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Elections

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Elections

Elections; absentee ballots—voting procedures

Elections Code § 1013 (amended).
SB 133 (Presley); 1987 STAT. Ch. 22

Under existing law, absentee voters¹ must either return their marked ballots to the election official² who mailed or presented the ballot, or return the ballot to a precinct board member at any polling place.³ Under Chapter 22, absentee voters must return the ballots by mail or in person to the official who sent the ballot, or personally return the ballot to any polling place.⁴ Furthermore, absentee voters who are unable to personally return the ballots due to illness or other physical disabilities may designate a spouse, child, parent, grandparent, grandchild, brother, or sister to return the ballot to the official who sent the ballot or to the precinct board at any polling place.⁵ In apparent response to the California Supreme Court decision in *Wilks v. Mouton*,⁶ Chapter 22 provides that a ballot may not be

1. See CAL. ELEC. CODE § 1000 (definition of absentee voter). See also *id.* § 1003 (eligibility of registered voters for absentee ballots).

2. See *id.* § 15 (definition of elections official).

3. *Id.* § 1013 (ballot must be received before the close of the polls on election day).

4. *Id.*

5. *Id.*

6. 42 Cal. 3d 400, 412, 722 P.2d 187, 195, 229 Cal. Rptr. 1, 8-9 (1986) (ballots collected and delivered by third parties who are not election officials may be counted in some circumstances). The court in *Wilks* ruled that noncompliance with a directory provision of the California Elections Code will not nullify a vote if there was substantial observance of the law, and no showing that: (1) the rights of voters were injuriously affected, or (2) the results of an election would be changed. *Id.* at 404, 722 P.2d at 190, 229 Cal. Rptr. at 3 (citing *Rideout v. City of Los Angeles*, 185 Cal. 426, 430, 197 P. 74, 75 (1921). See also *Kenworthy v. Mast*, 141 Cal. 268, 271, 74 P. 841, 843 (1903); *Willburn v. Wixson*, 37 Cal. App. 3d 730, 736, 112 Cal. Rptr. 620, 624 (1974)). The legislature is concerned that language in *Wilks v. Mouton* might be misread to authorize counting such ballots unless fraud, tampering, or coercion is affirmatively shown. 1987 Cal. Stat. ch. 22, sec. 1, at _____. The intent of the legislature is and always has been that any ballot cast in violation of California Elections Code section 1013 cannot be counted, particularly if the ballot would affect the election results. 1987 Cal. Stat. ch. 22, sec. 1(d), at _____. See *Canales v. City of Alviso*, 3 Cal. 3d 118, 127, 474 P.2d 417, 422, 89 Cal. Rptr. 601, 606 (1970) (ballots cast in violation of directory

counted if delivery does not comply with this section.⁷

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provisions of the California Elections Code must be nullified if the election result has been changed by the deviation).

7. CAL. ELEC. CODE § 1013. The legislative intent has always been that the provisions of section 1013 are mandatory and not directory. 1987 Cal. Stat. ch. 22, sec. 1(b), at _____. See *Fair v. Hernandez*, 138 Cal. App. 3d 578, 582, 188 Cal. Rptr. 45, 47 (1982) (if California Elections Code section 1013 was intended to be directory, not mandatory, the legislature would have so stated).

Elections; validation of signatures on initiative petitions

Elections Code § 5153 (repealed); §§ 5153, 5153.5 (new).
AB 961 (Chacon); 1987 STAT. Ch. 189

Prior law required the clerk¹ of the board of a district to ascertain whether an initiative petition is signed by the requisite number of voters.² Chapter 189 reinstates the requirement of determining whether the petition is signed by the requisite number of voters, but extends the time for ascertaining the validity of the petition to thirty days.³ If the petition contains more than 1000 signatures,⁴ Chapter 189 authorizes the clerk of the district to use a random sampling technique for verification of the signatures.⁵ In order for the petition to be certified, the random statistical sampling must show that the petition has the required number of valid signatures.⁶ After verifying the

1. CAL. ELEC. CODE § 14 (definition of clerk); see also *id.* § 14000 (definition of procurement of materials by clerk).

2. 1976 Cal. Stat. ch. 248, sec. 3, at 515 (enacting CAL. ELEC. CODE § 5153) (the clerk must make this determination within 10 days from the date of the filing of the petition). See CAL. ELEC. CODE § 18 (definition of voter). The required number of petition signatures is 10% of the registered voters in a district with less than 500,000 registered voters. *Id.* § 5154(a). In a district of more than 500,000 registered voters, the required number of petition signatures is 5% of the registered voters. *Id.*

3. CAL. ELEC. CODE § 5153.

4. CAL. CIV. CODE § 14 (definition of signature).

5. CAL. ELEC. CODE §§ 5153, 5153.5(a). In determining the validity of the signatures, the clerk may use the duplicate file of affidavits or may check the signatures against facsimiles of voters' signatures. *Id.* The sample must give equal opportunity for all the signatures to be drawn and must contain at least 1000 signatures or 5% of the signatures, whichever is greater. *Id.* § 5153.5(a).

6. *Id.* § 5153.5. In order to validate the petition, the sampling must show that 90 to 110% of the required number of signatures are present. *Id.* § 5153.5(b).

petition, the clerk must notify the proponents as to whether the petition is sufficient.⁷ If the petition is sufficient, the clerk must certify the results of the examination to the governing board of the district at the next regular meeting.⁸

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7. *Id.* §§ 5153, 5153.5(d) (the clerk must attach a certificate of results of the sampling to the petition).

8. *Id.* §§ 5153, 5153.5(f). If the petition is not sufficient, no action may be taken on the petition. *Id.* §§ 5153, 5153.5(e). The failure to secure sufficient signatures does not preclude the filing of another petition on the same issue. *Id.*

Elections; absent voter ballots

Election Code § 29642 (repealed); §§ 29505, 29656, 29657, 29658 (new).

SB 460 (McCorquodale); 1987 STAT. Ch. 466

Under existing law, a person who fraudulently casts or attempts to cast an absent voter¹ ballot is guilty of a felony.² Chapter 466 further provides that a person is guilty of a misdemeanor for willfully (1) interfering with the prompt delivery of a completed absent voter ballot application,³ (2) retaining a completed absent voter ballot application for more than three days,⁴ or (3) denying an applicant the right to return the completed absent voter ballot application to local elections officials.⁵ Chapter 466 also prohibits any person having charge of a completed absent voter ballot from willfully interfering with the return of the ballot to local elections officials.⁶ Additionally, Chapter 466 prohibits any individual, group, or organization from

1. CAL. ELEC. CODE § 1000(a) (definition of absent voter).

2. *Id.* § 29658. Under Chapter 466, the felony is expanded to include fraudulently applying for an absent voter ballot by using either a fictitious name or the name of a qualified voter. *Id.*

3. *Id.* § 1002 (definition of application for absent voter's ballot).

4. The person may retain the absent voter ballot application with the voter's authorization and over state holidays and weekends. *Id.* § 29656(b).

5. *Id.* § 29656.

6. *Id.* § 29657. Chapter 466 imposes misdemeanor penalties for the interference. *Id.*

knowingly distributing any application for an absent voter's ballot that is not in conformity with statutory requirements.⁷

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7. *Id.* § 29505 (the individual, group, or organization is guilty of an infraction for violating the statutory requirements). *See id.* § 1000-1310 (provisions on absentee voting).

Elections; libel and slander

Elections Code §§ 12527, 12528 (new); § 12511 (amended).
SB 244 (Presley); 1987 STAT. Ch. 778

Existing law imposes civil liability for libel¹ or slander.² Chapter 778 expands existing law by imposing civil liability for libel or slander as a result of any campaign advertising or communication.³ With the enactment of Chapter 778, an individual may bring a civil action against a candidate or state measure proponent for any slander or libel committed by a committee controlled⁴ by the candidate or state measure proponent.⁵ Chapter 778 also provides that an individual may bring an action against the sponsor of a sponsored committee⁶ which has slandered or libeled the individual.⁷ Chapter 778, however, does not alter the actual malice standard required by existing case law.⁸

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1. CAL. CIV. CODE § 45 (definition of libel).
 2. *Id.* §§ 44-48.9. *Id.* § 46 (definition of slander). Statements of opinion, as distinguished from statements of fact are not actionable. *See Baker v. Los Angeles Herald Examiner*, 42 Cal. 3d 254, 260, 721 P.2d 87, 90, 228 Cal. Rptr. 206, 208-09 (1986); *Gregory v. McDonnell Douglas Corp.*, 17 Cal. 3d 596, 600-01, 552 P.2d 425, 427-28, 131 Cal. Rptr. 641, 643-44 (1976); *Miller v. Bakersfield News-Bulletin, Inc.*, 44 Cal. App. 3d 899, 903, 119 Cal. Rptr. 92, 94 (1975).
 3. CAL. ELEC. CODE § 12511 (definition of campaign advertising or communication).
 4. CAL. GOV'T CODE § 82016 (definition of controlled committee).
 5. CAL. ELEC. CODE § 12528(a); CAL. GOV'T CODE § 82016.
 6. CAL. GOV'T CODE § 82048.5 (definition of sponsored committee).
 7. CAL. ELEC. CODE § 12528(b).
 8. *See Gertz v. Welch*, 418 U.S. 323, 351 (1974) (an individual who is neither a public official nor a public figure and is defamed by a publisher or broadcaster does not have to prove the publisher or broadcaster acted with knowledge of the falsity or reckless disregard for the truth). An additional hurdle for an individual bringing an action against a public official is that official's privilege to make statements in the proper discharge of the official duty, free from concern about defamation actions. CAL. CIV. CODE § 47. The publication or broadcast of the statement also may be privileged. *Id.*

Elections; slate mailers

Government Code §§ 82048.3, 82048.5, 84108, 84218, 84219, 84220, 84221, 84305.5 (new).
SB 1311 (Craven); 1987 STAT. Ch. 905

Under existing law, no person¹ may make expenditures² for the purpose of sending a mass mailing,³ unless the sender is identified.⁴ Chapter 905 further regulates slate mailers⁵ and slate mailer organizations⁶ by requiring the organizations to have a treasurer, to file a statement of organization with the Secretary of State,⁷ to file amendments to the statement of organization within ten days after the change occurs,⁸ and to maintain detailed accounts, records, bills and receipts.⁹

Chapter 905 requires an organization to file semiannual campaign statements¹⁰ for each period in which the organization has received five hundred dollars or more in payments¹¹ from any person, or in which the organization has expended more than five hundred dollars to produce one or more slate mailers.¹² Chapter 905 further provides that organizations must file preelection statements if the organization

1. CAL. GOV'T CODE § 82047 (definition of person).

2. *Id.* § 82025 (definition of expenditure).

3. *Id.* § 82041.5 (definition of mass mailing).

4. *Id.* § 84305.

5. A slate mailer is a mass mailing which supports or opposes a total of four or more candidates or ballot measures. *Id.* § 82048.3.

6. A slate mailer organization is any person who directly or indirectly does all of the following: (1) Is involved in the product of one or more slate mailers and exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers; (2) receives \$500 or more in payments during a calendar year for the production of slate mailers. *Id.* § 82048.5(a). Not included as a slate mailer organization are the following: (1) A candidate or officeholder or a committee controlled by a candidate or officeholder; (2) an official committee of any political party; (3) a legislative caucus committee; and (4) a committee primarily formed to support or oppose a candidate, officeholder, or ballot measure. *Id.* § 82048.5(b).

7. A statement of organization must include the following: (1) The full name, street address, and telephone number of the treasurer and principal officers; (2) the name and telephone number of the organization; (3) the names and telephone numbers of persons with final decisionmaking authority as to which candidates or measures will be supported or opposed in the organization's slate mailers. *Id.* § 84108(b). If the organization qualifies as a slate mailer organization before the election, but after the closing date to file campaign statements, then the organization must file a statement with the Secretary of State within 24 hours by telegram or personal delivery. *Id.* § 84108(c).

8. The statement must be made by telegram or personal delivery within 24 hours if the change occurs after the last deadline for preelection filing. CAL. GOV'T CODE § 84103(b).

9. *Id.* § 84108.

10. *Id.* § 82006 (definition of campaign statement).

11. *Id.* § 82044 (definition of payment).

12. *Id.* § 84218(a). Campaign reports must include the following information: (1) Total

receives or expends more than five hundred dollars during the period covered¹³ by the statement.¹⁴

Chapter 905 requires each slate mailer to be printed with the name and address of the organization.¹⁵ Chapter 905 also requires that at the top or bottom of the mailer's front side there be a notice to the voters, which designates the candidates and ballot measure committees that paid for and authorized the mailer.¹⁶

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receipts for the period of the statement and a cumulative total; (2) total disbursements for the period of the statement and a cumulative total; (3) for each candidate or committee that is a source of receipts of more than \$100 during the period of the statement, the name and identification of the candidate or committee, the date of receipt of the funds and the cumulative amount of receipts; (4) for each person who is not a candidate or committee but who contributes more than \$100 during the period of the statement, the name and address of the person, the name of the employer, the date of receipt and the cumulative amount received; (5) the names of the candidates or ballot measures supported or opposed in any slate mailers sent by the organization during period; (6) the total amount of disbursements made during the period to persons who received \$100 or more; (7) for each person receiving more than \$100 in disbursements, the full name, street address, amount of disbursement, a description as to the purpose of the disbursement; (8) cumulative disbursements of \$1000 or more made directly or indirectly to any person listed in the organization's statement of organization; and (9) the name and address of the organization and the treasurer. *Id.* § 84219(a)-(g). *See id.* § 84219(a) (definition of receipts). *See id.* § 84219(b) (definition of disbursements). If the payee is not the person who provided the consideration for the disbursement, then the name, address and a description as to the purpose of the disbursement must be provided for the person who provided consideration. *Id.* § 84219(h)(5). An indirect disbursement that is intended for the use or benefit of that person or a member of the person's immediate family, or if made to a business entity in which the person or a member of the person's immediate family is a partner, shareholder, owner, director, trustee, officer, employee, consultant or holds any position in management of a nonpublicly traded corporation. *Id.* § 84219(i). If the organization qualifies as a general purpose committee, then the committee must file a statement. *Id.* § 84219(k). *See id.* §§ 84211 (necessary contents of statement), 82027.5 (definition of general purpose committee).

13. *Id.* § 82046 (definition of period covered).

14. *Id.* § 84218(b). The preelection statements for a June election in even numbered years must be filed no later than March 22 for the period ending March 17; for the period ending 17 days prior to the election, the statement must be filed at least 12 days prior to the election. *Id.* § 84200.7(a). The preelection statements for a November election in even numbered years must be filed no later than October 5 for the period ending September 30; for the period ending 17 days prior to the election, the statement must be filed 12 days prior to the election. *Id.* § 84200.7(b). For all other elections the statement for the period ending 45 days prior to the election must be filed no later than 40 days before the election; for the period ending 17 days prior to the election, the statement must be filed 12 days prior to the election. *Id.* § 84200.8.

15. *Id.* § 84305.5(a)(1). The print must be at least 8-point roman type and in a color designed to contrast with the background. *Id.*

16. *Id.* § 84305.5(a)(2)-(4). The printed notice must be at least in 8-point roman type and must read:

Notice to Voters

This document was prepared by [name of slate mailer organization], not an official political party organization. Appearance in this mailer does not necessarily imply endorsement of others in this mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an *.

Id. § 84305.5(a)(2).

Elections; Voter registration—confidentiality

Elections Code §§ 511.5, 1002.5, 29207 (new).
SB 1195 (Marks); 1987 STAT. Ch. 1458

Under existing law, each citizen must file an affidavit of registration¹ to be eligible to vote.² Chapter 1458 makes the affidavit of registration a public record and provides for the confidentiality of certain information³ appearing on the affidavit upon a showing of the existence of life-threatening circumstances.⁴ Further, Chapter 1458 grants governmental⁵ immunity from civil negligence actions brought as a result of an unauthorized disclosure of such confidential information.⁶ Finally, under Chapter 1458, any unauthorized use⁷ of voter registration information is a misdemeanor.⁸

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1. CAL. ELEC. CODE § 500 (contents of an affidavit).

2. *Id.* § 301 (the affidavit information provided by a voter is available to private citizens). See 27 Ops. Att'y Gen. 30 (1955) (information available providing the citizen bears the cost of reproduction).

3. See CAL. ELEC. CODE § 511.5(b) (information concerning the voter's residence address and telephone number).

4. *Id.* § 515.5(a), (b) (the voter must obtain a superior court order issued upon showing the existence of life-threatening circumstances). Once confidentiality is granted, the citizen is considered an absentee voter and is required to provide an alternate mailing address. *Id.* § 511.5(c). See *id.* § 1000(a) (definition of absent voter). See also *id.* § 310 (absentee voter registration procedures). The elections official may use either the alternate address or the word "confidential" in an official list or roster. *Id.* § 515(c)(2).

5. *Id.* § 515(d) (or any officer or employee of a governmental agency).

6. *Id.* (immunity applies only in the absence of gross negligence or willfulness).

7. *Id.* § 29207 (limits use to election, scholarly or political research, or governmental purposes).

8. *Id.* (applies to any person who knowingly uses, permits the use of, or furnishes the information for other than an authorized purpose).

