

BALLOT ARGUMENTS AND CANDIDATES' STATEMENTS: A PRIMER FOR LOCAL GOVERNMENTS

By Heather Kenny¹

As with many areas in California elections law, ballot arguments and candidates' statements can be a murky area. On one end of the spectrum, city attorneys and local elections officials² are trying to field the question, "What can we allow in respect to ballot arguments and candidates' statements?" On the other end, there are candidates and initiative proponents trying to figure out how far they can push the envelope. As a foundation, there is the California Elections Code, which rarely provides clear answers.

This paper will go through the basic requirements for ballot arguments and candidates' statements, the problems and challenges that can arise from each, and some practical examples that will pull it all together.

I. BALLOT ARGUMENTS

a. The Basic Rules

The Elections Code³ sets forth the requirements for ballot arguments in municipal elections. What are the guidelines for municipalities? What are the guidelines for the initiative proponents? This paper will cover only the basic rules. For a comprehensive review, please see California Elections Code Sections 9280 through 9287.

- i. For measures placed on the ballot by petition: Proponents of an initiative measure, or other interested parties, can prepare an argument of up to 300 words in favor of the ballot argument. The legislative body, e.g., the city council, may submit a 300-word argument against the ordinance.⁴
- ii. For measures placed on the ballot by the legislative body: (1) The legislative body, or any member(s) of the legislative body *authorized by that body*; (2) or any individual voter who is eligible to vote on the measure; (3) or a bona fide association of citizens; (4) or any combination of the above may file a 300-word written argument for or against a city measure.⁵ This section creates a rather large group of people who are eligible to draft or file ballot arguments for or against a measure. However, note that in the case of a city council-sponsored initiative, for example, a city councilmember may not draft an argument for a ballot measure *unless* he or she has been authorized to do so by the city council. This keeps a minority of the legislative body from speaking for the whole.
- iii. Elections officials must ensure that the following statement appears on the front cover, or if there is not a front cover, the

- heading of the first page, of the printed arguments: “Arguments in support or opposition of the proposed laws are the opinions of the authors.” This is a fairly new provision, so please make note of it.⁶
- iv. A ballot argument cannot be accepted unless it is accompanied by the printed name and signature(s) of the author(s) submitting it. If it is submitted on behalf of an organization, the argument must include the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument.⁷
 - v. The city elections official must fix a date 14 days from the calling of the election as a deadline for the submission of ballot arguments. After this date, no arguments for or against a ballot measure may be accepted.⁸ Arguments may be changed or withdrawn by their proponents until and including the date fixed by the city elections official during normal business hours, as posted.⁹
 - vi. No more than five signatures are allowed per argument. If an argument is signed by more than five authors, only the signatures of the first five will be printed.¹⁰
 - vii. If more than one argument for, or more than one argument against, any city measure is submitted to the local elections officials, he or she must select one of the arguments for printing and distribution using the following preference and priority:
 - 1. The legislative body, or member or members of the legislative body authorized by that body.
 - 2. The individual voter or bona fide association of citizens, or combination of voters and associations, who are bona fide sponsors or proponents of the measure.
 - 3. Bona fide associations of citizens.
 - 4. Individual voters who are eligible to vote on the measure.¹¹

b. Rebuttal Arguments

Rebuttal arguments are not an automatic right of the proponents or opponents of an initiative.¹² Rebuttal arguments are allowed only if Elections Code Section 9285(a) is adopted by the legislative body no later than the day on which the legislative body calls for an election. At that point, rebuttal arguments will be allowed at the following election and each municipal election thereafter, unless later repealed by the legislative body. If the legislative body adopts Section 9285(a):

- i. A copy of the argument in favor of the initiative must be sent to the authors of the argument against the measure; and a copy of the argument against the initiative must be sent to the authors of the argument in favor of the initiative. These copies must be sent immediately upon their receipt by the elections official.¹³

- ii. The authors can prepare and submit a rebuttal argument, or they can authorize in writing any other person to prepare, submit or sign the rebuttal argument.¹⁴
- iii. No rebuttal argument may exceed 250 words.¹⁵
- iv. A rebuttal argument relating to a city measure must be filed with the elections official no later than 10 days after the final filing day for primary arguments.¹⁶
- v. No more than five people may sign the rebuttal argument, although the individuals who sign the rebuttal argument do not need to be the same ones who prepared it.¹⁷ If more than five people sign the rebuttal argument, only the signatures of the first five individuals will be printed.¹⁸

c. Local Election Official's Duties

Local elections officials often ask, “What can I do if I know a ballot argument is unlawful?” First, if a ballot argument fails to meet the above standards, e.g., the word count is too long or the authors’ names are statutorily incorrect, the Elections Code suggests that the local elections official can reject the ballot argument. For example, Section 9283 states that “[a] ballot argument cannot be accepted unless it is accompanied by the printed name and signature(s) of the author(s) submitting it...” That implies that the local elections official has the power to reject the ballot argument if it fails to comply with the Elections Code’s provisions.

However, there is no case law to suggest that the duty of a local elections official goes beyond his or her ministerial duty (in the realm of initiative petitions) to reject a ballot argument based on technical grounds only.¹⁹ In other words, the courts have held that a local elections official does not have the authority to reject an initiative petition based on substantive grounds. Thus, although there are no cases on point at this time, it is likely that the same line of reasoning would apply to ballot arguments, i.e., a local elections official has a duty to reject them for technical defects, but must accept a ballot argument that is technically correct.

As will be discussed below, ballot arguments with inconsistent and false or misleading statements present a strategic issue for the local elections official and his or her city attorney. The local elections official (see below) can bring a writ of mandate to have the ballot argument amended or deleted. In addition, another party can also choose to bring a writ of mandate to request that certain statements from the ballot argument be redacted. Thus, once the ballot argument is filed (because it meets all the technical requirements under the Elections Code), there are still decisions to be made by the local elections official regarding whether to pursue legal action, if necessary.

d. Public Examination

The elections official must make a copy of the ballot arguments (and rebuttals, if applicable) available for public examination for a ten-calendar-day period immediately

following the filing deadline for submission of those materials. Any person may obtain a copy of the materials from the elections office for use outside of the elections office. The elections official may charge a fee to any person obtaining a copy of the material. The fee may not exceed the actual cost incurred by the elections official in providing the copy.²⁰

e. Sample Timeline for Elections Official:

- June 1: City Council calls for election and passes a resolution adopting the provisions of Section 9285(a) and allowing for rebuttal arguments.
- June 15: Deadline for ballot arguments for and against the ballot measure.
- June 25: Deadline for rebuttal arguments.
- June 26: Ten-day public examination period begins.
- July 6: Ten-day public examination period ends.

f. Challenges

i. Who Can Challenge the Material in the Ballot Argument?

During the ten-calendar-day public examination period, as discussed in Section 9295, (1) any voter of the jurisdiction in which the election is being held, (2) or the election official, himself or herself, may seek a writ of mandate or an injunction requiring any or all of the materials to be amended or deleted.²¹

ii. The Parties

- The elections official must be named as respondent in any cause of action.
- The person or official who authored the material in question must be named as a real party in interest.
- If the elections official brings the action, the board of supervisors of the county is named as the respondent and the person or official who authored the material is named as the real party in interest.²²

iii. When is the Action Filed? Is There a Deadline?

Yes, there is a deadline. The writ of mandate or injunction request shall be filed no later than the end of the ten-calendar-day public examination period.²³

Section 13314 states any elector²⁴ may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of any name on, or in the printing of, a ballot, sample ballot, voter pamphlet, or other official matter, or that any neglect of duty has occurred, or is about to occur.²⁵ The action of appeal shall have priority over all other civil matters,²⁶ which means that a court will hear the action right away.

iv. The Standard

A peremptory writ of mandate or an injunction can be issued only upon clear and convincing proof that the material in question (1) is false, misleading, or inconsistent with the requirements of Division 9, Chapter 3 of the Elections Code, and (2) that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law.²⁷

v. What Types of Statements Can Be Stricken From the Ballot?

In *Huntington Beach City Council v. Superior Court*, 94 Cal.App.4th 1417 (2002), the Court noted that any restrictions on ballot language must be drawn narrowly because the First Amendment right to freedom of speech is implicated.²⁸ Thus, only clear and convincing proof of a false, misleading, or inconsistent statement will be enough for a court to strike a statement from the ballot.

California courts have provided some guidance as to what types of statements constitute “false, misleading and inconsistent.” For example:

- Personally insulting material – Not Allowed.²⁹ These statements have been rejected as false or misleading.
- Base personal attacks on specific individuals concerning their marital problems and financial status – Not Allowed.³⁰ These statements have been rejected as false or misleading.

However, a statement that is “merely irrelevant” is acceptable. In *Huntington Beach City Council v. Superior Court*, 94 Cal.App.4th 1417 (2002), the court said that a statement must have “absolutely *no* relationship” to the matter on the ballot to be stricken as irrelevant.³¹ The court called the relevancy standard for statements in a ballot argument only “a minimal requirement.”³²

In *Huntington Beach*, the City Council proposed an initiative that would have increased the utility taxes on an electric plant in the city. In its arguments in favor of the ballot measure, the city said the plant was “ugly, pollutes our air, and our ocean [and]...has been a blight on Huntington Beach for over 40 years.”³³ The utility plant owners challenged these statements as false and misleading. The trial court agreed the statements should be stricken, stating that they “were not relevant to the issues at hand.”³⁴

The appellate court disagreed and ordered the city’s arguments reinstated. It opined that a “no relationship” and “totally unrelated” test for relevancy was “an extremely light burden” for the judiciary to carry: “Any other test would mean that courts would be forced to determine the substantive persuasiveness of the arguments. Indeed, the judiciary must be mindful that the rough and tumble of politics is ill-suited to the imposition of the relatively stringent judicial standards of ‘relevancy.’”³⁵

Thus, the Elections Code and case law both mandate that a ballot argument cannot contain statements that are false or misleading, or inconsistent with California Elections Code, Division 9, Chapter 3. Voters or the elections official can challenge a ballot argument and a rebuttal statement within the proper time period by naming the appropriate parties and filing for a writ of mandate. Courts use strict standards in striking ballot statements and even allow for “merely irrelevant” statements that have little to do with the actual issue. A statement must have “no relationship” to the issue to be considered for striking by the court.

g. Practical Examples

i. No Evidence of Alleged Crimes – Stricken:

“But there are worse reasons for the financial crisis at the [District]. Allegations of bribery, embezzlement, conflict of interest, felony misuse of public resources for political purposes and ignoring a San Diego County Grand Jury Edict to obey state disclosure laws. How can we trust \$685 Million of our taxes to people under investigation for allegation of misconduct and crimes like these?”³⁶

The court struck this portion of the ballot argument as false and misleading. The six District officials were not under investigation for any of the alleged crimes. In the single instance in which an investigation was conducted against one of the six officials, there was insufficient evidence to file charges and the trustee was exonerated of any wrongdoing. There was no government investigation, as was insinuated by the statement. In fact, the only investigation was one instigated by a private citizen – the author of the ballot argument. Since the statement did not clarify that the investigation was a private one, the court found the statement false and misleading.³⁷

ii. Opinion Only - Permitted:

“Proposition S supporters have threatened lawsuits because we’re exposing allegations of massive [District] corruption.”³⁸

The court did not find this statement to be false or misleading. The court noted that the sentence made it clear that the individuals associated with the ballot argument, rather than the government, were pursuing allegations of corruption. The court said that the reason why the supporters of Proposition S may choose to bring a lawsuit was not susceptible to objective verification and, thus, the argument’s author was entitled to his opinion. Thus, the statement remained in the ballot argument.³⁹

iii. No Evidence of Wrongdoing – Stricken:

“San Diego County Registrar of Voters documents disclose that \$50,000 of district scholarship and student funds has been funneled to the PAC promoting [Measure] S!”⁴⁰

The court struck this statement from the ballot, stating that the contributions made were lawful, made voluntarily with authorization of the organization’s governing boards, independent of any action by the District or the trustees, and involved purely private funds. The ballot argument’s author could not produce any evidence to the contrary.⁴¹

h. Legislative History

If the plain language of the statute or ordinance is unclear, a court can use the text of a ballot measure when interpreting an initiative measure or attempting to determine the voters’ intent in adopting a measure. However, this rule regarding legislative intent applies only to the official printed ballot argument, not to statements or comments by the argument’s authors.⁴²

i. Practice Tip

Absent the filing of a writ of mandamus, the only time to reach a compromise between parties is during the public examination period. After that, arguments can only be amended by a court, so in order to for a party to obtain a revision, one of the parties will have to file a writ. So, if there is any opportunity for your client to work with the other side in developing a ballot argument that both parties can live with, it will be easier – and less expensive – in the long-term.

j. Hypothetical Examples

- i. In Pleasantville, an opponent to “Measure A” drafts a ballot argument, which she delivers to the local elections official. The ballot argument contained the following statements:
 - a. “Pleasantville has an incompetent Parks and Recreation Director who was terminated after a drug problem.”
 - b. “Her friend, the City Manager, denied that the story was true.”
 - c. “The media published a fictional account.”
2. The court redacted the above three statements and three others which were found to be false and misleading. In addition, there were other statements in the ballot argument that were also arguably false and misleading: “The council put on a show, **lied**, and fooled everyone....” (Emphasis added). However, strategically, it can be difficult to meet the “clear and convincing” burden of proof, so a city attorney should choose only those statements where there is

clear evidence that the statement is irrelevant, false and/or misleading. Strategically, that is a decision for the city staff, the city attorney and the litigation team.

- ii. In a Central California Special District, opponents to a ballot measure wrote five statements that were arguably false and/or misleading. The General Counsel for the District filed a Petition for Writ of Mandate and the court reviewed the statements, which included the following: “This was highlighted when a former board member...said ranking officials...offered to pay all of his campaign debt.” The court called the latter statement misleading and redacted it. The ballot author agreed to voluntarily redact three of the other four statements.

II. CANDIDATES’ STATEMENTS

When running for office, candidates may prepare statements to convey information to voters about their qualifications. Again, this paper will only cover the basic guidelines for candidates’ statements as set forth in the California Elections Code. For a comprehensive review of the contents of a candidates’ statement for local candidates, please see Section 13307.

a. The Basic Rules

- i. The form for the candidates’ statement is provided by the elections official.⁴³
- ii. The statement may include the name, age and occupation of the candidate.⁴⁴
- iii. The statement may include a brief description of the candidate’s education and qualifications. (Section 13307(a)(1)). Qualifications of a candidate encompass his or her ideas, views, ideology and platform.⁴⁵ A law that went into effect on January 1, 2008 mandates that the statement cannot reference other candidates, their character, qualifications or activities.⁴⁶
- iv. The statement may be no more than 200 words UNLESS the governing body of the local agency, e.g., the city council, authorizes an increase in the limitations on words from 200 to 400 words.⁴⁷
- v. The statement cannot include the party affiliation of the candidate. It cannot include membership or activity in any partisan political organizations.⁴⁸
- vi. The statement must be filed when the candidate’s nomination papers are returned for filing.⁴⁹
- vii. Generally, the statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the closing of the nomination period.⁵⁰

- viii. The elections official must send to each voter, together with the sample ballot, a voter's pamphlet which contains the written statements of each candidate prepared pursuant to Section 13307. The elections official must provide a Spanish translation for those candidates who wish to have one.
- ix. The cost of the candidates' statement is based on the total cost of printing, handling, translating and mailing. The city cannot bill the candidate for more than the actual prorated costs of printing and handling, but there is no requirement that the agency refrain from taking "reasonable steps" to insure collection of the costs.⁵¹ This could include requiring a deposit from the candidate to cover some of the costs upfront. One court held that the California Legislature intended that the power to "bill" include the power of collection through access to the courts.⁵²
 - 1. Question: A non-indigent candidate pays for his candidate's statement by personal check, which later fails to clear the bank. The statement has already been published and the candidate refuses to pay his costs. The city decides not to sue. At the next election, the candidate runs for election again and submits another personal check to cover the costs of his candidate's statement. Does the city have to accept the check?
 - 2. Answer: No. The Attorney General's opinion allows the city to take "reasonable steps" to recover the amount billed. Thus, the city has a few options: (1) it could hold the candidate's statement until the personal check clears and then, if the check does not clear, the city could refuse to publish the statement until the candidate pays the amount in full in another form, e.g., cash or credit card⁵³; (2) it could require an alternative form of payment, e.g., a cashier's check, from the candidate; or (3) it could accept the personal check and commence litigation to recover the amount if the check fails to clear.
- x. The cost of the candidates' statement includes translation compliance under the Voting Rights Act (Sec. 203, 42 U.S.C. 1973aa – 1a).⁵⁴ Translation compliance may be different for each city. Therefore, the local elections official should first check with his or her county elections official, who often knows which translations are required and can sometimes provide information on how to obtain translation services and give an estimate of translation service fees.
- xi. Candidates are responsible for false, slanderous or libelous statements in their respective candidates' statements.⁵⁵

b. Ballot Designations

- i. No title or degree can appear on the same line as a candidate's name, either before or after the candidate's name.⁵⁶
- ii. A candidate for local office may have only ONE of the following designations:
 1. Words designating the elective office the candidate holds at the time of filing the nomination papers to which he or she was elected by a vote of the people.
 2. The word "incumbent" if the candidate is a candidate for the same office which he or she holds at the time of filing the nomination papers, and was elected to that office by a vote of the people.
 3. No more than THREE words designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of the nomination documents.
 4. The phrase "appointed incumbent" if the candidate holds an office other than a judicial office by virtue of an appointment, and the candidate is a candidate for election to the same office.⁵⁷
- iii. A candidate has to fill out a ballot designation worksheet that supports the use of that ballot designation. This statute went into effect on January 1, 2008.⁵⁸
- iv. The elections official MAY NOT accept a ballot designation of which any of the following would be true:
 1. It would mislead the voter.
 2. It would suggest an evaluation of a candidate, such as outstanding, leading, expert, virtuous, or eminent.
 3. It abbreviates the word "retired" or places it following any word or words which it modifies.
 4. It uses a word or prefix, such as "former" or "ex-," which means a prior status. The only exception is the use of the word retired.
 5. It uses the name of any political party, whether or not it has qualified for the ballot.
 6. It uses a word or words referring to a racial, religious, or ethnic group.
 7. It refers to any activity prohibited by law.⁵⁹
- v. If the elections official checks the nomination documents and ballot worksheet⁶⁰ and finds the designation to be in violation of any of the above restrictions, the elections official must notify the candidate by registered or certified mail return receipt requested, addressed to the mailing address appearing on that candidate's

nomination documents.⁶¹ This suggests that the elections official has a duty to check the ballot designation for compliance with this section, although it is unclear to what extent the elections official must verify the facts given by the candidate.

- vi. Ballot Designation as “Community Volunteer:” A candidate can designate himself or herself as “community volunteer” subject to the following conditions:
 - 1. His or her community volunteer activities constitute his or her principal profession, vocation or occupation.
 - 2. He or she is not engaged concurrently in another principal profession, vocation, or occupation.
 - 3. A candidate may not use the designation of “community volunteer” in combination with any other principal profession, vocation, or occupation designation.⁶²

c. Indigent Candidates:

- i. If a candidate alleges to be indigent and unable to pay in advance the requisite fee for submitting a candidates’ statement, he or she must submit to the local agency a statement of financial worth.⁶³
- ii. The statement of financial worth may include questions relating to the candidate’s employer, income, real estate holdings, tangible personal property, and financial obligations. The candidate must also sign a release to his or her most recent federal income tax report.⁶⁴
- iii. From the statement of financial worth, the local agency will decide whether the candidate is indigent and whether he or she will have to pay in advance for his or her statement like a non-indigent candidate.⁶⁵ If the candidate is found to be indigent, the elections official will print and mail that candidate’s statement prior to receiving advance payment.

Regardless of the candidate’s indigent status as decided by the local agency, nothing shall prohibit the elections official from billing the candidate his or her actual pro rata share of the cost after the election.⁶⁶

d. Confidentiality:

Candidates’ statements shall remain confidential until the expiration of the filing deadline.⁶⁷

e. Challenges:

i. Public Examination:

Candidates' statements are subject to a ten-calendar-day public examination period.⁶⁸ The rules for obtaining a copy and charging a fee for such copy are the same as for ballot argument materials (see above).

ii. Local Elections Official's Duties:

As stated above, the local elections official's duties are generally ministerial in nature, i.e., a rejection should be technical in nature. However, with candidates' statements and ballot designations, Section 13107 appears to give the local election's official a perfunctory duty to examine the ballot designation for technical errors, e.g., the use of a political party, or anything the local elections official knows would mislead the voters. Further, the local elections official must examine each candidate's statement to ensure its per se compliance with the Elections Code, e.g., that it does not go over the allotted word count, does not refer to another candidate or another candidate's character, qualifications or activities, etc.

However, there is no case law requiring that the local elections official *research* the candidates' statements or ballot designations to determine their accuracy, e.g., there are no cases on point pertaining to how far a local elections official has to go to determine whether the designation of "community volunteer" applies to a candidate who has chosen that designation. For example, if a local elections official is aware that his or her attorney, who is a full-time practicing attorney in town, is running for office and has chosen "community volunteer" as a ballot designation, the local elections official would probably be required to disallow that designation since it would not fit within the statutory definition and the local elections official has actual knowledge of that fact. However, when a local elections official has no information about a candidate except for the ballot worksheet, it is likely that his or her duty is purely ministerial, as with the acceptance of initiatives.⁶⁹

iii. Who Can Challenge the Material in a Candidates' Statement?

During the ten-calendar-day public examination period, any voter of the jurisdiction in which the election is being held, or the elections official himself or herself, may seek a writ of mandate or an injunction requiring any or all of the material in the candidates' statements to be deleted.⁷⁰

iv. Is There a Deadline for Challenging the Candidates' Statement?

The writ of mandate or injunction request shall be filed no later than the end of the ten-calendar-day public examination period.⁷¹

v. What is the Standard?

It is the same standard as discussed above for ballot arguments. A peremptory writ of mandate or an injunction shall issue only upon clear and convincing proof that the material in question is (1) false, misleading, or inconsistent with the requirements of this chapter, and (2) that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law. ⁷²

vi. Who Are The Parties?

The elections official must be named as the respondent and the candidate who authored the material in question must be named as the real party in interest. In the case of the elections official bringing the mandamus or injunctive action, the board of supervisors of the county shall be named as the respondent and the candidate who authored the material in question shall be named as the real party in interest. ⁷³

vii. What is the Process?

1. Any elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of any name on, or in the printing of, a ballot, sample ballot, voter pamphlet, or other official matter, or that any neglect of duty has occurred, or is about to occur. ⁷⁴
2. A peremptory writ of mandate shall issue only upon proof of the following:
 - a. That the error, omission, or neglect is in violation of the Elections Code or the Constitution; and
 - b. That issuance of the writ will not substantially interfere with the conduct of the election. ⁷⁵
3. The action or appeal shall have priority over all other civil matters. ⁷⁶

f. Hypothetical Examples:

- i. In City X, one candidate has designated himself as a “Realtor.” A citizen has complained to the local elections official that this ballot designation is false and misleading because the candidate is a real estate salesperson. The term “Realtor” actually denotes an individual who is a member of the National Association of Realtors (“NAR”). Thus, unless the candidate is a member of the NAR, he cannot technically use this term as part of his ballot designation.
- ii. Councilmember X was appointed to the City Council in the City of Bliss to fill the remaining term of a vacant seat. When the term

expires, Councilmember X decides to run for a new term in the same seat. She puts “incumbent” as her ballot designation. However, because she was appointed, not elected, to the seat, she must put “appointed incumbent” as her ballot designation.

- iii. Chris is currently an attorney. However, in college, he taught physical education to high school students for a year. He also volunteers at “Homework House,” where he tutors underprivileged children. He wants to put “Attorney/Teacher/Community Volunteer” for his ballot designation. Can he do it? No. First, he can only list a profession, vocation or occupation that is either his current principal profession, vocation or occupation, or a principal profession, vocation or occupation that he engaged in during the calendar year immediately preceding the election. Because Chris was a teacher while he was in college, his “teacher” designation, does not qualify. Further, although he volunteers in the community, he cannot list “community volunteer” as a ballot designation because his volunteer activities do not constitute his principal profession, vocation or occupation. So, “Teacher” and “Community Volunteer” have to be stricken from Chris’s ballot designation.
- iv. Alexandra submits her candidate’s statement to the local elections official. It contains the following sentence: “My opponent, Jane Doe, didn’t take her job as Councilmember seriously – her attendance at City Council meetings during the last four years has been abysmal.” The local elections official would have a duty to disallow this statement pursuant to the new law prohibiting the mention of other candidates, their character or qualifications.
- v. Missy submitted her candidate’s statement to the local elections official. It contains the following sentence: “I am a proud member of the Pleasantville Republican Women, Federated.” This is a reference to a membership in a partisan political organization and would be prohibited pursuant to the rules set forth in the Elections Code. If the statement referenced Missy’s membership in the “League of Women Voters,” for example, that would be acceptable because it is a non-partisan organization.

III. CONCLUSION

Although some of the building blocks for writing and filing campaign statements and ballot arguments are set forth in the California Elections Code, and in various cases, more complex issues often need to be analyzed in depth. For example, how can a city get candidates to pay for the prorated costs of their statements? How far does a local elections official’s duty extend in determining which candidates’ statements and ballot arguments to accept for filing? What ballot designations are appropriate, particularly now that candidates are required to fill out ballot worksheets provided by the Secretary of State as background for their chosen designation?

There are two resources you may want to consult for assistance. First, the 2008 Desktop Edition of the California Elections Code (published by Thomson/West) is available this month. It underlines all the changes from 2007 to 2008 and shows any deletions in strike-out format. Second, “Ballot Box Navigator: A Practical and Tactical Guide to Land Use Initiatives and Referenda in California” by Michael Patrick Durkee, et al. (Solano Press 2003) can be helpful, although it is less up-to-date.

If you have any questions about any of the material in this outline, please feel free to contact me at (916) 556-1855 or hkenny@meyersnave.com. Best wishes during the upcoming elections cycle!

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² “Elections official” means any of the following: (a) A clerk or any person who is charged with the duty of conducting an election; or (b) A county clerk, city clerk, registrar of voters, or elections supervisor having jurisdiction over elections within any county, city, or district within the state. (CAL. ELEC. CODE § 320) (this statute was recently amended in 2008).

³ All statutory reference from this point forward will be to the Elections Code unless otherwise stated in this paper.

⁴ CAL. ELEC. CODE at §§ 9282(a) & (c).

⁵ *Id.* §§ 9282(b) & (c).

⁶ *Id.* at § 9282(d).

⁷ *Id.* at § 9283.

⁸ *Id.* at § 9286.

⁹ CAL. ELEC. CODE at § 9286.

¹⁰ *Id.* at § 9283.

¹¹ *Id.* at § 9287.

¹² *Id.* at § 9285.

¹³ *Id.* at § 9285(a)(1).

¹⁴ *Id.* at § 9285(a)(2).

¹¹ CAL. ELEC. CODE § 9285(a)(3).

¹⁶ *Id.* at § 9285(a)(4).

¹⁷ *Id.* at § 9285(a)(5).

¹⁸ *Id.* at § 9283.

¹⁹ *See generally*, Myers v. Patterson, 196 Cal.App.3d 130 (1987); Farley v. Healey, 67 Cal.2d 325 (1967); McFadden v. Jordan, 32 Cal.2d 330 (1948); Gayle v. Hamm, 25 Cal.App.3d 250 (1972); Mapstead v. Anchundo, 63 Cal.App.4th 246 (1998).

²⁰ CAL. ELEC. CODE at § 9295(a).

²¹ *Id.*

²² *Id.* at § 9295(b)(3).

²³ *Id.* at § 9295(b)(1).

²⁴ “Elector” means any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 15 days prior to an election. (CAL. ELEC. CODE § 321).

²⁵ CAL. ELEC. CODE § 13314(a)(2).

²⁶ *Id.* at § 13314 (a)(3).

²⁷ *Id.* at § 9295(b)(2).

²⁸ Huntington Beach City Council v. Superior Court, 94 Cal.App.4th 1417, 1427 (2002) (citing Patterson v. Board of Supervisors, 202 Cal.App.3d 22 (1988)).

²⁹ Patterson v. Bd. of Supervisors, 202 Cal.App.3d 22, *review denied* (1988).

³⁰ *Id.*

³¹ Huntington Beach City Council v. Superior Court, 94 Cal.App.4th at 1423.

³² *Id.* at 1428.

³³ *Id.* at 1426.

³⁴ *Id.*

³⁵ Huntington Beach City Council v. Superior Court, 94 Cal.App.4th at 1428-29 (2002).

³⁶ Escoffier v. Superior Court of San Diego County, No. D040797, slip op. at 1 (Cal.App.4th Dist. Sept. 19, 2002) (this is an unpublished case and its citation is restricted by the California Rules of Court – it is used purely for the purpose of showing hypothetical examples of ballot arguments).

³⁷ *Id.* at 3-4.

³⁸ *Id.* at 5.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 5.

⁴² Howard Jarvis Taxpayers Ass’n v. City of Riverside, 73 Cal.App.4th 679 (1999).

⁴³ CAL. ELEC. CODE § 13307(a)(1).

⁴⁴ *Id.* at § 13307(a)(1).

⁴⁵ Hammond v. Agran, 76 Cal.App.4th 1181 (1999).

⁴⁶ CAL. ELEC. CODE § 13308.

⁴⁷ *Id.* § 13307(a)(1).

⁴⁸ *Id.*

⁴⁹ *Id.* at § 13307(a)(2).

⁵⁰ *Id.* at § 13307(a)(3).

⁵¹ 46 Cal.Ops.Atty.Gen. 115 (1965).

⁵² East Bay Mun. Util. Dist. v. Appellate Dept. of Superior Court of Alameda County, 153 Cal.Rptr. 597 (1979).

⁵³ This option may not work with regard to the deadline between collection of the check and publication of the candidate’s statement – it depends on the city’s printing deadline.

⁵⁴ CAL. ELEC. CODE. at § 13307 (c).

⁵⁵ *Id.* at § 13307(d).

⁵⁶ CAL. ELEC. CODE § 13106.

⁵⁷ *Id.* at § 13107(a).

⁵⁸ *Id.* at § 13107.

⁵⁹ *Id.* at § 13107(b).

⁶⁰ The ballot worksheet is more fully described in California Elections Code § 13107.3, which went into effect on January 1, 2008.

⁶¹ CAL. ELEC. CODE at § 13107(c).

⁶² *Id.* at 13107.5(a).

⁶³ *Id.* at § 13309(a)

⁶⁴ *Id.* at § 13309(b).

⁶⁵ *Id.* at §§ 13309(c), (d) & (e).

⁶⁶ *Id.* at § 13309(f).

⁶⁷ CAL. ELEC. CODE at § 13311.

⁶⁸ *Id.* at § 13313.

⁶⁹ *See generally*, Myers v. Patterson, 196 Cal.App.3d 130 (1987); Farley v. Healey, 67 Cal.2d 325 (1967); McFadden v. Jordan, 32 Cal.2d 330 (1948); Gayle v. Hamm, 25 Cal.App.3d 250 (1972); Mapstead v. Anchundo, 63 Cal.App.4th 246 (1998).

⁷⁰ CAL. ELEC. CODE at § 13313(b)(1).

⁷¹ *Id.*

⁷² *Id.* at § 13313(b)(2).

⁷³ CAL. ELEC. CODE at § 13313(b)(3).

⁷⁴ *Id.* at § 13314(a)(1).

⁷⁵ *Id.* at § 13314 (a)(2).

⁷⁶ *Id.* at § 13314(a)(3).