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STATE OF CALIFORNIA | ELECTIONS

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County Clerk/Registrar of Voters (CC/ROV) Memorandum # 11126

TO: All County Clerks/Registrars of Voters

FROM: Jana M. Lean  
Jana M. Lean  
Chief, Elections Division

RE: Top Two Candidates Open Primary Act of 2010: Implementation Guidelines

While some county elections officials have conducted special elections under the state's Top Two Candidates Open Primary Act that took effect in 2011, the 2012 election cycle will be the first time all county elections officials will conduct an election under the Act.

The Secretary of State's office has developed the following direction to ensure that all county elections officials conduct the upcoming statewide elections in a uniform fashion that complies with the Top Two Candidates Open Primary Act.

**Statewide Elections for Voter-Nominated Offices  
Under the Top Two Candidates Open Primary Act**

**I. Introduction**

The Top Two Candidates Open Primary Act was created and implemented by the June 2010 passage of Proposition 14 and by Senate Bill 6 (SB 6) (Chapter 1, Statutes of 2009).

Except for the office of U.S. President and county central committee offices, offices that used to be known as "partisan offices" (e.g., state constitutional offices, congressional, and state legislative offices) are now known as "voter-nominated" offices. (Elec. Code §§ 337, 359.5.) What used to be known as a "political party affiliation" is now known as a "political party preference."

The June 5, 2012, Presidential Primary Election and the November 6, 2012, General Election will be conducted under the Top Two Candidates Open Primary Act, as it pertains to voter-nominated offices.

All of the Elections Code statutes cited within this document took effect January 1, 2011.

## **II. Documents from Secretary of State (SOS) for Voter-Nominated Offices**

The Top Two Candidates Open Primary Act required the SOS to change many of the documents candidates must file in order to run for voter-nominated offices. In order to facilitate a uniform implementation of the upcoming statewide primary election using the new open primary format, the SOS office has revised the necessary candidate filing documents. The new aspects of the forms are highlighted below.

Signatures in-lieu – Prior to the Top Two Candidates Open Primary Act, only a voter of the same political party as a candidate could sign the candidate's nomination paper. Additionally, any voter could sign an in-lieu petition, but only the signature of a voter who was of the same political party could be counted toward the number of voters required to sign a nomination paper. Now any registered voter, regardless of party preference, can sign a nomination paper. As a result, all signatures on an in-lieu petition can be counted toward the number of voters required to sign a candidate's nomination paper. (Elec. Code §§ 8061, 8068.)

Declaration of Candidacy – A candidate may indicate his or her party preference, or lack of party preference, upon his or her declaration of candidacy. (Elec. Code § 8002.5.) A new section has been added to require candidates to list their 10-year party preference and voter registration history. (Elec. Code §§ 300.5, 8121.)

Nomination Paper – The number of registered voters who must sign the nomination paper remains the same and applies to all candidates. For United States Senator, 65-100 signatures are required, and for United States Representative in Congress, State Senator, and Member of the State Assembly, 40-60 signatures are required. (Elec. Code § 8062.) Any registered voter may sign any candidate's nomination paper, regardless of the voter's or the candidate's party preference or lack of party preference. (Elec. Code § 8068.) Counties do not need to verify the political preferences of the voters who have signed nomination papers. (Elec. Code § 8081.)

The forms themselves, along with the qualifications and requirements for running for voter-nominated office, have been forwarded to all the counties. Additionally, the qualifications and requirements are posted on our website at [www.sos.ca.gov/elections/2012-elections/qualifications.htm](http://www.sos.ca.gov/elections/2012-elections/qualifications.htm).

## **III. Candidates for Voter-Nominated Offices**

Prior to the Top Two Candidates Open Primary Act, the law allowed for three types of candidates: 1) candidates using the party nomination process (primary only), 2)

candidates using the write-in process (both primary and general), and 3) candidates using the independent nomination process (general only).

After the primary election, the top voter-getter from each qualified political party would move on to the general election, as would any write-in candidates who received votes equal in number to 1 percent of all votes cast for the specific office at the last preceding general election at which that office was filled.

At the general election, voters could cast ballots for candidates from the above two categories, as well as any candidates who qualified by using the write-in process or the independent nomination process.

Under the Top Two Candidates Open Primary Act, although the law still allows for three types of candidates, there have been the following changes: 1) candidates using the voter nomination process (primary only), 2) candidates using the write-in process (primary only), and 3) candidates using the independent nomination process (general only, and only in a specific circumstance).

Accordingly, at the primary election, all candidates running for a voter-nominated office must qualify using either the voter nomination process or the write-in process. A candidate from the primary election, including a write-in candidate, will only advance to the general election if he or she is one of the top two vote-getters (Elec. Code §§ 8141.5, 8605.)

At the general election, if a person's name is written on a ballot as a write-in candidate, the vote will not be counted. (Elec. Code § 8606.) Furthermore candidates will only be allowed to run for a voter-nominated office using the independent nomination process if no candidate is nominated for that voter-nominated office at the primary election. (Elec. Code § 8300.)

#### **IV. Language and Layout for Ballot**

To facilitate the uniform implementation of elections using the new open primary format, the SOS office has adopted the following language for county elections officials to use. To assist county elections officials, the SOS office will also provide the translation of this language.

##### **A. Primary Ballot**

The Top Two Candidates Open Primary Act requires certain information be provided to voters on the ballot. (Elec. Code § 13206.)

Pursuant to Section 13206(a), on the partisan ballot, immediately below the instructions to voters, there should be a box not less than one-half inch high enclosed by heavy-ruled line the same as the borderline. The box shall be as long as there

are columns for the partisan ballot and shall be set directly above these columns. Within the box shall be printed in 24-point boldface gothic capital type the words "Party-Nominated Offices." Immediately below that phrase within the same box shall be printed, in 8-point boldface gothic type, the following:

"Only voters who disclosed a preference upon registering to vote for the same party as the candidate seeking the nomination of any party for the Presidency or election to a party committee may vote for that candidate at the primary election, unless the party has adopted a rule to permit non-party voters to vote in its primary elections."

Although Section 13206 seems to contemplate a ballot with partisan, voter-nominated, and nonpartisan offices, the June 5, 2012, Presidential Primary Election ballot will not contain a nonpartisan office. Therefore, to eliminate the potential for confusion, the SOS office is providing the ballot language below for county elections officials to use. It is based on the language of Section 13206(b), but removes the references to "nonpartisan offices" to eliminate the potential for voter confusion since there will not be a nonpartisan office on the ballot.

The same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the ballot and within the box in the same style and point size of type shall be printed "Voter-Nominated Offices." Immediately below that phrase within the same box shall be printed, in 8-point boldface gothic type, the following:

"All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated office.

Voter-Nominated Offices. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only.

It does not constitute or imply an endorsement of the candidate by the party indicated, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party."

#### B. Sample Ballot Booklet and All Ballots

- a. Pursuant to Elections Code sections 8002.5 and 13105(a), and the direction set forth in CC/ROV #11125, the language following the candidates' names should be as follows:

- i. For a candidate who designated a qualified political party pursuant to Sections 8002.5 and 8040, "Party Preference: \_\_\_\_\_".
  - ii. For a candidate who did not state a preference for a qualified political party pursuant to Sections 8002.5 and 8040, "Party Preference: None".
  - iii. For a candidate who chooses not to have his or her stated qualified party preference listed on the ballot, "Party Preference: Not Given".
- b. With respect to the ballot layout, there is potentially conflicting language in the Elections Code. The potential for the conflicting language existed prior to the enactment of the Top Two Candidates Open Primary Act and was retained by the Act. If there is not sufficient space next to the candidate's name, Elections Code section 13105 states that the political party identification should be placed "immediately below the name" of the candidate. However, Elections Code section 13107 states that the ballot designation shall be placed "immediately under the name" of the candidate. The potential for conflict will be more likely to occur now, given the new political party identification sentences required by the Top Two Candidates Open Primary Act.

In order to facilitate a uniform implementation of how candidates appear on the ballot, county elections officials should follow a three-line format for all candidates in any election for congressional or state legislative office:

Name of Candidate  
Political Party Identification Sentence (e.g., "Party Preference: \_\_\_\_\_.")  
Ballot Designation

## V. Other Duties

There are a number of other duties that the Top Two Candidates Open Primary Act requires county elections officials to adhere to when conducting a primary or general election. Those items the Secretary of State's office has identified are:

- A. County elections officials, when posting or distributing a list of the names of precinct board members, must indicate the precinct board members' party preferences or lack of party preferences. (Elec. Code § 12108.)
- B. Any qualified political party may submit to the county elections official a list of all candidates for voter-nominated office who will appear on any ballot in the county in question, and who have been endorsed by the party. The county elections official shall print any such list that is timely received in the sample ballot. (Elec. Code § 13302(b).)

The political parties are not required to pay for the space to print the list.

- C. County elections officials must furnish, as a part of the precinct supplies, printed copies of notices supplied by the Secretary of State's office; the notices must be conspicuously posted both inside and outside every polling place. (Elec. Code § 14105.1.) The notices, specified in Elections Code section 9083.5, are a written explanation of the electoral process for party-nominated and voter-nominated offices.

The Legislature is contemplating amendments to the Top Two Candidates Open Primary Act of 2010 law that may cause or require the Secretary of State to revisit the direction provided in this CC/ROV. However, until such time that occurs, the Secretary of State recommends that county elections officials adhere to the direction provided above.

If you have any questions, please feel free to contact our office at (916) 657-2166.  
Thank you.