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STATE OF CALIFORNIA | ELECTIONS

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September 11, 2009

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 09154

TO: All County Clerks/Registrars of Voters

FROM:

A handwritten signature in blue ink, appearing to read "Robbie Anderson".

Robbie Anderson
Elections Counsel

RE: Regulations: Ballot Designation Regulations

Elections Code section 13107.5(b) requires the Secretary of State to define by regulation the ballot designation of "community volunteer." The Secretary of State proposes to adopt a new regulation and make clarifying amendments to existing regulations in Title 2, Division 7, Chapter 7 of the California Code of Regulations governing ballot designations.

The text of the regulations and related documents will be published on the Office of Administrative Law's website (www.oal.ca.gov) today Friday, September 11, 2009, which will start the 45-day written comment period. The written comment period will end on Monday, October 26, 2009.

Further information and the text of the proposed regulations are provided in the three attachments and are also available on our website at www.sos.ca.gov/elections/elections_reqs.htm.

If you have any questions, please contact me at robbie.anderson@sos.ca.gov or by phone at (916) 653-1690.

Attachments (3)

TEXT OF PROPOSED REGULATIONS

Add Section 20714.5 to Chapter 7 of Division 7 of Title 2 of the California Code of Regulations, and amend sections 20711, 20712, 20714, 20716, 20717, 20718, and 20719 of Chapter 7 of Division 7 of Title 2 of the California Code of Regulations to read:

§ 20711. Ballot Designation Worksheet

(a) In order to facilitate review of a candidate's proposed ballot designation by the Secretary of State pursuant to Elections Code § 13107, the candidate ~~may~~ shall submit, at the time of filing his or her proposed ballot designation on the Declaration of Candidacy, a completed Ballot Designation Worksheet on a form provided by the Secretary of State.

(b) All Ballot Designation Worksheets filed with the Office of the Secretary of State or the county elections officials pursuant to this section shall be public records and shall be available for inspection and copying at the public counter of the Elections Division of the Office of the Secretary of State, Fifth Floor, 1500 ~~11~~ Street, Sacramento, California 95814, or at the office of the applicable county elections official.

(c) The Secretary of State shall provide a master copy or copies of the Ballot Designation Worksheet to all elections officials responsible for providing and accepting the nomination documents for candidates in elections for offices certified by the Secretary of State. The Ballot Designation Worksheet shall request that the candidate proposing the ballot designation provide the following information:

(1) The candidate's name, home, business and mailing addresses, telephone numbers, e-mail address, if available, and fax number;

(2) A designation of the office for which the candidate is seeking election;

(3) The name, home, business and mailing addresses, telephone numbers, e-mail address, if available, and fax number of the attorney representing the candidate or for any other person to be contacted in the event the Secretary of State requires further information regarding the proposed ballot designation;

(4) The proposed ballot designation submitted by the candidate;

(5) ~~At the option of the candidate,~~ The candidate may submit one or more proposed alternate ballot designations ranked in order of the candidate's preference;

(6) A brief statement identifying the factual basis upon which the candidate claims the proposed ballot designation and each proposed alternate ballot designation, including the following:

(A) If the candidate holds elected office and is submitting his or her proposed ballot designation pursuant to Elections Code § 13107, subdivisions (a)(1) or (a)(2), the candidate ~~should~~ shall indicate the elective office he or she currently occupies and may attach a copy of his or her Certificate of Election;

(B) If the candidate is a judicial officer and is submitting his or her proposed ballot designation pursuant to Elections Code § 13107, subdivisions (a)(1) or (a)(2), the candidate ~~should~~ shall indicate the elective office he or she currently holds and may attach either (A) a copy of his or her

Certificate of Election or (B) a copy of his or her commission or certificate of appointment, issued at the time the candidate was appointed to the judicial office which he or she currently occupies;

(C) If the candidate submits a ballot designation pursuant to Elections Code § 13107, subdivision (a)(3), the candidate ~~should~~ shall indicate:

(i) The title of the position or positions which he or she claims supports the proposed ballot designation;

(ii) The dates during which the candidate held such position;

(iii) A description of the work he or she performs in the position;

(iv) The name of the candidate's business or employer;

(v) The name and telephone number of a person or persons who could verify such information; and

(vi) A statement that the professions, vocations or occupations relied upon to support the proposed ballot designation constitute the primary, main or leading professions, vocations or occupations of the candidate, in accordance with the definition of the term "principal" as set forth at § 20714, subdivision (b).

(D) If the candidate submits a ballot designation pursuant to Elections Code § 13107, subdivision (a)(4), the candidate ~~should~~ shall indicate the date on which he or she was appointed to the office for which he or she is an appointed incumbent.

(d) The candidate may attach or append any supporting documents or other exhibits to his or her Ballot Designation Worksheet which he or she believes support his or her proposed ballot designation. Such attached documents or other exhibits shall be deemed to be incorporated by reference as part of the candidate's Ballot Designation Worksheet and shall be considered as such by the Secretary of State.

(e) If a candidate requests a change of his or her ballot designation pursuant to Elections Code § 13107(e), that request shall be accompanied by a Ballot Designation Worksheet.

AUTHORITY:

Note: Authority cited: Section 12172.5, Government Code. Reference: Sections 13107, 13107.3, Elections Code.

§ 20712. Proposed Ballot Designations Submitted Pursuant to Elections Code § 13107, Subdivision (a)(1)

Proposed ballot designations submitted pursuant to Elections Code § 13107, subdivision (a)(1), shall be subject to the following provisions:

(a) In the case of candidates holding elective city, county, district, state, or federal office, the candidate's ballot designation shall be the elective office which the candidate holds at the time of filing the nomination documents.

(b) In the case of judicial officers, the candidate's ballot designation shall be the elective office which the candidate holds at the time of filing the nomination documents.

(c) There shall be no word count limitation applicable to ballot designations submitted pursuant to Elections Code § 13107, subdivision (a)(1).

(d) Proposed ballot designations indicating a position of legislative leadership or leadership in another elected body, such as "Majority Leader of the California Senate," "Minority Leader of the California State Assembly," "Speaker of the California State Assembly," "President Pro Tempore of the California State Senate," "City of Orange Mayor Pro Tem," and the like, are not elective offices described in Elections Code § 13107, subdivision (a)(1). Such ballot designations are improper, pursuant to Elections Code § 13107, subdivision (a)(1). They may, however, subject to the three-word limit, be considered under the provisions of § 13107(a)(3). Examples of acceptable ballot designations under this section include, but are not limited to, "Assembly Minority Leader," "California Assembly Speaker," and "Mayor Pro Tem."

(e) Proposed ballot designations indicating that the candidate is a member of the state or county central committee of a political party, or an officer of a state or county central committee of a political party, are improper, as such positions do not constitute elective county or state offices as specified in Elections Code § 13107, subdivision (a)(1).

AUTHORITY:

Note: Authority cited: Section 12172.5, Government Code. Reference: Section 13107, Elections Code.

§ 20714. Proposed Ballot Designations Submitted Pursuant to Elections Code § 13107, Subdivision (a)(3)

Proposed ballot designations submitted pursuant to Elections Code § 13107, subdivision (a)(3), shall be subject to the following provisions:

(a) The terms "profession," "vocation," or "occupation," as those terms are used in Elections Code § 13107, subdivision (a)(3), are defined as follows:

(1) "Profession" means a field of employment requiring special education or skill and requiring ~~specific~~ knowledge of a particular discipline ~~of learning or science~~. The labor and skill involved in a profession is predominantly mental or intellectual, rather than physical or manual. Recognized professions generally include, but are not limited to, law, medicine, education, engineering, accountancy, and journalism. Examples of an acceptable designation of a "profession," as defined in Elections Code § 13107, subdivision (a)(3), include, but are not limited to, "attorney," "physician," "accountant," "architect," and "teacher."

(2) "Vocation" means a trade, a religious calling, or the work upon which a person, in most but not all cases, relies for his or her livelihood and spends a major portion of his or her time. As defined, vocations may include, but are not limited to, religious ministry, child rearing, homemaking, elderly and dependent care, and engaging in trades such as carpentry, cabinetmaking, plumbing, and the like. Examples of an acceptable designation of a "vocation," as defined in Elections Code § 13107, subdivision (a)(3), include, but are not limited to, "minister," "priest," "mother," "father," "homemaker," "dependent care provider," "carpenter," "plumber," "electrician," and "cabinetmaker."

(3) "Occupation" means the employment in which one regularly engages or follows as the means of making a livelihood. Examples of an acceptable designation of an "occupation," as defined in Elections Code § 13107, subdivision (a)(3), include, but are not limited to, "rancher," "restaurateur," "retail salesperson," "manual laborer," "construction worker," "computer manufacturing executive," "military pilot," "secretary," and "police officer."

(b) "Principal," as that term is used in Elections Code § 13107, subdivision (a)(3), means a substantial involvement of time and effort such that the activity is one of the primary, main or leading professional, vocational or occupational endeavors of the candidate. The term "principal" precludes any activity which does not entail a significant involvement on the part of the candidate. Involvement which is only nominal, pro forma, or titular in character does not meet the requirements of the statute.

(1) If a candidate is licensed by the State of California to engage in a profession, vocation or occupation, the candidate is entitled to consider it one of his or her "principal" professions, vocations or occupations if (i) the candidate has maintained his or her license current as of the date he or she filed his or nomination documents by complying with all applicable requirements of the respective licensure, including the payment of all applicable license fees and (ii) the status of the candidate's license is active at the time he or she filed his or her nomination documents.

(2) A candidate who holds a professional, vocational or occupational license issued by the State of California may not claim such profession, vocation or occupation as one of his or her "principal" professions, vocations or occupations if (i) the candidate's licensure status is "inactive" at the time the candidate files his or her nomination document, or (ii) the candidate's license has been suspended or revoked by the agency issuing the license at the time the candidate files his or her nomination documents.

(c) In order for a ballot designation submitted pursuant to Elections Code § 13107, subdivision (a)(3), to be deemed acceptable by the Secretary of State, it must accurately state the candidate's principal professions, vocations or occupations, as those terms are defined in subdivisions (a) and (b) herein. Each proposed principal profession, vocation or occupation submitted by the candidate must be factually accurate, descriptive of the candidate's principal profession, vocation or occupation, must be neither confusing nor misleading, and must be in full and complete compliance with Elections Code § 13107 and the regulations ~~included~~ in this Chapter.

(d) If the candidate is engaged in a profession, vocation or occupation at the time he or she files his or her nomination documents, the candidate's proposed ballot designation is entitled to consist of the candidate's current principal professions, vocations and occupations. In the event the candidate does not have a current principal profession, vocation or occupation at the time he or she files his or her nomination documents, the candidate may use a ballot designation consisting of his or her principal professions, vocations or occupations, which the candidate was principally engaged in during the calendar year immediately preceding the filing of the candidate's nomination papers.

(e) A candidate may engage in multiple principal professions, vocations or occupations. Accordingly, the candidate may designate multiple principal professions, vocations or occupations. If a candidate proposes a ballot designation including multiple principal professions, vocations or occupations, the proposed ballot designation must comply with the following provisions:

(1) The proposed ballot designation must comply with the three-word limitation specified in Elections Code § 13107, subdivision (a)(3), and as implemented pursuant to subdivision (f) herein.

(2) Each such proposed profession, vocation or occupation shall be separately considered by the Secretary of State and must independently qualify as a "principal" profession, vocation or occupation, as that term is defined pursuant to subdivision (b) herein.

(3) When multiple professions, vocations or occupations are proposed as a ballot designation, they shall be separated by a slash ("/"). An example of an acceptable designation would be "Legislator/Rancher/Physician."

(f) Pursuant to Elections Code § 13107, subdivision (a)(3), the candidate's ballot designation shall be limited to not more than three (3) words. The following rules shall govern the application of the three-word limitation:

(1) The proposed ballot designation shall be grammatically correct, generic, and all words must be spelled correctly.

(2) Punctuation shall be limited to the use of a comma (e.g., District Attorney, Los Angeles County) and a slash (e.g., Legislator/Rancher/Physician), pursuant to subdivision (e) of this section. A hyphen may be used if, and only if, the use of a hyphen is called for in the spelling of a word as it appears in a standard reference dictionary of the English language, which was published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted.

(3) All California geographical names shall be considered to be one word and shall be limited to the names of cities, counties and states. The names of special districts and political subdivisions are not "geographical names," as that term is used in Elections Code § 13107, subdivision (a)(3). If the candidate desires, the geographical name may be used in the form of "City of . . .," "County of . . .," or "City and County of . . ." Examples of geographical names considered to be one word include Tehama County, Los Angeles County and County of Sacramento. Examples of designations containing a special district or political subdivision that are not geographical names include "Butte County Rural Fire District Captain," "Huntington Beach Unified School District President," and "South Bay Irrigation District Director."

(4) An acronym shall be counted as one word.

(g) A candidate who chooses to include the name of his or her elective office with another profession, vocation, or occupation may do so pursuant to Elections Code section 13107(a)(3), but that ballot designation shall be limited to no more than three words. Examples of acceptable designations under this section include "State Senator/Rancher," "California Assemblywoman/Attorney," "County Supervisor/Teacher," and "State Controller/Businessman." Examples of unacceptable designations under this section include "Assemblyman, 57th District/Educator," "California State Senator/Architect," "Placer County Supervisor/Business Owner," and "Member, Board of Equalization/Banker."

AUTHORITY:

Note: Authority cited: Section 12172.5, Government Code. Reference: Sections 9, 13107, Elections Code.

§ 20714.5. “Community Volunteer”

(a) “Community Volunteer” means a person who engages in an activity or performs a service for or on behalf of, without profiting monetarily, one or more of the following:

- (1) A charitable, educational, or religious organization as defined by the United States Internal Revenue Code section 501(c)(3);
- (2) A governmental agency; or
- (3) An educational institution.

(b) The activity or service must constitute substantial involvement of the candidate’s time and effort such that the activity or service is the sole, primary, main or leading professional, vocational or occupational endeavor of the candidate within the meaning of subdivisions (a) and (b) of section 20714 of this Chapter.

AUTHORITY:

Note: Authority cited: Section 12172.5, Government Code; Section 13107.5(b), Elections Code. Reference: Sections 13107 and 13107.5, Elections Code; Section 501(c)(3), United States Internal Revenue Code.

§ 20716. Unacceptable Ballot Designations

(a) The Secretary of State shall reject as unacceptable any proposed ballot designation which fails to comply with, ~~or is otherwise inappropriate pursuant to,~~ Elections Code § 13107, subdivision (a); is prohibited pursuant to Elections Code § 13107, subdivision (b); is misleading; or is otherwise improper pursuant to the regulations set forth in this Chapter.

(b) The following types of activities are distinguished from professions, vocations and occupations and are not acceptable as ballot designations pursuant to Elections Code § 13107, subdivision (a)(3):

(1) Avocations: An avocation is a casual or occasional activity, diversion or hobby pursued principally for enjoyment and in addition to the candidate's principal profession, vocation or occupation. Avocations may include, but are not limited to, hobbies, social activities, volunteer work (except as set forth in Section 20714.5 of this Chapter), and matters pursued as an amateur.

(2) Pro Forma Professions, Vocations and Occupations: Pro forma professions, vocations or occupations are positions held by the candidate which consume little or none of the candidate's time and which, by their nature, are voluntary or for which the candidate is not compensated, except as set forth in Section 20714.5 of this Chapter. Pro forma professions, vocations and occupations may include, but are not limited to, such pursuits as honorary peace officer, ~~volunteer firefighter~~, honorary chairperson, honorary professor, goodwill ambassador, official host or hostess and the like.

(3) Statuses: A status is a state, condition, social position or legal relation of the candidate to another person, persons or the community as a whole. A status is generic in nature and generally fails to identify with any particular specificity the manner by which the candidate earns his or her livelihood or spends the substantial majority of his or her time. Examples of a status include, but are not limited to, veteran, proponent, reformer, scholar, founder, philosopher, philanthropist, activist, patriot, taxpayer, concerned citizen, husband, wife, and the like.

(c) Pursuant to Elections Code § 13107, subdivision (b)(1), the Secretary of State shall reject as unacceptable any proposed ballot designation which would mislead voters. In making this determination, the Secretary of State shall determine whether there is a substantial likelihood that a reasonably prudent voter would be misled as to the candidate's principal profession, vocation or occupation by the candidate's proposed ballot designation. The determination shall take into account the plain meaning of the words constituting the proposed ballot designation and the factual accuracy of the proposed ballot designation based upon supporting documents or other evidence submitted by the candidate in support of the proposed ballot designation, pursuant to §§ 20711 and 20717 of this Chapter.

(d) A ballot designation may not comprise or include commercial identification information, such as a trademark, service mark, trade name, or the specific name of a business, partnership, corporation, company, foundation, or organization. Examples of an improper use of commercial identification information include, but are not limited to, "Acme Company President," "Universal Widget↔Inventor," "Director, Smith Foundation," "UCLA Professor," and the like.

(e) Pursuant to Elections Code § 13107, subdivision (b)(2), the Secretary of State shall reject as unacceptable any proposed ballot designation which would suggest an evaluation of the candidate's qualifications, honesty, integrity, leadership abilities or character. Any laudatory or derogatory adjectives which would suggest an evaluation of the candidate's qualifications shall not be permitted. Such impermissible adjectives include, but are not limited to, "senior," "emeritus," "specialist," "magnate," "outstanding," "leading," "expert," "virtuous," "eminent," "best," "exalted," "prominent," "famous," "respected," "honored," "honest," "dishonest," "corrupt," "lazy," and the like.

(f) Pursuant to Elections Code § 13107, subdivision (b)(3), the Secretary of State shall reject as unacceptable any proposed ballot designation which abbreviates the word "retired" or places it following any word or words which it modifies. Examples of impermissible designations include "Ret. Army General," "Major USAF, Retired" and "City Attorney, Retired."

(g) Pursuant to Elections Code § 13107, subdivision (b)(4), the Secretary of State shall reject as unacceptable any proposed ballot designation which uses a word or prefix to indicate a prior profession, vocation, occupation or elected, appointed or judicial office previously held by the candidate. Such impermissible words or prefixes include, but are not limited to, "Ex-," "former," "past," and "erstwhile." Examples of impermissible designations include "Former Congressman," "Ex-Senator," and "Former Educator."

(h)(1) Subject to the provisions of Elections Code § 13107, subdivision (b)(4), use of the word "retired" in a ballot designation is generally limited for use by individuals who have permanently given up their chosen principal profession, vocation or occupation.

(2) In evaluating a proposed ballot designation including the word "retired," the Secretary of State will consider the following factors in making a determination as to the propriety of the use of the term "retired":

(1) (A) Prior to retiring from his or her principal profession, vocation or occupation, the candidate worked in such profession, vocation or occupation for more than 5 years;

(2) (B) The candidate is collecting, or eligible to collect, retirement benefits or other type of vested pension;

~~(3)~~ (C) The candidate has reached at least the age of 55 years;

~~(4)~~ (D) The candidate voluntarily left his or her last professional, vocational or occupational position; and,

~~(5) If the candidate is requesting a ballot designation that he or she is a retired public official, the candidate must have previously voluntarily retired from public office, not have been involuntarily removed from office, not have been recalled by voters, and not have surrendered the office to seek another office or failed to win reelection to the office;~~

~~(6) The candidate has not had another more recent, intervening principal profession, vocation or occupation; and,~~

~~(7)~~ (E) The candidate's retirement benefits are providing him or her with a principal source of income.

(3) If a candidate is requesting a ballot designation that he or she is a retired public official, the candidate must have previously voluntarily retired from public office, not have been involuntarily removed from office, not have been recalled by voters, and not have surrendered the office to seek another office or failed to win reelection to the office. If such a candidate did not voluntarily retire from public office, he or she may not use the word "retired" in his or her ballot designation.

(4) A candidate may not use the word "retired" in his or her ballot designation if that candidate possesses another more recent, intervening principal profession, vocation, or occupation.

(i) Pursuant to Elections Code § 13107, subdivision (b)(5), the Secretary of State shall reject as unacceptable any proposed ballot designation which uses the name of any political party, whether or not it has qualified for recognized ballot status.

(j) Pursuant to Elections Code § 13107, subdivision (b)(6), the Secretary of State shall reject as unacceptable any proposed ballot designation which uses a word or words referring to a racial, religious, or ethnic group.

(1) The Secretary of State shall reject as unacceptable any ballot designation which expressly contains or implies any ethnic or racial slurs or ethnically or racially derogatory language.

(2) If the candidate is a member of the clergy, the candidate may not make reference to his or her specific denomination. However, the candidate may use his or her clerical title as a ballot designation (e.g., "Rabbi," "Pastor," "Minister," "Priest," "Bishop," "Deacon," "Monk," "Nun," "Imam," etc.)

(k) Pursuant to Elections Code § 13107, subdivision (b)~~(6)~~(7), the Secretary of State shall reject as unacceptable any proposed ballot designation which refers to any activity prohibited by law. Unlawful activity includes any activities, conduct, professions, vocations, or occupations prohibited by state or federal law.

AUTHORITY:

Note: Authority cited: Section 12172.5, Government Code. Reference: Section 13107, Elections Code.

§ 20717. Requests for Supporting Documentation

In addition to the Ballot Designation Worksheet ~~requested~~ required to be filed with the Secretary of State pursuant to Elections Code § 13107.3 and § 20711 of this Chapter, the Secretary of State may request that a candidate submit additional supporting documentation or other evidence to support the proposed ballot designation.

(a) Time is of the essence regarding all matters pertaining to the review of proposed ballot designations submitted by candidates for public office. Failure to promptly submit requested supporting materials will preclude consideration of such materials in and the rendering of a ~~summary~~ final decision on the candidate's proposed ballot designation.

(b) The Secretary of State will communicate, whenever possible, with the candidate in the most expeditious manner, including, but not limited to, telephone, facsimile transmission and electronic mail at the number or address provided by the candidate. When the candidate does not have reasonable access to a facsimile machine or electronic mail, the Secretary of State will transmit written communication to the candidate by means of overnight express delivery to the address provided by the candidate.

(c) The candidate shall have the burden of establishing that the proposed ballot designation that he or she has submitted is accurate and complies with all provisions of Elections Code § 13107 ~~of~~ and this Chapter.

AUTHORITY:

Note: Authority cited: Section 12172.5, Government Code. Reference: Sections 13107, 13107.3, Elections Code.

§ 20718. Communication of Decisions Regarding Ballot Designations

(a) ~~If a candidate's proposed ballot designation has been rejected, An~~ an official copy of the decision of the Secretary of State ~~regarding a candidate's ballot designation~~ will be made in writing and transmitted directly to the candidate by registered or certified mail, return receipt requested, to the address provided by the candidate. The Secretary of State shall also provide a copy to the elections official in the candidate's county of residence and to the elections official of each county within the political subdivision. Copies may also be made available to all other candidates in the race.

(b) At the request of the candidate, the Secretary of State will transmit ~~an unofficial~~ a copy of the decision of the Secretary of State regarding the candidate's proposed ballot designation by facsimile transmission or e-mail to the facsimile number or e-mail address listed on the candidate's Ballot Designation Worksheet. ~~When the candidate does not have reasonable access to a facsimile machine, the Secretary of State will transmit to the candidate, at the candidate's request, an unofficial copy of the decision by means of overnight express delivery to the address listed on the candidate's Ballot Designation Worksheet provided. If the candidate has not submitted a Ballot Designation Worksheet, the Secretary of State will transmit an official copy to the facsimile number provided by the candidate or, if the candidate does not have reasonable access to a facsimile machine, by overnight express mail to the address provided by the candidate~~

(c) All written decisions of the Secretary of State regarding ballot designations are public records and are available for inspection and copying at the public counter of the Elections Division of the Office of the Secretary of State, 1500 11th Street, Fifth Floor, Sacramento, California 95814.

AUTHORITY:

Note: Authority cited: Section 12172.5, Government Code. Reference: Section 13107, Elections Code.

§ 20719. Service of Legal Process Regarding Ballot Designations

(a) In the event a candidate or other interested party files a petition for the issuance of an extraordinary writ with the court or other legal action pertaining to a candidate's ballot designation, the summons and any other legal process should be served upon the Chief Counsel to the Secretary of State, ~~Legal Affairs Unit, Executive Office of the Secretary,~~ 1500 11th Street, Sixth Floor, Sacramento, California 95814. The Chief Counsel may designate a Deputy Secretary of State ~~in the Legal Affairs Unit~~ to accept service of process on behalf of the Secretary of State.

(b) Telephone notice pertaining to any ex parte applications filed with the court by any candidate or other interested party should be directed to the attention of the Chief Counsel to the Secretary of State at (916) 653-7244. Counsel for all parties to such ex parte matters are admonished that waivers of the Secretary of State's right to timely notice and the right to personally appear at the ex parte hearing will be granted in writing and only in limited instances.

(c) The Secretary of State shall provide a copy of any legal actions in subdivision (a) or (b) above to the elections official in the county of the candidate's residence and any other county in the district.

(d) The Secretary of State shall be named as a respondent in any legal action pertaining to a ballot designation for a candidate described in Elections Code § 15375, except for a candidate for judge of the superior court.

AUTHORITY:

Note: Authority cited: Section 12172.5, Government Code. Reference: Sections 13107, 13314, Elections Code.

INITIAL STATEMENT OF REASONS

TITLE 2. ADMINISTRATION DIVISION 7. SECRETARY OF STATE CHAPTER 7. BALLOT DESIGNATIONS

ADDING SECTION 20714.5 AMENDING SECTIONS 20711, 20712, 20714, 20716, 20717, 20718, AND 20719

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Elections Code sections 13107 through 13107.5 establish the statutory framework for the use of a ballot designation by a candidate in a California public office election. Section 12172.5 of the Government Code gives the Secretary of State authority to adopt regulations to assure the uniform application and administration of state election laws. Elections Code section 13107.5 directs the Secretary of State to adopt regulations defining what constitutes a “community volunteer.”

The proposed regulation and amendments to existing regulations were drafted for consistency with the Elections Code and with the goal of providing clearer rules and instructions concerning the use of ballot designations. These changes help clarify and streamline the ballot designation review process for both elections officials and candidates. It is our goal to have these regulations filed and effective before the candidate-filing period for the June 8, 2010, Primary Election.

1) The proposed amendments to Section 20711 are intended to comply with Elections Code section 13107.3(a), which states that, “Each candidate who submits a ballot designation pursuant to subdivision (a) of Section 13107 shall file, in addition to the nomination documents filed pursuant to section 8020, a ballot designation worksheet that supports the use of that ballot designation by the candidate, in a format prescribed by the Secretary of State.” (Added by Stats. 2007, c. 505, §2.) Previously, the filing of the ballot designation worksheet was optional, but section 13107.3 was amended to make filing of the worksheet mandatory. Section 20711 is being amended to reflect this change in the law. The amendment further clarifies that if a change is requested to a ballot designation, a Ballot Designation Worksheet must accompany the change request.

2) The proposed amendment to Section 20712 is intended to interpret Elections Code sections 13107(a)(1) and (3) and provide specific guidelines for ballot designations indicating a position of legislative leadership or leadership in another elected body. While not allowed under section 13107(a)(1), non-elective office titles may be considered under Section 13107(a)(3), however they will be subject to the three-word limit. Examples are now included.

3) The proposed amendments to Section 20714 are intended to interpret Elections Code section 13107(a)(3) and provide specific guidelines for the terms “profession,” “vocation,” and “occupation” as those terms are used in Section 13107. Specifically, the definition of “profession” has been expanded to no longer require “specific” knowledge or be “of learning or science.”

Use of a hyphen in the ballot designation when the word appears in a dictionary is further clarified to reference a dictionary that is now published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted. This provision was amended to mirror the language set forth in Elections Code section 9.

Examples of special districts and political subdivisions that are not acceptable are now included.

Rules regarding the use of an elective office with another profession, vocation, or occupation have been clarified to be allowable under Section 13107(a)(3), but subject to the three-word limit. Examples are now provided.

4) Proposed Section 20714.5 is intended to comply with Elections Code section 13107.5(b), which states that, “The Secretary of State shall by regulation define what constitutes a community volunteer for purposes of this section.” (Added by Stats. 2002, c. 364, §1.) Specifically, “community volunteer” is defined as a person engaging in activity for an organization that is tax-exempt pursuant to Internal Revenue Code section 501(c)(3), a governmental agency, or an educational institution. The level of activity is clarified as substantial involvement for which there should be no monetary profit.

5) The proposed amendments to Section 20716 are intended to comply with Elections Code section 13107(a)(3) and provide specific guidelines for activities that are distinguished from professions, vocations, and occupations, and therefore not acceptable as ballot designations. Specifically, this section now allows a candidate to use his or her volunteering activities as a ballot designation if those activities meet the requirements set forth in Section 20714.5.

This section also provides further examples of unacceptable statuses, adding “veteran, proponent, reformer, scholar, founder, and philosopher.”

This section would also comply with Elections Code section 13107(b)(2) and provide specific further examples of unacceptable ballot designations, which would suggest an evaluation of the candidate’s qualifications, honesty, integrity, leadership abilities, or character, adding “senior,” “emeritus,” “specialist,” and “magnate.”

The proposed amendments to this section also comply with Elections Code section 13107(b)(4) and provide specific guidelines for use of the word “retired” in a ballot designation. Ballot designations indicating a retired public official are only allowed when the candidate has previously voluntarily retired, was not removed, not recalled, and

did not surrender office to seek another office or fail to win reelection to the office. Furthermore, “retired” cannot be used if the candidate has a more recent, intervening principal profession, vocation, or occupation.

Finally, a correction to an erroneous Elections Code citation is included in Section (k).

6) The proposed amendments to Section 20717 are intended to comply with Elections Code section 13107.3, which was amended to require that a Ballot Designation Worksheet be filed with the Secretary of State’s office and changes the language of the regulation to make such a filing a requirement.

This section was also amended to remove the reference to a summary decision of a proposed ballot designation. Only final decisions are made.

7) The proposed amendments to Section 20718 are intended to comply with Elections Code section 13107(c) and provide specific guidelines for communication of decisions regarding ballot designations. Specifically, an official copy of the decision on the ballot designation will only be made in writing if the candidate’s proposed ballot designation has been rejected. At the request of the candidate, a copy of the decision will now be emailed or faxed to the candidate, as opposed to overnight delivery.

8) The proposed amendments to Section 20719 are intended to comply with Elections Code section 13107 and provide specific guidelines for service of legal process regarding ballot designations. Specifically, a section has been added clarifying that the Secretary of State shall be named as respondent in any legal actions pertaining to a ballot designation of a candidate for an office listed in Elections Code section 15375, except for candidates for judge of the superior court.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Secretary of State did not rely on any technical, theoretical or empirical studies or reports in proposing these regulations.

ALTERNATIVES TO THE PROPOSED REGULATIONS

No alternatives were considered.

ECONOMIC IMPACT ON BUSINESS

The proposed regulation and amendments to existing regulations merely propose to implement, interpret or make specific existing requirements and procedures for ballot designations as set forth in the Elections Code. The proposed regulation and amendments to existing regulations, therefore, have no impact directly affecting business.

NOTICE OF PROPOSED RULEMAKING

CALIFORNIA CODE OF REGULATIONS

TITLE 2. DIVISION 7. CHAPTER 7.

SECRETARY OF STATE

NOTICE IS HEREBY GIVEN that the Secretary of State intends to adopt a regulation and amend other regulations as described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Secretary of State proposes the following regulatory action: Adopt Section 20714.5 and amend Sections 20711, 20712, 20714, 20716, 20717, 20718, and 20719, of Chapter 7 of Division 7 of Title 2 of the California Code of Regulations.

AUTHORITY AND REFERENCE

Authority cited: Section 12172.5, Government Code; Section 13107.5, Elections Code.
Reference: Sections 13107, 13107.3, and 13107.5, Elections Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Elections Code sections 13107 through 13107.5 establish the statutory framework for the ballot designation by a candidate in a California public office election. Section 12172.5 of the Government Code gives the Secretary of State authority to adopt regulations to assure the uniform application and administration of state election laws. In Elections Code section 13107.5, the Legislature directed the Secretary of State to adopt regulations defining what constitutes a “community volunteer.”

The proposed regulation and amendments to existing regulations were drafted for consistency with the Elections Code and with the goal of providing clearer rules and instructions for ballot designations. These changes help clarify and streamline the ballot designation review process for both elections officials and candidates. It is our goal to have these regulations filed and effective before the candidate-filing period for the June 8, 2010, Primary Election.

1) The proposed amendments to Section 20711 are intended to comply with Elections Code section 13107.3(a), which states that, “Each candidate who submits a ballot designation pursuant to subdivision (a) of Section 13107 shall file, in addition to the nomination documents filed pursuant to section 8020, a ballot designation worksheet that supports the use of that ballot designation by the candidate, in a format prescribed by the

Secretary of State.” (Added by Stats. 2007, c. 505, §2.) Previously, the filing of the ballot designation worksheet was optional, but section 13107.3 was amended to make filing of the worksheet mandatory. Section 20711 is being amended to reflect this change in the law. The amendment further clarifies that if a change is requested to a ballot designation, a Ballot Designation Worksheet must accompany the change request.

2) The proposed amendment to Section 20712 is intended to interpret Elections Code sections 13107(a)(1) and (3) and provide specific guidelines for ballot designations indicating a position of legislative leadership or leadership in another elected body. While not allowed under section 13107(a)(1), non-elective office titles may be considered under Section 13107(a)(3), however they will be subject to the three-word limit. Examples are now included.

3) The proposed amendments to Section 20714 are intended to interpret Elections Code section 13107(a)(3) and provide specific guidelines for the terms “profession,” “vocation,” and “occupation” as those terms are used in Section 13107. Specifically, the definition of “profession” has been expanded to no longer require “specific” knowledge or be “of learning or science.”

Use of a hyphen in the ballot designation when the word appears in a dictionary is further clarified to reference a dictionary that is now published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted. This provision was amended to mirror the language set forth in Elections Code section 9.

Examples of special districts and political subdivisions that are not acceptable are now included.

Rules regarding the use of an elective office with another profession, vocation, or occupation have been clarified to be allowable under Section 13107(a)(3), but subject to the three-word limit. Examples are now provided.

4) Proposed Section 20714.5 is intended to comply with Elections Code section 13107.5(b), which states that, “The Secretary of State shall by regulation define what constitutes a community volunteer for purposes of this section.” (Added by Stats. 2002, c. 364, §1.) Specifically, “community volunteer” is defined as a person engaging in activity for an organization that is tax-exempt pursuant to Internal Revenue Code section 501(c)(3), a governmental agency, or an educational institution. The level of activity is clarified as substantial involvement for which there should be no monetary profit.

5) The proposed amendments to Section 20716 are intended to comply with Elections Code section 13107(a)(3) and provide specific guidelines for activities that are distinguished from professions, vocations, and occupations, and therefore not acceptable as ballot designations. Specifically, this section now allows a candidate to use his or her volunteering activities as a ballot designation if those activities meet the requirements set forth in Section 20714.5.

This section also provides further examples of unacceptable statuses, adding “veteran, proponent, reformer, scholar, founder, and philosopher.”

This section would also comply with Elections Code section 13107(b)(2) and provide specific further examples of unacceptable ballot designations, which would suggest an evaluation of the candidate’s qualifications, honesty, integrity, leadership abilities, or character, adding “senior,” “emeritus,” “specialist,” and “magnate.”

The proposed amendments to this section also comply with Elections Code section 13107(b)(4) and provide specific guidelines for use of the word “retired” in a ballot designation. Ballot designations indicating a retired public official are only allowed when the candidate has previously voluntarily retired, was not removed, not recalled, and did not surrender office to seek another office or fail to win reelection to the office. Furthermore, “retired” cannot be used if the candidate has a more recent, intervening principal profession, vocation, or occupation.

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6) The proposed amendments to Section 20717 are intended to comply with Elections Code section 13107.3, which was amended to require that a Ballot Designation Worksheet be filed with the Secretary of State’s office and changes the language of the regulation to make such a filing a requirement.

This section was also amended to remove the reference to a summary decision of a proposed ballot designation. Only final decisions are made.

7) The proposed amendments to Section 20718 are intended to comply with Elections Code section 13107(c) and provide specific guidelines for communication of decisions regarding ballot designations. Specifically, an official copy of the decision on the ballot designation will only be made in writing if the candidate’s proposed ballot designation has been rejected. At the request of the candidate, a copy of the decision will now be emailed or faxed to the candidate, as opposed to overnight delivery.

8) The proposed amendments to Section 20719 are intended to comply with Elections Code section 13107 and provide specific guidelines for service of legal process regarding ballot designations. Specifically, a section has been added clarifying that the Secretary of State shall be named as respondent in any legal actions pertaining to a ballot designation of a candidate for an office listed in Elections Code section 15375, except for candidates for judge of the superior court.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Secretary of State has made the following initial determinations:

1. Mandate on local agencies and school districts: None.

2. **Cost or savings to any state agency:** None.
3. **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.
4. **Other nondiscretionary cost or savings imposed on local agencies:** None.
5. **Cost or savings in federal funding to the state:** None.
6. **Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None.

The proposed regulation and amendments to existing regulations merely propose to implement, interpret or make specific existing requirements and procedures for ballot designations as set forth in the Elections Code. The proposed regulation and amendments to existing regulations, therefore, have no impact directly affecting business.

7. **Cost impacts on a representative private person or business:** None. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

8. **Adoption of these regulations will not:**

- (A) create or eliminate jobs within California;
- (B) create new businesses or eliminate existing business within California;
- or
- (C) affect the expansion of businesses currently doing business within California.

9. **Significant effect on housing costs:** None.

10. **Effect on small business:** None. This proposed regulation and amendments to existing regulations merely propose to implement, interpret or make specific existing requirements and procedures for ballot designations as set forth in the Elections Code.

The proposed regulation and amendments to existing regulations, therefore, have no impact directly affecting small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Secretary of State's office must determine that no reasonable alternative has been identified that would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Secretary of State invites persons to present statements or arguments with respect to alternatives to the proposed regulation and the proposed amendments during the written comment period.

CONTACT

Any inquiries should be made to Robbie Anderson, Secretary of State's office, 1500 11th Street, 5th Floor, Sacramento, CA 95814; telephone (916) 653-1690; e-mail robbie.anderson@sos.ca.gov. Back-up contact: Rachelle Sanchez, Secretary of State's office, 1500 11th Street, 5th Floor, Sacramento, CA 95814; telephone (916) 651-6971; e-mail rachelle.sanchez@sos.ca.gov.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State's office. Written comments concerning the proposed rulemaking must be received by 5:00 p.m. on October 26, 2009. The Secretary of State's office will consider only comments received by that time. Submit written comments to the contact indicated below.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Secretary of State's office will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the address indicated below. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed regulations, and the initial statement of reasons. The initial statement of reasons includes the express terms of the proposed action and the information upon which the proposed action is based. Copies are posted on the Secretary of State's web site at www.sos.ca.gov/elections and may also be obtained from the contact indicated below.

AVAILABILITY OF THE TEXT IN PLAIN ENGLISH

The text of the proposed regulations is available in plain English from the contact person indicated below.

PUBLIC HEARING

The Secretary of State has not scheduled a public hearing on this proposed rulemaking. The Secretary of State will hold a hearing if it receives a written request for a public hearing from any interested person, or the interested person's authorized representative, no later than 15 days before the close of the written comment period. Any request for a public hearing should be sent within the time specified to the contact person indicated below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Secretary of State's office may adopt the proposed regulations substantially as described in this notice. If the Secretary of State's office makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Secretary of State's office adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact indicated below. The Secretary of State's office will accept written comments on the modified regulations for 15 days after the date on which they are made available generally.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, copies of the Final Statement of Reasons may be obtained from the contact person indicated above.