



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

February 10, 2012

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 12059

TO: All County Clerks/Registrars of Voters

FROM:


Joanna Southard
Assistant Chief, Elections Division

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

While some county elections officials have conducted special elections under the state's Top Two Candidates Open Primary Act, 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 **updated** 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.

Top Two Candidates Open Primary Act was amended by Assembly Bill 1413 (AB 1413), which was signed into law on February 10, 2012, and took effect immediately (Chapter 3, Statutes of 2012.) As a result, this CC/ROV amends and supersedes all direction given in [CC/ROV #11125](#) and [CC/ROV #11126](#), both dated November 23, 2011.

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

I. Introduction

The Top Two Candidates Open Primary Act was approved by the voters in June 2010 and the implementation of the Act was directed by the approval of SB 6 (Chapter 1, Statutes of 2009), and AB 1413 (Chapter 3, Statutes of 2012).

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.

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. 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.)

AB 1413’s effect on signatures in-lieu: None.

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.)

AB 1413’s effect on Declaration of Candidacy: Requires candidates to provide their party preference or lack of party preference consistent with the preference stated on their voter registration card. Removed the option for a candidate who disclosed a party preference on their voter registration card to withhold that information from the ballot.

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.)

AB 1413's effect on nomination papers: None.

The forms, along with the qualifications and requirements for running for voter-nominated office, were forwarded to all county elections offices in November 2011. The newly revised Declaration of Candidacy, as well as the newly revised Statement of Write-In Candidacy and the Ballot Designation Worksheet, all which comply with AB 1413, have been forwarded to all county elections offices. Additionally, the qualifications and requirements are posted on our website at www.sos.ca.gov/elections/2012-elections/qualifications.htm.

III. Candidates for Voter-Nominated Offices

Nothing in this section has changed as a result of AB 1413.

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

As a result of AB 1413, there have been changes to this section:

The Top Two Candidates Open Primary Act and AB 1413 require certain information be provided to voters on the ballot. (Elec. Code §§ 13206, 13206.5.) To assist county elections officials, the SOS office will provide the translations of the required language.

A. Primary Ballot

1. 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 the words "Party-Nominated Offices." Immediately below that phrase within the same box shall be printed 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."

Pursuant to Section 13206(b), 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 and Nonpartisan Offices." Immediately below that phrase within the same box shall be printed 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 or nonpartisan office. 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

imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot."

2. For county elections officials who want to create two ballot types – a partisan ballot and a nonpartisan ballot, Elections Code section 13230(a) requires that on the partisan ballot, the material appearing under the heading "Voter-Nominated and Nonpartisan Offices," as well as the heading itself, shall be omitted.
3. Based upon the direction provided in CC/ROV # 12035 dated January 23, 2012, relating to the printing of ballots for the Americans Elect Party, there is no need to print ballots for voters who have disclosed a preference for the Americans Elect Party.

B. General Ballot

1. Pursuant to Section 13206.5(a)(1), on the ballot used in this upcoming statewide general election, immediately below the instructions to voters, there shall be a box not less than one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ballot and shall be set directly above these columns. Within the box shall be printed the words "Party-Nominated Offices." Immediately below that phrase within the same box shall be printed the following:

"The party label accompanying the name of a candidate for party-nominated office on the general election ballot means that the candidate is the official nominee of the party shown."

Pursuant to Section 13206.5(a)(2), the same style of box described in subdivision (a)(1) shall also appear and within the box in the same style and point size of type shall be printed "Voter-Nominated and Nonpartisan Offices." Immediately below that phrase within the same box shall be printed 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 or nonpartisan office. 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 imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot."

2. Pursuant to Elections Codes sections 13207 and 13212, no write-in spaces shall be printed for voter-nominated offices at a general election.

C. Sample Ballot Booklet and Ballots

1. Pursuant to Elections Code sections 8002.5 and 13105(a), for candidates for voter-nominated offices, the language following the candidates' names should be as follows:
 - a. For a candidate who designated a qualified political party on his or her affidavit of registration and pursuant to Sections 8002.5 and 8040, "Party Preference: _____".
 - b. For a candidate who declined to disclose a preference for a qualified political party on his or her affidavit of registration and pursuant to Sections 8002.5 and 8040, "Party Preference: None".

The above-described designations made by the candidates shall appear on both the primary and general election ballots and shall not be changed between the primary and general elections.

2. There may be cases where using the above-listed candidate political party designations will not solve ballot printing and cost challenges.

In such rare cases where limitations in voting systems and/or ballot layout capacity necessitates abbreviating qualified political party names where a candidate is permitted to express a preference as identified above, the Secretary of State's office is providing the following direction to each county elections official:

- a. Utilize the following list of approved abbreviations:

DEM – Democratic
REP – Republican
AI – American Independent
AE – Americans Elect
GRN – Green
LIB – Libertarian
PF – Peace and Freedom

Should a county utilize the abbreviation option, it must provide a list of the abbreviations to voters in the sample ballot booklet, in postings at the polling places, and in information mailed to vote-by-mail voters.

- b. Utilize political party abbreviations for each candidate in a particular contest and throughout the entire ballot on a countywide basis, even though only one candidate may require the use of an abbreviation.
3. With respect to the ballot layout for voter-nominated offices, if there is not sufficient space next to the candidate's name, Elections Code section 13105 states that the political party designation should be placed "immediately below the name" of the candidate. Elections Code section 13107 states that if the political party designation is placed below the candidate's name, the ballot designation shall be placed immediately under the political party designation, otherwise, the ballot designation shall be placed immediately under the candidate's name.
4. Pursuant to Elections Code section 13105(b), for candidates for President and Vice President, the name of the party shall appear to the right of and equidistant from the pair of names, "and on the same line as the name of the candidate for President, or immediately below the name of the vice presidential candidate if there is not sufficient space to the right of the name."

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. As a result of AB 1413, the following information has changed:

County elections officials, when posting or distributing a list of the names of precinct board members, must indicate the precinct board members' political party preferences. If a precinct board member has not expressed a preference for a political party, the word "None" shall be printed in place of a party name. (Elec. Code § 12108.)

- B. As a result of AB 1413, the language of the statute changed slightly, but there is not a change in the effect:

A qualified political party may submit to the county elections official a list of all candidates for voter-nominated office who will appear on a ballot in the county in question, and who have been endorsed by the party. The county elections official shall print the names of the candidates for voter-nominated office who were endorsed by that political party in the voter information portion of the sample ballot. The party chair must provide written copy of the list of candidates endorsed by the party to the elections official no later than E-83. (Elec. Code § 13302(b).)

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

County elections officials are required to print the names of the candidates for voter-nominated office who were endorsed by any of the seven qualified state political parties when those names are provided to the county elections official by the party chair. There is no requirement that, or ability for, a county elections official to print endorsements made by county central committees.

C. Nothing in this section has changed as a result of AB 1413:

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 election process for party-nominated, voter-nominated, and nonpartisan offices.

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

Thank you.