU: Thank you. Good morning, honorable
23 commissioners. My name is Eva Chu, deputy county
24 counsel for the County of Los Angeles.

25 I just have a couple comments that I would like to

1 make regarding the parameters and guidelines and just a
2 disclaimer that they may sound familiar, given what the
3 Commission has just heard on the prior test claim.

4 The parameters and guidelines provide
5 that redistricting by a mapping process and compliance
6 with the Voting Right Act -- Voting Rights Act are not
7 new, and, therefore, these activities are not
8 reimbursable even though other activities are, under
9 SB 958.

10 I think the comment that I would like to make is
11 that the reasoning there, with response -- with respect
12 to consultant costs is oversimplified. Here, the
13 requirements for drawing the new supervisorial boundary
14 district -- the district lines are different. SB 958
15 imposes different requirements in drawing district
16 boundaries that did not exist before. It is a higher
17 level of service required.

18 SB 958 does not just require the boundaries to be
19 drawn in compliance with the Voting Rights Act. It
20 requires the Independent Citizens Redistricting
21 Commission, or the CRC, to draw maps that meet other
22 requirements in that statute. That include, the
23 district shall be geographically contiguous, that
24 geographic integrity of communities of interest shall be
25 respected in a manner that minimizes its division, to

1 the extent possible, and that the boundaries shall not
2 consider the residency of any incumbent or candidate.
3 And this is in Elections Code section 21534(a)(3,
4 (a)(4), and (b).

5 SB 958 also requires the CRC to prepare and file a
6 final report that explains the basis on which the CRC
7 made its decision in achieving compliance with the
8 criteria set forth in the law. This is Elections Code
9 section 21534(d)(4).

10 These criteria are mandatory; they are not
11 permissive. And in the earlier redistricting cycles,
12 the county was subject to different requirements, which
13 required the districts to be as nearly equal in
14 population; that is still a requirement for this cycle.
15 Comply with the Voting Rights Act, and that is still a
16 requirement, and give consideration to factors such as
17 contiguity, integrity, compactness, and community of
18 interest.

19 But, again, there's no "shall" in the prior law,
20 and there was no requirement to provide a report that
21 set forth the basis of how the redistricting plan
22 adopted -- meets the criteria set forth in SB 958.

23 And because of these new and different requirements
24 imposed by SB 958, it is reasonably necessary for the
25 CRC to engage legal counsel to monitor, and voting

1 consultants to help guide them on their mandated charge.
2 Moreover, unlike the Board of Supervisors, who are
3 experienced government officials, with quasi-legislative
4 and quasi-judicial responsibilities in their day-to-day
5 role as county supervisors, SB 958 has put this critical
6 and enormous responsibility of drawing supervisorial
7 district lines on 14 commissioners, who, by the law's
8 own design, come from diverse backgrounds and cannot
9 have worked or represented the county in the last ten
10 years, and then to have these 14 commissioners get
11 themselves educated on the legal and demographic
12 criteria of the law, and then come to an agreement and
13 submit a redistricting plan that meets all of these
14 criteria, with a final report explaining the basis, it
15 is hard to imagine how that is feasible if it's meant to
16 be done correctly.

17 And it begs the question how the CRC is supposed to
18 comply with these new statutory requirements without the
19 support of legal, demographic, and voting consultants.

20 And the other point I wanted to say is, it isn't as
21 if the county can choose not to provide consultants to
22 the CRC; it's not discretionary. The law says the
23 county has to provide reasonable funding and staffing.
24 If the county were to refuse the CRC's reasonable
25 request to hire these consultants, the CRC or someone

1 else could sue the county for not complying with SB 958.

2 SB 958 has created such a catch-22 where the law
3 requires the county to provide reasonable funding and
4 staffing on a state-mandated program, but then cannot
5 get reimbursed for costs, these consulting costs, that
6 are reasonably and necessarily incurred, and, also,
7 where the county's fate is basically tied to the CRC in
8 a way that the county has no control over.

9 If the redistricting plan the CRC adopts is
10 challenged on the grounds that it does not meet the
11 criteria of SB 958 -- and there is certainly a
12 likelihood that there could be litigation given the
13 number of lawsuits on redistricting that we have already
14 seen filed across the country -- the county is left to
15 defend the acts of this Independent Citizens
16 Redistricting Commission for which it has no control,
17 but has to fund.

18 And for all of these reasons, I would urge the
19 Commission to please review and determine that the cause
20 of the consultants are reasonably necessary for the
21 Commission to comply with the state-mandated program and
22 to give true meaning to the words "reasonably necessary"
23 in Government Code section 17557.

24 CHAIRPERSON MILLER: Thank you very much.

25 Mr. Lemus, do you have anything to add to this?

1 MR. LEMUS: I do not.

2 CHAIRPERSON MILLER: Great. Thank you.

3 Mr. Hill from the Department of Finance. Any
4 comments?

5 MR. HILL: Thank you.

6 The Department of Finance has no comment on the
7 proposed parameters and guidelines.

8 CHAIRPERSON MILLER: Great. Thank you very much.

9 Now turning it to the Board to see if there are any
10 questions for the county counsel.

11 Seeing none, Ms. Gmur or Ms. Shelton, anything you
12 want to add?

13 MS. GMUR: If I may, Madam Chair.

14 CHAIRPERSON MILLER: Please.

15 MS. GMUR: So just to clarify a couple of things
16 here.

17 Let's start with the concept of consultants.
18 Consultants were decided at the time that the test claim
19 was decided in the decision. And you may remember our
20 conversation at the time, that consultants are not
21 required -- that is, they are not mandated -- under the
22 plain language of the statute.

23 However, if the CRC is hiring consultants to
24 perform mandated activities, then the cost of those
25 consultants, incremental costs of those consultants

1 performing those mandated activities, would be
2 reimbursable. Because we're not looking at who is
3 performing what mandated activities, but we are
4 reimbursing the costs for the mandated activities to be
5 performed.

6 So that's -- that takes care of the consultants
7 issue. And as I said, that was discussed thoroughly in
8 the test claim decision.

9 Also discussed in the test claim decision was the
10 question of mapping, and Ms. Chu has brought up that
11 there are additional requirements, different
12 requirements, that are now presented in the plain
13 language of the statute.

14 And that, too, was addressed at the time of the
15 test claim decision. Those five different requirements
16 were compared with the prior requirements, and the
17 analysis showed that they were using different words,
18 but were intentionally the same sort of thing. And so,
19 at that time, the decision brought it around to the fact
20 that it really, actually, isn't new.

21 She did bring up the final report. The final
22 report is new. It was found to be a mandated activity
23 at the time of the test claim decision. You will find
24 it in the parameters and guidelines that are before you
25 today in section (B)(2)(g).

1 Now, we don't say "final report," those specific
2 words, but it is there. And I believe I can cite you to
3 the page.

4 "Ongoing activities" begin on page 36, and you will
5 find subdivision (g) on page 38: "Issue a report that
6 explains the basis upon which the CRC made its decision
7 in achieving compliance with the redistricting criteria
8 required to comply with the Voting Rights Act."

9 So this is in our proposed Ps and Gs.

10 Finally, I understand her concern regarding
11 lawsuits and not fully complying with these --
12 everything that needs -- that the CRC needs to be done
13 because of the lack of reimbursement, but those two
14 things do not equate.

15 She is required by law -- not she personally,
16 obviously. The county is required by law to comply with
17 the statutory construct, and whether they are reimbursed
18 completely or not at all or partially should not --
19 should not affect how they choose to comply with the
20 law. You can't just comply with the parts you are being
21 reimbursed for. That's just ill advised.

22 So that's about all I have, if anybody has any
23 further questions.

24 CHAIRPERSON MILLER: Thank you very much.

25 Any questions for Ms. Gmur?

1 (No response.)

2 CHAIRPERSON MILLER: Anything to add, Ms. Shelton?

3 (No response.)

4 CHAIRPERSON MILLER: Any questions from the Board?

5 (No response.)

6 CHAIRPERSON MILLER: Yes, please.

7 MS. CHU: Just one response. Yes. The report has
8 been found to be a reimbursable activity. I think I
9 would just like to emphasize for the Commission, you
10 know, to approve, of course, the costs of the report
11 preparation, but to also understand that the underlying
12 consultant costs that went into it where -- you know,
13 they were incurred to ensure that compliance with the
14 criteria, and it may not just be advising and preparing
15 the report.

16 CHAIRPERSON MILLER: Thank you for that.

17 I'm going to see, is there any public comment
18 before we call for a motion?

19 MS. PALCHIK: I see none, Madam Chair.

20 CHAIRPERSON MILLER: Thank you, Ms. Palchik.

21 Ms. Shelton, did you want to make a final comment
22 before we -- no? Okay.

23 MS. SHELTON: No. I think the proposed Ps and Gs
24 are pretty clear and consistent with the Commission's
25 test claim decision, that any costs incurred to do the

1 actual redistricting and mapping are not eligible for
2 reimbursement.

3 But the activity of issuing the report that
4 explains the basis, as Ms. Gmur mentioned, is eligible
5 for reimbursement.

6 CHAIRPERSON MILLER: Thank you very much.

7 Any further questions from the Board?

8 If not, I will entertain a motion.

9 MEMBER OLSEN: I will move adoption of the staff
10 recommendation.

11 CHAIRPERSON MILLER: Thank you, Ms. Olsen.

12 Is there a second?

13 MEMBER STOWERS: Second.

14 CHAIRPERSON MILLER: Thank you, Ms. Stowers.

15 Motion by Ms. Olsen; second by Ms. Stowers.

16 Ms. Halsey, will you call the roll, please.

17 MS. HALSEY: Sure.

18 Mr. Adams.

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Ms. Kuffel.

21 MEMBER KUFFEL: Aye.

22 MS. HALSEY: Ms. Miller.

23 CHAIRPERSON MILLER: Aye.

24 MS. HALSEY: Ms. Nash.

25 MEMBER NASH: Aye.

1 MS. HALSEY: Ms. Olsen.

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Ms. Stowers.

4 MEMBER STOWERS: Aye.

5 MS. HALSEY: Mr. Walker.

6 MEMBER WALKER: Aye.

7 CHAIRPERSON MILLER: Thank you very much. The
8 staff recommendation is adopted.

9 We will now move on Item 5, please.

10 MS. HALSEY: Item 5 is reserved for county
11 applications for a finding of significant financial
12 distress, or SB 1033 applications. No SB 1033
13 applications have been filed.

14 Item 6 is on the consent calendar.

15 CHAIRPERSON MILLER: Great. Thank you.

16 MS. HALSEY: And then for Item 7, Program Analyst
17 Jill Magee will please turn on her video and microphone
18 and present Item 7, the Legislative Update.

19 CHAIRPERSON MILLER: Hi, Ms. Magee. Please go
20 ahead.

21 MS. MAGEE: Good morning. The following are the
22 legislative updates since the last time the Commission
23 met.

24 First, AB 473, California Public Records Act:
25 Conforming revisions, was chaptered on October 7th,

1 2021. This bill recodifies and reorganizes the
2 provisions of the act and becomes operative on
3 January 1st, 2023.

4 Finally, AB 474, California Public Records Act:
5 conforming revisions, which chaptered on October 7th,
6 2021. This bill enacts various conforming and technical
7 changes related to AB 473. Most of the changes made by
8 this bill are technical in nature and/or unrelated to
9 the mandates process.

10 Staff will continue to monitor legislation for
11 bills that impact the mandates process.

12 Thank you.

13 CHAIRPERSON MILLER: Thank you.

14 Any questions for Ms. Magee?

15 (No response.)

16 CHAIRPERSON MILLER: Any public comment?

17 Seeing none, we will now move on, please,
18 Ms. Halsey, to the Chief Counsel Report.

19 MS. HALSEY: Yes. Chief Legal Counsel Camille
20 Shelton will please turn on her video and microphone and
21 present Item 8, the Chief Legal Counsel Report.

22 CHAIRPERSON MILLER: Still good morning,
23 Ms. Shelton.

24 MS. SHELTON: Good morning.

25 We do have one new filing. In the case of the

1 County of San Diego versus Commission on State Mandates,
2 the case challenging the Commission's decision on the
3 Youth Offender Parole Hearings, they did file a Notice
4 of Appeal on November 5th, 2021, and that case is now
5 pending in the Fourth District Court of Appeal.

6 We don't have any recent decisions and then nothing
7 currently calendared.

8 And that's all I have to report today.

9 CHAIRPERSON MILLER: Great. Thank you very much.

10 Ms. Halsey.

11 MS. HALSEY: And then moving on to Item 9, it's the
12 Executive Director's Report.

13 I have two components to this report today: An
14 information and an action.

15 First is the action.

16 On November 22nd, 2019, the Commission adopted its
17 strategic plan for January 2020 through December 2021.
18 And most of our goals in the current plan have been met.
19 Others required updating. And staff have also proposed
20 new goals in implementing objectives, and you can see in
21 the attachment to my Executive Director Report, Exhibit
22 A, for the proposed strategic plan.

23 You will also note that we did some rewording and
24 revisiting of our mission, vision, and goals.

25 Substantively, they have remained the same, but we have

1 new staff on -- on hand, and they had some really good
2 ideas, I think, to make it more clear and less
3 legalistic for the reader. And so the -- in essence,
4 they are the same. They are reworded, if you want to
5 look at those and see if you agree with them. And if
6 you do, we would like to ask for the Commission to
7 approve this new proposed strategic plan.

8 CHAIRPERSON MILLER: Great. Thank you very much.

9 Any questions for Ms. Halsey? Incredible staff
10 work again. And I think it -- the strategic plan
11 certainly shows the vision of how hard this Commission
12 works on behalf of the people.

13 Any questions for Ms. Halsey?

14 (No response.)

15 MEMBER OLSEN: Move adoption of the strategic plan.

16 CHAIRPERSON MILLER: Thank you, Ms. Olsen.

17 Is there a second?

18 MEMBER WALKER: I will second.

19 CHAIRPERSON MILLER: Thank you, Mr. Walker.

20 Any public comment, Ms. Palchik, on the strategic
21 plan?

22 MS. PALCHIK: I see none.

23 CHAIRPERSON MILLER: Great. Thank you.

24 And was there any public comment on Ms. Shelton's
25 report? I forgot to ask. I apologize.

1 MS. PALCHIK: There was not.

2 CHAIRPERSON MILLER: Great. Thank you very much.

3 It was moved. The strategic plan is moved by

4 Ms. Olsen; seconded by Mr. Walker.

5 Ms. Halsey, will you please call the roll to adopt
6 the strategic plan.

7 MS. HALSEY: Sure.

8 Mr. Adams.

9 MEMBER ADAMS: Aye.

10 MS. HALSEY: Ms. Kuffel.

11 MEMBER KUFFEL: Aye.

12 MS. HALSEY: Ms. Miller.

13 CHAIRPERSON MILLER: Aye.

14 MS. HALSEY: Ms. Nash.

15 MEMBER NASH: Abstain.

16 MS. HALSEY: Ms. Olsen.

17 MEMBER OLSEN: Aye.

18 MS. HALSEY: Ms. Stowers.

19 MEMBER STOWERS: Aye.

20 MS. HALSEY: Mr. Walker.

21 MEMBER WALKER: Aye.

22 CHAIRPERSON MILLER: Thank you. The strategic plan
23 is adopted.

24 We will now move into our closed session. The
25 Commission will meet in closed executive session

1 pursuant to --

2 MS. PALCHIK: I'm sorry, Ms. Miller. I need to
3 interrupt. Ms. Halsey has additional reporting.

4 CHAIRPERSON MILLER: Oh, I'm so sorry, Ms. Halsey.
5 I thought you said you were done. I thought you were
6 referring to the written report. I apologize.

7 MS. HALSEY: I'm sorry. That was the action item.

8 The other is just informational, and it's on our
9 workload and tentative agenda items. Our workload after
10 this hearing: There are 37 pending test claims -- oh,
11 wait. 38 pending test claims. All but 37 regarding
12 storm water. There is one parameters and guidelines
13 regarding storm water. That is on inactive status,
14 pending the outcome of litigation.

15 And, additionally, there are four statewide cost
16 estimates which are pending inactive.

17 Finally, there are six IRCs pending.

18 The Commission currently expects to complete all
19 these pending items by approximately January 2025,
20 depending on staffing and other workload. However, some
21 of the test claims may be heard and decided earlier than
22 currently scheduled if they are consolidated for
23 hearing.

24 And then for tentative agenda items, I would direct
25 people to the Executive Director Report, and you can see

1 the items that we expect will come up in the next
2 meeting or two.

3 And then if you want to see all of the -- all of
4 the pending matters and when they are tentatively
5 scheduled for hearing, those are posted on the
6 Commission's website, and that document is updated at
7 least bimonthly.

8 And that's all I have.

9 CHAIRPERSON MILLER: Great. Thank you very much.
10 Sorry I got ahead of you, especially with all that work
11 coming up.

12 So now any other questions for Ms. Halsey or any
13 public comment?

14 (No response.)

15 CHAIRPERSON MILLER: Seeing none, now we really
16 will move into closed session. Pursuant to Government
17 Code section 11126(e) to confer with and receive advice
18 from legal counsel for consideration and action, as
19 necessary and appropriate, upon the pending litigation
20 listed on the published notice and agenda; and to confer
21 with and receive advice from legal counsel regarding
22 potential litigation. The Commission will also confer
23 on personnel matters pursuant to Government Code section
24 11126(a)(1).

25 We will reconvene in open session in approximately

1 15 minutes. So we will be in recess for closed session.

2 (Closed session: 11:31 a.m. to 11:39 a.m.)

3 CHAIRPERSON MILLER: The Commission met in closed
4 executive session pursuant to Government Code
5 11126(e)(2) to confer with and receive advice from legal
6 counsel for consideration and action, as necessary and
7 appropriate, upon the pending litigation listed on the
8 published notice; and to confer with and receive advice
9 from legal counsel regarding potential litigation. The
10 Commission also conferred on personnel matters pursuant
11 to Government Code section 11126(a)(1).

12 With no further business to discuss, I will
13 entertain a motion to adjourn, please.

14 MEMBER NASH: So moved.

15 CHAIRPERSON MILLER: Thank you, Ms. Nash. Welcome
16 again.

17 I will second that motion.

18 Without objection, we -- do we need a roll call to
19 adjourn, Ms. Halsey?

20 MS. HALSEY: Well, we've been doing roll calls for
21 everything because of the Zoom.

22 CHAIRPERSON MILLER: Great. Thank you.

23 MS. HALSEY: Normally not.

24 CHAIRPERSON MILLER: Right.

25 MS. HALSEY: Mr. Adams.

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MEMBER ADAMS: Aye.

MS. HALSEY: Ms. Kuffel.

MEMBER KUFFEL: Aye.

MS. HALSEY: Ms. Miller.

CHAIRPERSON MILLER: Aye.

MS. HALSEY: Ms. Nash.

MEMBER NASH: Aye.

MS. HALSEY: Ms. Olsen.

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Stowers.

MEMBER STOWERS: Aye.

MS. HALSEY: Mr. Walker.

MEMBER WALKER: Aye.

CHAIRPERSON MILLER: Great. That motion to adjourn is approved and wishing you all the very best. Lots of light and peace over the holiday season and we look forward to seeing you in the new year. Please take care.

(Proceedings concluded at 11:40 a.m.)

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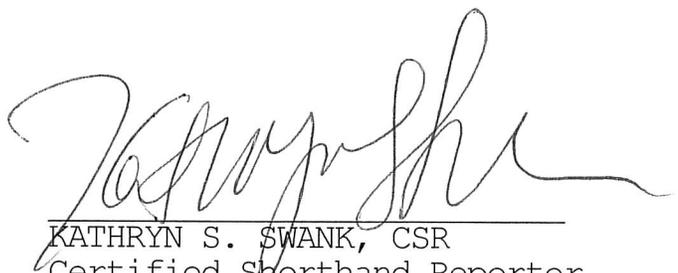
CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings were reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of December 2021.



KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061