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# Elections

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# Elections

## **Elections; simulated ballots**

Elections Code §§12058, 12059 (new).  
AB 959 (Waxman); STATS 1974, Ch 681

Section 12058 has been added to the Elections Code to require anyone who prints a simulated ballot or simulated sample ballot to place on each page the following notice:

### **NOTICE TO VOTERS**

(Required by Law)

This is not an official ballot or an official sample ballot prepared by the county clerk, registrar of voters, or the Secretary of State.

This is an unofficial, marked ballot prepared by \_\_\_\_\_  
(insert name and address of the person or organization responsible for preparation thereof).

This notice must be in ten-point roman type or type at least half as large as that of the simulated ballot or simulated sample ballot, whichever is larger, and must be printed in a box which is set apart from any other printed matter. No such notice is required in any editorial or other statement appearing in a regularly published newspaper or magazine, other than a paid political advertisement. Section 12058 also prohibits the use of any official seal or the insignia of any public entity on the simulated ballot or simulated sample ballot, or its envelope.

Section 12059 provides that anyone who prints or causes to be printed such a ballot in violation of section 12058 is guilty of a misdemeanor. In addition to this criminal penalty, any registered voter may bring an action in superior court to obtain "a temporary or permanent restraining order or injunction" against publication.

### **COMMENT**

The language of section 12058(b) raises a problem of construction which may require clarification by future legislation. Strictly construing such language, it would appear that it is the official seal or insignia

of a public entity that may not be placed upon the sample ballot, rather than a reproduction or simulation of the seal. However, since the possibility of an actual official seal appearing on a simulated ballot or sample ballot is so remote, it is presumably the legislative intent to prohibit the use of a reproduction or simulation of an official seal or insignia of a public entity. The apparent reason for the newspaper editorial exception to section 12058 is that such uses of a simulated sample ballot are not likely to lead the reader to believe that the ballot is an official ballot.

### **Elections; recall**

Elections Code §27004 (repealed); §§27004, 27005, 27006, 27007, 27008, 27217, 27517.5 (new).

AB 483 (Keene); STATS 1974, Ch 233  
(Effective November 6, 1974)

Prior to the enactment of chapter 233, the procedural requirements for the recall of elected state officials, now contained in Elections Code Sections 27004 through 27008, were contained in article XXIII of the California Constitution in substantially the same form. The relocation of the recall provisions from the constitution to the Elections Code was necessitated by a constitutional revision pursuant to Assembly Constitutional Amendment 29 (Proposition 9) which was adopted by the electorate on November 5, 1974. This amendment repealed the recall provisions as they existed in the constitution and replaced them with new streamlined provisions. This relocation of the detailed steps involved in the recall process places the recall process under legislative rather than constitutional control, and will facilitate minor procedural changes in the process since a constitutional amendment is no longer required for such changes. Chapter 233 also allows counties and cities, through sections 27217 and 27517.5, respectively, to reimburse officers not recalled for any election expense legally and personally incurred. Prior law made no provision for reimbursement of city or county officials.

The major substantive changes made by Assembly Constitutional Amendment 29 are: (1) the signature filing period is reduced from 180 to 160 days; (2) the Secretary of State is required to maintain a continuous count of signatures certified to him; (3) the reimbursement of state officers not recalled is limited to those expenses legally and personally incurred; (4) the prohibition on initiating recall proceedings within the first six months of the officer's term is elimi-

nated; and (5) the authority to establish regulations for circulating, filing, and certifying petitions, nomination of candidates, and the recall election, is delegated to the legislature.

### **Elections; registration of voters**

Elections Code §§310, 321, 450 (amended).  
AB 765 (Kapiloff); STATS 1974, Ch 74

Prior to the enactment of chapter 74, a woman registering to vote was required by sections 310 and 321 of the Elections Code to use the designation "Miss" or "Mrs." preceding her name. In *Allyn v. Allison* [34 Cal. App. 3d 448, 110 Cal. Rptr. 77 (1973)] the court held that the provisions of those sections did not violate a woman's constitutional rights. Despite this holding, however, and seemingly in response to public dissatisfaction with this provision, the legislature has amended sections 310, 321, and 450 of the Elections Code. As amended these sections now allow a woman to use the prefix "Ms." The amendment further provides that no person shall be denied the right to register because he or she fails to mark a prefix to his or her given name. Prior to the enactment of chapter 74, such a failure would have resulted in the denial of the right to vote (§200).

### **Elections; water district elections**

Elections Code §§23512, 23527.5, 23554, 23555, 23557 (amended); Water Code §§34026, 35003.1, 35005, 35107 (amended).  
AB 4143 (Badham); STATS 1974, Ch 1157

Prior to the enactment of Chapter 1157, section 34026 of the Water Code defined "holder of title" for the purpose of determining voter eligibility in water district elections to mean the owner of record of the fee title to the land. Chapter 1157 has amended this section to redefine "holder of title" to mean the owner of record of the fee title to the land *unless* that holder has conveyed equitable title to the land by means of a recorded land sale contract, in which case "holder of title" means the vendee under that contract. Section 35003.1 has also been amended to require county clerks to apportion the voting rights among all owners of the land if there is more than one person or entity shown as the owner of record of that land. The county clerk may consider any information he deems correct, proper, and appropriate for this

apportionment. Chapter 1157 also makes several minor related changes to Elections Code Sections 23412, 23527.5, 23554, 23555, and 23557, and sections 35005 and 35107 of the Water Code with respect to the duties of the county clerk, district secretary, and precinct board. Equitable owners of land now will be able to participate in water district elections.

**Elections; resource conservation districts**

Public Resources Code §§9140, 9203, 9207 (repealed); §§9023, 9024, 9135, 9145, 9164, 9200 (amended).  
SB 1518 (Nejedly); STATS 1974, Ch 672

Section 9074 of the Public Resources Code provides for the formation of resource conservation districts. Under prior law the only persons qualified to vote in an election dealing with the issue of a district's formation (pursuant to §9125) or an election of the directors of a district (in accordance with §9200), were landowners within the boundaries of that district. Similarly, only landowners were allowed to contest such elections. Chapter 672 has amended sections 9023 and 9145, and repealed sections 9140, 9203, and 9207, to allow *residents* of each district to vote in and contest these elections.

The provision of section 9024 which allowed proxy voting has been deleted, thus making the absentee voting provisions of Elections Code Section 23531 applicable to all resource conservation district elections. Section 9135 of the Public Resources Code has been amended to require the county clerk of a county where a resource district election is held to provide each eligible voter with a ballot without the voter making a request for one. In addition, sections 9164 and 9200 have been amended to provide that terms of district directors shall expire, and elections shall be held, in even-numbered rather than odd-numbered years.

*COMMENT*

Voter qualification provisions regarding water storage district elections, similar to those regulating resource conservation district elections prior to the enactment of chapter 672, have recently withstood constitutional challenge in *Salyer Land Co. v. Tulare Lake Basin Water Storage District* [410 U.S. 719 (1973)]. In that case the plaintiff argued that restricting voting rights to only landowners was a denial of equal protection to nonlandowner residents. The Court, in affirming the validity of the landownership requirement, stated that because the ac-

tions of a water district governing board disproportionately affect landowners, and because of the water district's special limited purpose and exercise of authority which cannot be labeled as normal governmental authority, there is no equal protection violation [410 U.S. at 728-29]. Therefore, although it does not appear that chapter 672 is the result of legislative concern over the constitutional issues in *Salyer*, its effect has been to extend voting rights, at least with respect to resource conservation districts, well beyond the minimum protection afforded by the courts.

### **Elections; filing fees**

Elections Code §16100.6 (new); §§6555, 18603 (amended).  
AB 914 (Gonzales); STATS 1974, Ch 454  
(Effective July 12, 1974)

Sections 6552 and 6554 of the Elections Code provide for the payment of filing fees by certain candidates in direct primary elections. Candidates for the offices of state senator or assemblyman, Representative in Congress, district attorney, or any judicial office or other office to be voted for in any district comprising more than one county, must pay a filing fee of one percent of the first year salary for that office. Two percent of the first year salary must be paid by candidates for the office of United States Senator or any state or county office other than a judicial office or the office of district attorney.

Section 6555 of the Elections Code has been amended to provide that any candidate may, in lieu of all or any portion of a filing fee, submit to the county clerk a petition signed by voters registered in the area to be represented in the following numbers: state assemblyman—1,500 signatures; state senator or Representative in Congress—3,000 signatures; statewide office—10,000 signatures; any other elective public office where there are 2,000 or more registered voters in the district in which the candidate seeks nomination—four signatures per dollar of the filing fee or 10 percent of the registered voters in the district to be represented, whichever is less; all other offices for which a filing fee is required and the number of registered voters in the district is less than 2,000—four signatures per dollar of the filing fee or 20 percent of the registered voters in the district to be represented, whichever is less. Section 6555 also provides that should the party with whom the candidate is registered have a party registration of less than five percent of the total registered voters eligible to vote at the last statewide election, the candidate may submit a petition containing signatures of

10 percent of the registered voters of that party in the district in which he seeks nomination, or 150 signatures, whichever is less. No registered voter may sign more than one such petition for the same office unless there is more than one vacancy in that office, in which case no voter may sign more petitions than the number of positions to be filled. Any voter registered as affiliated with the same political party as a candidate for whom he is eligible to vote may sign the petition of that candidate, and any registered voter may sign the petition of a candidate "other than a candidate seeking the nomination of his party, for whom he is eligible to vote regardless of political party." (§6555(b)(1)). Although the language of this provision is somewhat ambiguous, the interpretation of the bill by its author is that any voter who is eligible to vote for the *partisan* office for which the candidate is seeking nomination may sign such petition if he is of the same party affiliation as the candidate, and any eligible voter may sign the petition of a candidate seeking a *nonpartisan* office, regardless of the voter's party affiliation [Interview with Assemblyman Ray Gonzales, California State Assembly, Sacramento, Cal., Sept. 25, 1974].

A candidate may submit more than the required number of signatures in order to compensate for signatures that may be invalidated. If the clerk determines that the number of valid signatures falls below the number required, he is to notify the candidate of this fact and allow him to submit new signatures at any time prior to the close of the period for circulation of nomination papers. The provisions of sections 6555 and 18603 requiring write-in candidates at primary elections to pay filing fees in order to have their names printed on the general election ballot have been repealed. Chapter 454 does not decrease the number of signatures required for a candidate's nomination papers, and any such signatures on nomination papers shall be in addition to, and different from, the signatures filed in lieu of a filing fee.

#### *COMMENT*

Chapter 454 represents a legislative response to recent court decisions dealing with the constitutionality of filing fee requirements [See *Bullock v. Carter*, 405 U.S. 134 (1972); *Zapata v. Davidson*, 24 Cal. App. 3d 823, 101 Cal. Rptr. 438 (1972)]. In *Bullock* candidates alleged that they were unable to pay assessed filing fees. While recognizing that the state has a legitimate interest in protecting the political process from "frivolous or fraudulent candidacies," [405 U.S. at 145], the Court found that because the filing fee system tended to deny those candidates lacking personal wealth or affluent backers ac-

cess to the ballot, it therefore necessarily tended to deny poorer voters the opportunity to vote for a candidate of their choosing [405 U.S. at 144], and resulted in an unconstitutional denial of equal protection of the laws [405 U.S. at 149].

Similarly, in *Zapata v. Davidson* the court held that the state could not exclude a candidate from the ballot because he was unable to pay a filing fee unless it also provided "reasonable alternative means of access to the ballot." [24 Cal. App. 3d at 837, 101 Cal. Rptr. at 450]. Section 6555, as amended by chapter 454, appears to provide such means as it will make the ballot more accessible to all qualified, serious candidates, regardless of their economic status.

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See Generally:

- 1) Comment, *The Constitutionality of Qualifying Fees for Political Candidates*, 120 U. PA. L. REV. 109 (1971).
- 2) Note, *The Constitutionality of Candidate Filing Fees*, 70 MICH. L. REV. 558 (1972).