



Governor James Rolph, Jr. delivers his inaugural address on the west steps of the State Capitol, January 6, 1931.

Chapter III

Elections

Right of Suffrage

In 1972, the people adopted a constitutional amendment substantially revising California's voting qualifications. The new Article II reflected changes brought about by federal legislation and court decisions. The provisions of this article regulate the right of the people of this state to vote in federal, state, and local elections.¹

It provides that any citizen who is 18 years of age and a resident of California is entitled to vote.² The power to define residence and to provide for registration and free elections resides in the Legislature.³

Furthermore, the Constitution provides that no person who is mentally incompetent or imprisoned or on parole for the conviction of a felony is qualified to vote in California.⁴ The voter's right to cast his or her vote in secrecy is also guaranteed by the California Constitution.⁵

The language formerly contained in the Constitution and the statutes pertaining to suffrage was, perhaps, the most misleading and confusing area in California law as many of the requirements contained therein had been stricken by the courts as being unconstitutional.

For example, the prerequisite that a person be able to read the Constitution in the English language was declared to be a violation of the equal protection clause of the *14th Amendment, U.S. Constitution*, and the voter, if otherwise eligible, need only be literate in another language and have access to sources of political information published in that language.⁶ The *Federal Voting Rights Act of 1970* also declared that literacy tests required before voting were unconstitutional.⁷

Likewise, the residency requirements for state elections of one year in the state, 90 days in the county, and 54 days in the precinct prior to the election, and the 54-day residency requirement in the state for presidential and vice presidential elections had also been declared unconstitutional as being in violation of the equal protection clause and as an infringement on a person's constitutional right to travel.⁸

However, until the adoption of the current Article II and the enactment of conforming statutes, these provisions remained in the text of our Constitution and statutory law.

In summation, the courts have concluded that any durational residency requirement exceeding 30 days is unconstitutional unless the state can show that such an imposition is not merely an administrative convenience but an

¹ *Constitution*, Article II, Sections 2–4.

² *Constitution*, Article II, Section 2. Eighteen years of age is also the federal requirement, *United States Constitution*, Amendment XXVI.

³ *Constitution*, Article II, Section 3.

⁴ *Constitution*, Article II, Section 4. In California a “felony” is a crime which is punishable with death or by imprisonment in a state prison or by imprisonment in county jail pursuant to a specified provision of law. *Penal Code*, Section 17.

⁵ *Constitution*, Article II, Section 7.

⁶ *Castro v. State of California*, 2 Cal.3d 223.

⁷ 52 U.S.C.A. 10501. This section was held to be constitutional by the United States Supreme Court, *Oregon v. Mitchell*, 400 U.S. 112.

⁸ 52 U.S.C.A. 10502; *Dunn v. Blumstein*, 405 U.S. 330; *Keene v. Mihaly*, 11 Cal.App.3d 1037; *Young v. Gness*, 7 Cal.3d 18.

administrative necessity which promotes a compelling state interest. The courts have consistently stricken residency requirements exceeding 30 days.

The California statutory provisions are now in conformity with these decisions. Until 2001, a person could register at any time up to and including the 29th day prior to the election. The Legislature changed the voter registration deadline beginning in 2001 to the 15th day prior to the election.⁹ Individuals who become California residents or United States citizens after the voter registration deadline are permitted to register and vote after the deadline if certain conditions are met.¹⁰ Legislation has also been enacted that will allow voters to register to vote at any time, including on election day, though that legislation will not go into effect until after the Secretary of State rolls-out a new statewide voter registration database.¹¹

The Legislature has allowed any registered voter to receive a vote by mail ballot, sometimes referred to as an “absentee” ballot, and any voter may apply to become a permanent vote-by-mail voter.¹² Additionally, a vote-by-mail voter who is unable to return his or her ballot by mail or in person may designate an immediate relative or a person residing in the same household to deliver the ballot to an elections official.¹³

The voter must apply to the elections official for a vote-by-mail ballot. The application must be made not more than 29, nor less than 7, days prior to the election. However, any applications received prior to the 29th day shall be kept and processed during the application period. Ballots generally must be received by the elections official from whom they were obtained by the time the polls close on election day, though ballots that are returned by mail are counted if they are mailed by election day and received by the elections official no later than three days after the election, if certain conditions are met.¹⁴ Those voters who are registered as permanent vote-by-mail voters need not re-register for each election cycle. In the 2014 General Election, 60.52 percent of voters cast ballots by mail.

On election day after the polls are closed, the number of ballots cast are counted and compared with the total number of voters who have signed the precinct roster. The number of votes for and against each candidate and proposition are then tabulated or they are forwarded to a central counting center for tabulation. The count is open to the public and, when once begun, must be carried on continuously until its completion. The results of the count are posted outside the polling place or counting center. No information regarding the results of the election may be disclosed until after the polls have closed.¹⁵

⁹ *Statutes of 2000*, Chapter 899.

¹⁰ *Elections Code*, Sections 331, 332, 3400 et seq., and 3500 et seq.

¹¹ *Statutes of 2012*, Chapter 497. This law takes effect on January 1 of the year after the Secretary of State certifies that the new statewide voter registration database is operative. As this book went to print, that certification was expected to take place during the 2016 calendar year, which would allow the law to become operative on January 1, 2017.

¹² *Elections Code*, Sections 3003 and 3201. Section 3005 of the Elections Code allows an elections official to designate a precinct that contains 250 or fewer registered voters as a mailed ballot precinct. No polling place is established for precincts that are designated as mailed ballot precincts pursuant to this provision.

¹³ *Elections Code*, Section 3017. Voting by mail is not a new idea in California. In 1909, Senator L.H. Roseberry introduced the Postal Direct Primary Law (SB 24), which called for citizens to vote through the mail in direct primary elections. However, SB 24 was never passed into law, the measure died in the Senate. (*Story of the California State Legislature of 1909*, Franklin Hichborn, pp. xxvi–xxx; *Senate Final History*, 1909 Session, pp. 54, 919).

¹⁴ *Elections Code*, Sections 3001 and 3020.

¹⁵ *Elections Code*, Sections 14434 and 15100–15281. See also, 47 *Op. Atty. Gen.* 167.

Over the years, the Legislature has provided for different methods of voting and tabulating election results including the use of voting machines, punchcards and computers.¹⁶ The City and County of San Francisco was at the forefront of mechanical voting; it utilized this method of voting since the early part of the 20th century. In response to punchcard voting controversies in Florida during the disputed 2000 presidential election, California adopted the Voting Modernization Bond Act of 2002.¹⁷ This bond act assisted counties in purchasing updated voting systems. Voting systems must be approved by the Secretary of State prior to being used in an election in California.¹⁸

Primary and General Elections

California holds primary and general elections to choose most of its state officeholders. The law regulates the nomination of candidates for public office by electors, political parties, or organizations of electors at the primary election and prescribes the conditions to be complied with by electors, political parties, or organizations of electors in order to participate in any such primary.¹⁹

Party Qualification and Disqualification

There are two ways a proposed political party may qualify as an official party in the state: by registering voters in the new party's name, or by gathering signatures via petition. The law prescribes that if a proposed party chooses the first option, it must achieve a statewide registration with that party's name equaling at least 0.33% of the total number of voters registered as of a specified period of time before the election for which the party seeks to qualify. (As of February 10, 2015, there were 17,717,936 registered voters in California; based on that number of registered voters, a political party would need to have 58,470 registered voters in California to qualify.) Qualifying by petition, on the other hand, requires signatures by voters equal in number to at least 10% of the total votes cast in the preceding gubernatorial election (i.e., 751,398 signatures based on the number of votes cast in the 2014 gubernatorial general election).²⁰

Once qualified, a political party maintains its qualification status if it (1) maintains a statewide registration equaling at least 0.33% of the total number of voters registered in the state, or (2) the sum of the votes cast for all the candidates for a statewide office that are registered with that party is at least 2% of the vote for that office at the previous gubernatorial primary election, and the party maintains a statewide registration equaling at least one-fifteenth of one percent of the total number of voters registered in the state. Qualified political parties that fail to meet either test can be disqualified.

¹⁶ *Elections Code*, Sections 344, 345, 355, 358, 360–362 and 19004–19301.

¹⁷ See Proposition 41, adopted March 5, 2002, and *Statutes of 2001*, Chapter 902.

¹⁸ *Elections Code*, Sections 19201–19301. Elections Code Section 19209 allows for the experimental use of a voting system that has not been approved by the Secretary of State in a pilot program if certain conditions are met. Such pilot programs, however, can only be conducted in legally binding elections with the prior approval of the Secretary of State.

¹⁹ See generally, *Elections Code*.

²⁰ For more specific information on political party qualification process, see *Elections Code*, Sections 5000–5200.

At present, there are six officially qualified political parties in California: the American Independent, Democratic, Green, Libertarian, Peace and Freedom, and Republican Parties. The Democratic and Republican Parties have been qualified since the statewide party nomination process began in 1910, while the American Independent and Peace and Freedom Parties qualified in 1968.²¹ The Libertarian Party qualified in 1980, and the Green Party qualified in 1992.

The Green Party elected its first member to the Legislature in a special election held March 30, 1999. Audie Bock of Alameda County was elected to the Assembly as a Green Party candidate, but later registered without a party affiliation and unsuccessfully ran for re-election as an Independent in 2000.²²

Interestingly, the third largest voter registration designation in California is “no party preference,” constituting 23.6% of voter registrations.²³

Crossfiling System (1913–1959)

The Progressive Movement of the early 20th Century initiated dramatic changes in the political and electoral systems of the state. In 1908, voters approved a constitutional amendment establishing the groundwork for a direct primary system.²⁴ To implement the new procedures, the 1909 Legislature passed the Direct Primary Law, which allowed voters to vote directly for candidates from various political parties, abolishing the old system of political conventions (and party “machines”) from selecting the candidates.²⁵

In 1913, the Direct Primary Law was amended by the Legislature to allow candidates to “crossfile” with multiple political parties.²⁶ The crossfiling system gave a candidate the opportunity to file for their own party’s primary as well as filing in another party’s primary. If a candidate won both primaries, they would run unopposed in the general election. In 1917, the crossfiling laws were modified: a candidate now had to win their own primary in order to be a candidate in the general election. If a candidate lost their own party’s primary, but won the other party’s primary, they were ineligible to run in the general election. This exact scenario happened in 1918, when James Rolph, a Republican candidate for Governor, crossfiled in the Democratic Party primary. Rolph lost the Republican primary, but won the Democratic primary. Under the new law, Rolph was not able to advance to the general election because he lost his own party’s primary.²⁷

It is important to note that for many years under the crossfiling system, candidates did not have to state their political party on the ballot, so it heavily favored incumbents (due to their high name recognition). Since Republicans controlled the Legislature during the crossfiling era, the system often favored

²¹ The Peace and Freedom Party lost its status as a qualified political party after the 1998 elections, but regained its qualified status in 2003. The Natural Law Party was qualified from 1995 to 2010.

²² Nineteen parties have qualified for primaries since the beginning of the modern primary election process in 1910. The Democratic and Republican Parties have participated in state primary elections since 1910, whereas the American Independent and Peace and Freedom Parties qualified in 1968. Most recently, the Americans Elect Party qualified in 2011, but lost its status as a qualified party in 2015.

²³ As of February 2015, political party registrations were: 43.2% Democrat, 28% Republican, 23.6% decline to state, 5.3% other.

²⁴ See, e.g., *Los Angeles Herald*, November 6, 1908. Assembly Constitutional Amendment 3, which directed the Legislature to pass legislation to provide for a direct primary system, was overwhelmingly approved by the voters, 152,853 to 46,772 (adopted Nov. 3, 1908).

²⁵ *Statutes of 1909*, Chapter 405.

²⁶ *Statutes of 1913*, Chapter 690.

²⁷ *Francis J. Heney v. Frank C. Jordan* (1918) 179 Cal. 24.

Republicans in elections. To overcome this advantage by the Republicans, Democrats in 1952 placed an initiative on the ballot to end the crossfiling system. In response, Republicans placed their own initiative on the ballot to retain the crossfiling system, but to make candidates state their political party on the ballot.²⁸ The Republican measure was passed by the voters and the Democrat-backed measure narrowly failed. However, Democratic voter registration was rising in the 1950s, and since party registrations were now clearly listed on the ballot, Democrats soon gained a majority in the Legislature by the end of the decade. In 1959, the crossfiling system was abolished by the Democratic controlled Legislature.²⁹

Closed Primaries (1960–1996)

The purpose of the direct primary is to nominate party candidates who will run for office at the ensuing general election. Until Proposition 198 was adopted by the voters in March 1996, California held “closed” primaries. In these elections, only party members could participate in the election of their own party’s candidates in the primary (e.g., only registered Democrats could vote for Democratic candidates running in a primary election). Separate ballots were printed for each party so as to facilitate the closed primary process. Once a primary election had determined which candidates would run in the general election, voters from all parties could “cross party lines” to vote for any candidate appearing on the general election ballot.

Open Primaries (1996–2000) (Declared Unconstitutional)

In 1996, California voters passed Proposition 198, instituting the open primary. The open primary system allowed all voters, regardless of political affiliation, to vote for any candidate running in the primary. For example, a Green Party member could vote for the Democratic candidate if the voter wished to, or for any other candidate listed on the ballot. Unlike the previous years of closed primaries, when multiple ballots were printed (one for each party), the open primary ballot showed all the candidates’ names. The ballots contained a random listing of the candidates; they were not grouped by party affiliation. The candidate from each party who received the most votes became that party’s nominee at the upcoming general election. However, the election of political party officers, such as a member of a party’s central committee, was still only open to members of that political party.

Political parties challenged the legality of the proposition, but lost the initial court battles in 1997.³⁰ California held open primaries in 1998 and 2000. However, in June 2000, the U.S. Supreme Court overruled lower court rulings on California’s open primary system. In its 7–2 decision, the Court held that “California’s blanket primary violates a political party’s First Amendment right of association.”³¹ By allowing non-party members to participate in

²⁸ In 1952, Proposition 7 was supported by Republican Assembly Speaker Sam Collins. It passed, 72.8% to 27.2%. Proposition 13 was supported by Democratic groups, and was narrowly defeated, 50.04% to 49.96%.

²⁹ Cross filing was repealed by *Statutes of 1959*, Chapter 284 (A.B. 118, Munnell).

³⁰ Proposition 198 District Court decision: 984 F. Supp. 1288, 1298–1299 (1997); Ninth Circuit decision: 169 F. 3d 646 (1999); U.S. Supreme Court certiorari: 528 U.S. 1133 (2000).

³¹ *California Democratic Party v. Jones*, No. 99-401, argued April 24, 2000, decided June 26, 2000.

another party's nomination process, the political parties were forced to associate with those who did not share their beliefs.

California's Modified Closed Primary (2001–2010)

In response to the Supreme Court's nullification of California's open primary, Senate Bill 28 was adopted in 2000, instituting a "modified closed primary." This new system was similar to the old "closed primary" process, with one exception: persons registered as "decline to state" (later renamed "no party preference") could vote in any party's primary if the party rules allowed for it. As of February 2015, over 3.6 million Californians (23.6% of voters) were registered as "no party preference."

California's "Top Two" Primary (effective January 1, 2011)

On June 8, 2010, California voters approved Proposition 14, which created the Top Two Candidates Open Primary system. Under this new system, voters at primary elections receive ballots that list all candidates who are running for congressional, legislative and statewide elective offices. Voters are allowed to vote for any candidate on the ballot for these offices regardless of political party. The candidates who receive the two largest number of votes run against each other in the general election. The Top Two Candidates Open Primary allows for candidates of the same political party to run against each other in a general election. Implementing legislation for the Top Two Candidates Open Primary system also changed the terminology used to describe the process by which voters select a political party when registering to vote. Instead of choosing a party affiliation, voters who select a political party when they register to vote are deemed to be expressing a political party preference. Voters who do not select a political party when registering to vote are no longer referred to as "decline to state" voters, but instead are designated as having "no party preference."³²

Candidates for offices covered by this system have their political party preference displayed on the ballot. However, no political party or party central committee can nominate a candidate for a primary election for these offices. Political parties and party central committees can endorse or oppose candidates in primary elections. The Top Two Candidates Open Primary does not apply to presidential primaries, elections for political party offices, local elections or nonpartisan elections, such as the Superintendent of Public Instruction.

The Top Two Candidates Open Primary system was first used in two special primary elections for Senate District 17 and Senate District 28 on February 15, 2011.

Presidential Primaries

A presidential primary is also held to nominate candidates who will run for office in the general election. In a presidential primary, the voters decide the number of votes their party's nominee or nominees receive from California at

³² *Statutes of 2009*, Chapter 1.

the national convention which selects the party's candidate for the office of the President of the United States. The presidential primary is a modified "closed" system in California.

For decades, California's primary elections were held in June of every even-numbered year. In presidential election years, the presidential primary was consolidated with the statewide primary. To increase the impact of California in the presidential election process, the Legislature moved the consolidated presidential and statewide direct primary elections to the fourth Tuesday in March 1996.³³ Many other states soon followed suit, moving up their primaries even earlier than California's election date. Moving the election from June to March 1996 was a temporary change in California's election cycle, as the presidential-statewide direct primaries were set to return to the June date in the 2000 election, absent a further change in the law. In 1998, additional legislation was signed into law that moved the primaries to an even earlier date: the first Tuesday in March 2000.³⁴ As a result, consolidated primaries were held in early March 2000 and early March 2004. However, other states once again moved their primaries to earlier dates to increase their influence in the presidential race. By the time California held its presidential primary on March 2, 2004, twenty other states had already completed their contests. After experimenting with these different election dates, the Legislature and Governor decided to move California's primaries back to the June date beginning in 2006.³⁵ However, the law was changed yet again in 2007, this time to separate the primaries: the presidential primary would now be held in February 2008 and the statewide direct primary for other offices would be held in June 2008.³⁶ In 2011, legislation once again returned to a consolidated presidential primary and statewide direct primary to be conducted in June.³⁷

Candidates who win primaries move on to the general election in November. The general election is held in the even-numbered year on the first Tuesday after the first Monday in November (e.g., November 8, 2016).³⁸

Special Elections and Filling Vacancies

The Constitution gives the Governor the authority to call special elections for state initiative and referendum measures and to fill certain vacancies in elected offices.³⁹ The Governor must call a special election if a vacancy occurs in the office of either Assembly Member, State Senator, or in California's delegation in the House of Representatives or the United States Senate.⁴⁰ The Governor has 14 calendar days after a vacancy to call a special election to fill the vacant seat.⁴¹ The special election must be held at least 126 days, but no more than 140 days after the Governor issues the proclamation. However, the

³³ *Statutes of 1993*, Chapter 828.

³⁴ *Statutes of 1998*, Chapter 913.

³⁵ *Statutes of 2004*, Chapter 817.

³⁶ *Statutes of 2007*, Chapters 2 and 199. See also, *Elections Code*, Sections 240, 315, 1001, 1201, 1500.

³⁷ *Statutes of 2011*, Chapter 186.

³⁸ *Elections Code*, Sections 324 and 1200.

³⁹ *Constitution*, Article II, Sections 8(c) and 9(c).

⁴⁰ *United States Constitution*, Article I, Section 4; *Constitution*, Article IV, Section 2(d); *Elections Code*, Sections 10700 and 10703. For filling a vacancy by appointment for the office of U.S. Senator from California, see *Elections Code*, Section 10720 and 44 *Op. Atty. Gen.* 30.

⁴¹ *Government Code*, Section 1773, *Elections Code*, Section 10700.

Governor can schedule an election 180 days after the initial call for a special election to consolidate a special election with a statewide or local election in the same geographical area where a vacancy exists.⁴² If a vacancy occurs near the end of a term of office (after the closing period for filing nomination papers) the Governor cannot call a special election to fill the vacancy.⁴³ The seat will remain vacant until the next general election. Special primary elections are generally held nine Tuesdays before a special general election called by the Governor.⁴⁴ A special primary election follows the Governor's proclamation and all of the candidates, regardless of political party preference, are listed on a single ballot. If any candidate receives a majority of all the votes cast at this special primary election, he or she is elected and no additional special election is held. In the event that no one receives a majority of votes cast at the special primary election, the top two candidates, regardless of party preference, are placed on the ballot at the ensuing special general election.⁴⁵

Partisan, Voter-Nominated, and Nonpartisan Offices

In California there are three classes of offices to which candidates are elected—partisan, voter-nominated, and nonpartisan. The offices of President and Vice President of the United States (and the delegates therefor) and elected members of party central committees are partisan offices. The offices of Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, Insurance Commissioner, Member of the Board of Equalization, United States Senator, Member of the United States House of Representatives, State Senator, and State Assembly Member are voter-nominated offices. Nonpartisan offices are offices other than voter-nominated offices for which no political party may nominate a candidate including judicial, school, county, and municipal offices.⁴⁶ A constitutional amendment was adopted by the people in 1986 which prohibits any political party or party central committee from endorsing, supporting, or opposing a candidate for a nonpartisan office (Article II, Section 6(b)). This provision, however, was later declared to be in violation of the Federal Constitution and was permanently prohibited from being enforced.⁴⁷

Candidates for voter-nominated offices are nominated by the voters at the “Top Two” primary election in June, with the candidates who receive the highest and second-highest number of votes advancing to face each other in the general election.⁴⁸ The two candidates who advance can be members of the same political party. The Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, Controller, Insurance Commissioner, and United States Senators are voter-nominated officers elected by a vote of the electors of the entire state. Assembly Members, State Senators,

⁴² *Elections Code*, Section 10703.

⁴³ *Elections Code*, Section 10701. If a vacancy occurs in a congressional seat after the close of the nomination process in the final year of the term of office, then the Governor has the option to call a special election.

⁴⁴ *Elections Code*, Section 10704.

⁴⁵ *Constitution*, Article II, Section 5; *Elections Code*, Section 10705.

⁴⁶ *Elections Code*, Sections 334, 337, 338 and 359.5.

⁴⁷ *California Democratic Party v. Lungren*, 919 F.Supp. 1397 (N.D. Cal. 1996).

⁴⁸ *Elections Code*, Section 8141.5.

Representatives in the United States Congress, and Members of the State Board of Equalization are also voter-nominated officers, but are elected by the voters in the districts they represent. Voter-nominated offices were classified as partisan offices prior to the enactment of the “Top Two” primary system.

Although political parties do not nominate candidates to appear on the ballot at the general election for voter-nominated offices, candidates for those offices have their political party preferences included on the ballot.⁴⁹ At regularly-scheduled elections for voter-nominated offices, two candidates advance to the general election ballot even if one candidate receives a majority of the vote in the primary election.⁵⁰

As previously stated, for many years, California allowed a candidate for public office to seek the nomination of another party or parties in addition to his or her own party nomination at the primary election.⁵¹ This procedure was known as “crossfiling.” A candidate who won both major party nominations was practically assured of being elected at the general election in November, as his or her name would be the only one to appear on the general election ballot. (See page 28 for more information on crossfiling.)

The Justices of the Supreme Court and the Superintendent of Public Instruction are nonpartisan officers elected by the voters of the entire state. Justices of the appellate courts and judges of the superior courts are nonpartisan officers elected by the voters of the districts in which they serve.⁵² County, municipal, and district officers are nonpartisan officers elected either by the voters of the entire jurisdiction in which they serve (e.g., a county district attorney or a mayor), or by the voters of districts within that jurisdiction (e.g., a county supervisor). Depending on the office, elections for a nonpartisan office can feature both a primary and a general election, or can be a single-round election in which the candidate or candidates who receive the most votes are elected, even if they do not receive a majority of the votes cast.⁵³

Campaign Financing and the Fair Political Practices Commission

In 1949 and 1950, the Legislature passed the state’s first regulations on lobbying activity, known as the Collier Lobby Control Law of 1949 and the Erwin Act of 1950.⁵⁴ From 1950 to 1970, these laws required the Assembly Chief Clerk and Secretary of the Senate to register lobbyists. The Legislative Auditor (and later the Legislative Analyst) processed the registrations, which

⁴⁹ *Elections Code*, Section 8002.5.

⁵⁰ *Elections Code*, Section 8141.5. A candidate for voter-nominated office at a *special* election held to fill a vacancy can be elected outright in the special primary election if the candidate receives a majority of the vote. *Elections Code*, Section 10705.

⁵¹ *Statutes of 1913*, Chapter 690. See also, *Statutes of 1939*, Chapter 26. “The primary election of 1913 (*Stats. 1913*, pp. 1379, 1389) specifically provided that a person could become the candidate of more than one political party for the same office. This provision was held constitutional (*Hart v. Jordan*, 168 Cal. 32). Although this provision was not retained when the *Elections Code* was adopted, it remains the rule (*Shaffer v. Jordan*, 213 F. 2d 393).” *Jones v. McCollister*, 159 Cal.App.2d 708.

⁵² Unlike candidates for other offices, justices of the Supreme Court and the appellate courts do not run against other candidates, but instead are subject to confirmation by the voters after being appointed as justices. The public votes “yes” or “no” on whether to retain each justice. *Constitution*, Article VI, Section 8(d).

⁵³ Generally, in elections for nonpartisan office that feature both a primary and a general election, if a candidate for nonpartisan office receives a majority of the vote at the primary election, that candidate is elected outright and the general election for that office is not held.

⁵⁴ The laws were passed in response to the conduct of lobbyist Arthur H. Samish.

were published in the house Journals. The Joint Rules Committee took over the registration functions from 1971 to 1974, when the Political Reform Act of 1974 enacted the current system for lobbyist registration and reporting.

The Political Reform Act was enacted by almost 70 percent of the voters in the June 1974 statewide primary election. It established the Fair Political Practices Commission (FPPC) to administer and enforce its provisions. The Act's main purpose is to provide public disclosure of the financial influences directed at state and local public officials, including the disclosure of money raised and spent in election campaigns and money spent by public and private interests to lobby the State Legislature and state administrative agencies.⁵⁵

Under the Act, candidates, elected officials, and political committees must file reports at specified times each year disclosing sources of campaign contributions they receive and payments they make in connection with election activities. Lobbyists and their clients also must file reports with the Secretary of State showing payments received and made to influence governmental decisionmaking at the state level. Included in their disclosure requirements are any gifts, such as meals and entertainment, they provide to state elected and administrative officials. Public officials at all levels of state and local government are subject to gift limits and must file annual reports disclosing certain personal financial interests (business and real property holdings, sources of outside income and gifts) so that conflicts of interest may be avoided. They also are disqualified from making or participating in governmental decisions when their personal financial interests may be materially affected.

The FPPC interprets and administers the Act through opinions and regulations and imposes fines and penalties when violations occur. The FPPC, the Secretary of State and various local entities receive disclosure reports filed under the Act. The Attorney General and local district attorneys also may enforce violations of the Act.

Since 1974, several initiative measures have gone before voters in attempts to add contribution limits and, in some cases, expenditure limits to the Act. Most of these initiatives have been invalidated by the courts. However, Proposition 34, passed by the voters in 2000, established limits on contributions to, and voluntary expenditure limits for, candidates in state elections, remains in effect.

The Electoral College and Choosing the President

The United States employs a presidential election procedure known as the Electoral College. This body consists of 538 persons,⁵⁶ appointed by various methods in each state. These individual electors, grouped by state, meet in their respective state capitols after the general election to vote for a presidential and vice presidential candidate. A candidate for the presidency must receive the majority of electoral votes (270) to become President of the United States.

⁵⁵ See *Government Code*, Sections 84100–84612, 85100–85704, 86100–86118 and 87100 et seq.

⁵⁶ The total number of electors in the Electoral College is determined by the total number of federal legislators. Although there are 435 Members of Congress and 100 U.S. Senators (for a total of 535 presidential electors), the 23rd Amendment to the U.S. Constitution grants the District of Columbia 3 presidential electors, therefore bringing the total to 538 electors.

Currently, most states follow a “winner takes all” process whereby the winner of the state’s popular vote is entitled to receive all of the state’s electoral votes (e.g., the popular vote winner in California receives 55 electoral votes).

The number of electors each state is entitled to is determined by the number of representatives the state has in the U.S. Congress. Since California has 53 members in the House of Representatives and two U.S. Senators, the state has 55 electoral votes. No state may have less than three electoral votes because each state is entitled to at least one Member of Congress and two U.S. Senators. (Each state has its own system of appointing presidential electors; California’s process is outlined at the end of this section).

This process of choosing the chief executive has existed since the adoption of the U.S. Constitution in 1787. Although the Electoral College has usually served as a “ceremonial” function in the 20th century, this somewhat convoluted system has actually impacted several presidential elections.

History of the Electoral College

A brief description of how the Electoral College came into existence and the manner of selecting the President may provide the reader a cursory view of the procedure followed in electing the chief executive.

The Constitutional Convention of 1787, after prolonged debate, finally reached a compromise in the method to be used in selecting the President of the United States. The manner of this selection has not been materially changed since the adoption of the original proposal by the convention.

It was generally agreed that the President should be elected rather than appointed. The dispute at the convention arose whether the President should be elected by a vote of the people, the Congress, by the state legislatures, or be chosen by electors. The resolution of this problem found its way into Article II of the Federal Constitution which provides that each state shall appoint, in such manner as the Legislature may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress;⁵⁷ but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. These electors would then meet and vote for “two persons.” This ambiguous language resulted in the famous tie vote for the presidency between Thomas Jefferson and Aaron Burr (each received 73 votes), and Jefferson was subsequently elected by the House of Representatives. As a result, the 12th Amendment to the United States Constitution was ratified in 1804. This amendment reads in part as follows:

“The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; *they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President*, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number

⁵⁷ *United States Constitution*, 23rd Amendment. This amendment provides Washington, D.C., with presidential and vice presidential electors equal to what they would be entitled to if they were a state, but in no event shall they have more than the least populous state.

of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice * * *”.

This method of electing the President and Vice President has been highly controversial over the years and more than 100 attempts have been made in Congress to alter or abolish the system. The major complaint is that it is possible for a candidate to receive a greater number of votes than his or her opponent, but fail to win the requisite number of electoral votes. Thus, it is possible for the candidate receiving a lesser number of popular votes to be elected President or Vice President. This has happened in four U.S. presidential elections: 1824, 1876, 1888, and 2000.

For example, in 1876, Samuel J. Tilden received 4,284,757 votes and 184 electoral votes, as opposed to Rutherford B. Hayes, who received 4,033,950 votes but 185 electoral votes. Mr. Hayes was elected President. In 1888, Benjamin Harrison received 5,444,337 votes and 233 electoral votes; Grover Cleveland received 5,540,050 votes, but only 168 electoral votes. Harrison was elected President. This problem can be compounded if the House of Representatives elects the President. In the presidential election of 1824, Andrew Jackson received a plurality of the popular and electoral votes, but in neither case did he receive an absolute majority. At that time there were 24 states represented in the Congress and, therefore, 13 votes were required to elect the President. If the congressional delegations followed the choice of the electors in their states, Jackson would have received 11 votes; John Quincy Adams, 7; William H. Crawford, 3; and Henry Clay, 3. However, Mr. Adams received 13 votes, and was elected President of the United States. It is evident that several delegations had not followed the wishes of their constituents. Mr. Clay was shortly thereafter appointed the Secretary of State.⁵⁸

In the controversial 2000 election, Al Gore received 50,999,897 popular votes, and George W. Bush received 50,456,002 votes.⁵⁹ However, Mr. Bush garnered 271 electoral votes, while Al Gore received only 266 electoral votes.⁶⁰ In Florida, where Mr. Bush won by only 537 votes (2,912,790 to

⁵⁸ *Register of Debates in Congress*, Vol. I, February 9, 1825, pp. 526–527. See also, Augustus C. Buell, *History of Andrew Jackson*, Vol. II, Charles Scribner's Sons, New York, 1904, pp. 172–175.

⁵⁹ Federal Elections Commission, *2000 Official Presidential General Election Results*, updated December 2001.

⁶⁰ See *Bush v. Gore* (2000) 531 U.S. 98.

2,912,253), several counties commenced recounts. This prompted a flurry of lawsuits from both candidates and several other groups. Essentially, Gore supporters wanted a recount, while Bush supporters wanted to certify the election results. After several weeks of intense legal and political warfare, the U.S. Supreme Court ordered a halt to the recounts, and ordered the election results certified. Mr. Bush was declared the winner.

Despite all of the objections that have been raised to this system, it remains the method we use to elect our President and Vice President.

California's Electoral College Process

The selection process for presidential electors varies from state to state, and from party to party. In California, the electors are chosen by each political party to form a “slate” of presidential electors. The designation of each party’s slate of electors must be filed with the Secretary of State prior to October 1 preceding the election.⁶¹

Each political party has its own method for selecting its electors. The Democratic Party allows the Democratic candidate who received the largest number of votes at the primary election in each Congressional district and the Democratic candidate who received the largest number of votes at the primary election in each of the last two United States Senate elections to appoint a person as a Democratic elector. If there is no Democratic candidate for a particular district, the state party chairperson designates a presidential elector for that district.⁶²

The Republican Party appoints its slate of electors in a different manner. Each Republican Party nominee for statewide office (i.e., Governor, Attorney General, etc.) serves as a presidential elector. Also, the two most recent Republican nominees for the U.S. Senate, the two Republican state legislative leaders, and other designated Republican Party leaders also serve as electors. The Chair of the Republican State Central Committee fills any vacancies.⁶³

⁶¹ *Elections Code*, Sections 7100 and 7300.

⁶² *Elections Code*, Sections 7050 and 7100.

⁶³ *Elections Code*, Sections 7250 and 7300.



In California, the Electoral College meets in the Assembly Chamber several weeks after the presidential election. The results are sent to the U.S. Senate, where the votes from all 50 states are tallied. Pictured above is elector Delores Huerta, who is holding up ballots for Barack Obama and Joe Biden on December 17, 2012.

The Electoral College never meets as a whole body *per se*. However, the electors of individual states do meet in their respective state capitols a few weeks after the popular general election to cast their votes for President and Vice President. The general election determines which party's slate of electors will travel to Sacramento to exercise their lawful duties. The presidential candidate receiving the most popular votes on election day is entitled to all 55 of California's electoral votes. In effect, when citizens cast their votes on election day, they are actually voting for the candidate's slate of presidential electors. Subsequently, on the first Monday after the second Wednesday in December, the winning slate of electors convene at 2 p.m. in the State Capitol to cast votes for President and Vice President. The result of the vote is then transmitted to the President of the U.S. Senate.⁶⁴

In January, the President of the Senate (the Vice President of the United States) presides over a joint session of Congress to tally the sealed Electoral College votes of all 50 states and the District of Columbia. The candidates receiving the requisite 270 electoral votes are then announced as the President-elect and Vice President-elect.⁶⁵

As mentioned previously, if no candidate receives a majority of electoral votes, it is the duty of the House of Representatives to elect the President and

⁶⁴ *Elections Code*, Sections 6900–6909.

⁶⁵ *United States Constitution*, Article II, Section 1.

Vice President. Each state's congressional delegation is entitled to only one vote, and the candidates receiving a majority (26 out of 50 states) become the next President and Vice President.⁶⁶

Recall Elections⁶⁷

The Constitution provides that every elective public officer of the State of California may be removed from office prior to the conclusion of that person's term of office, by the electors entitled to vote for a successor of such incumbent. This procedure is known as the recall.⁶⁸

To recall an incumbent state officer elected at a statewide election (e.g., Governor, Lieutenant Governor, Controller, Treasurer, Secretary of State, Attorney General, Superintendent of Public Instruction, Insurance Commissioner, and Supreme Court Justices), a petition signed by qualified voters equal to at least 12 percent of the entire vote cast at the last election for all candidates for the office in question is required. Additionally, the petition must contain signatures from each of five counties equal in number to not less than 1 percent of the votes cast in each of the counties for that office at the last election.⁶⁹

To recall an incumbent state officer elected in a political subdivision of the state (e.g., Assembly Members, State Senators, justices of the appellate courts, and members of the State Board of Equalization), a petition signed by qualified voters entitled to vote for a successor to the incumbent equal in number to at least 20 percent of the entire vote cast at the last election for all candidates for that office is required.⁷⁰

Prior to initiating a recall petition against a state officer, the proponents of the recall must publish a notice of intention to circulate such petition; serve the notice upon the officer sought to be recalled; and, file a copy of the notice and proof of service on the officer to be recalled with the Secretary of State.⁷¹

The notice of intention must include a statement of the grounds upon which the recall is being sought.⁷² This statement, along with a response filed by the officer against whom the recall is being sought, appears on the petition for the information of the voters. Should the officer fail to answer, a statement to that effect appears on the petition.⁷³

When the petitions have been circulated they are filed with the county elections official who verifies that the signatories are qualified electors. Upon each submission of petitions or sections thereof, if fewer than 500 signatures are included, the elections official must count the number of signatures, and

⁶⁶ *United States Constitution*, Article II, Section 1.

⁶⁷ *Constitution*, Article II, Sections 13–19. These sections provide the basis for the procedure to recall elective state officials. The provisions for the recall of county and city officials differ slightly from the provisions governing the recall of state officials. *See Elections Code*, Division 11, Ch. 1–4.

⁶⁸ Members of the Congress of the United States from California are not subject to the recall provisions of Article II. "The courts have on many occasions held that a member of the Congress of the United States is a 'Federal Officer' rather than a 'State Officer.' The conclusion is inescapable that a California Member of the Congress is not an elective public officer of the State of California as those words are used in Article II, Sections 13, 14 and that therefore he is not subject to the recall provisions of the California Constitution." 11 *Op. Atty. Gen.* 14.

⁶⁹ *Constitution*, Article II, Section 14(b).

⁷⁰ *Id.*

⁷¹ *Elections Code*, Sections 11006, 11020, 11021, and 11022.

⁷² *Elections Code*, Section 11020.

⁷³ *Elections Code*, Section 11041.

forward the results to the Secretary of State. If more than 500 signatures are submitted, the official may verify a random sampling of 3 percent of the signatures, or 500, whichever is less.⁷⁴

When the Secretary of State determines and certifies that the requisite number of signatures have been obtained, the Secretary notifies the Governor, who then calls for an election on the question of recall not less than 60, nor more than 80, days from the date of certification. The recall may be consolidated with another election in that jurisdiction if the regularly scheduled election occurs within 180 days of the recall certification. Prior to 1994, the State Constitution did not give the Governor the flexibility to consolidate a recall with another election. The increased timeframe (180 days, instead of the strict 60- to 80-day window) now gives the Governor the opportunity to consolidate recall elections with other regularly scheduled elections in that jurisdiction, thereby reducing costs and perhaps increasing voter turnout.⁷⁵

Accompanying, or as part of, the sample ballot are copies of the statement of the proponents' reasons desiring the officer's removal and the officer's answer (if any) defending his or her conduct in office.⁷⁶

On the election ballot the following question is posed:

“Shall [name of officer sought to be recalled] be recalled (removed) from the office of [title of office]?”

Following the question are the words “Yes” and “No” on separate lines, with a blank space at the right of each, in which the voter indicates his or her vote for or against recall.⁷⁷

If a majority or exactly half of those voting on the recall of the incumbent state officer vote “No,” the incumbent continues in office, and is eligible to be repaid from the State Treasury any amount legally expended as expenses of such election. Another recall cannot be initiated against a successful incumbent within six months after a failed recall election.⁷⁸

If the majority voting at a recall election vote “Yes,” the incumbent shall be deemed removed from office, upon the qualification of a successor.⁷⁹

Candidates may be nominated for an office to be filled at a recall election in the same manner for nominating candidates for that office at a regular election. The nominating petition must be filed with the Secretary of State not less than 59 days before the recall election.⁸⁰

The names of any candidates so nominated appear on the recall ballot below the question of recall. The person against whom the recall petition was filed is not eligible to be a candidate to succeed himself or herself. If the officer is recalled, the candidate who receives the highest number of votes at the election

⁷⁴ *Elections Code*, Sections 11101, 11102 and 11105.

⁷⁵ *Constitution*, Article II, Section 15; *Elections Code*, Sections 11103 and 11104. *Constitution*, Article II, Section 15, as amended by Proposition 183, November 8, 1994. It should be noted that if a recall election cannot be consolidated with another election being held within 180 days, then the recall must still be held within the 60- to 80-day time limit prescribed by the *Constitution*.

⁷⁶ *Elections Code*, Section 11325.

⁷⁷ *Elections Code*, Sections 11320, 11322 and 11323.

⁷⁸ *Constitution*, Article II, Section 18; *Elections Code*, Section 11383.

⁷⁹ *Constitution*, Article II, Section 15; *Elections Code*, Section 11384.

⁸⁰ *Elections Code*, Section 11381. 75 days preceding recall elections of local officials. 135 candidates ran in the 2003 gubernatorial recall election.

recalling such officer is elected for the remainder of the term of the recalled officer. If the person securing the highest number of votes fails to qualify within 10 days after receiving the certificate of election, the office is deemed vacant and must be filled according to law.⁸¹

As of October 2015, there have been 160 state-level recall attempts. Only nine qualified for the ballot. Of the nine recall elections, one occurred in 1913, two in 1914, one in 1994, three in 1995, one in 2003, and one in 2008. In five of these elections, incumbents were successfully recalled.⁸² 1995 saw a record three recall elections of state officers; all three recalls targeted Members of the State Assembly. In 2003, the Governor was recalled for the first time in California history.

Similar statutory provisions govern the recall of elected local officers, the major difference being that these local officers are provided a “grace” period after assuming office before recall proceedings may be commenced against them.⁸³

Measures on the Ballot

The electoral process in California is not limited to the election of candidates for statewide or local offices, but for the passage of laws as well. The California Constitution has given the people the power to “legislate” on any given subject matter vis-a-vis statewide ballot measures. Measures are placed on the ballot in various ways: the Legislature may propose general obligation bond measures or constitutional amendments; or citizens may propose (via the initiative and referendum) their own laws, constitutional amendments or amendments to previously enacted initiatives, or citizens may propose to repeal laws the Legislature has enacted.⁸⁴ In any case, amendments to or revisions of the Constitution, general obligation bond issues, and acts amending or repealing initiative acts (proposed by the Legislature),⁸⁵ and initiative and referendum measures (proposed by the people)⁸⁶ must be approved by the electorate before they become effective.⁸⁷

Qualified measures are assigned a “Proposition Number,” and placed on the ballot in a specific order, as follows: (1) Bond measures in the order in which they qualify; (2) Constitutional amendments in the order in which they

⁸¹ *Constitution*, Article II, Section 15; *Elections Code*, Sections 11381, 11385 and 11386.

⁸² The five state officers that have been recalled in California are as follows: Senator Marshall Black, recalled January 2, 1913; Senator Edwin E. Grant, recalled October 8, 1914; Assembly Member Paul V. Horcher, recalled May 11, 1995; Assembly Member Doris Allen, recalled November 27, 1995; and Governor Gray Davis, recalled October 7, 2003. The four officers who survived recall attempts are as follows: Senator James C. Owens, survived recall held March 31, 1914; Senator David Roberti, survived recall held April 12, 1994; Assembly Member Mike Machado, survived recall held August 22, 1995; and Senator Jeff Denham, survived recall held June 3, 2008.

⁸³ *Constitution*, Article II, Section 19; *Elections Code*, Sections 11007 and 11200–11242. Recall proceedings may not be commenced against officers of a city, county, special district, school district, community college district or a member of the board of education until he or she has been in office for at least 90 days. If a recall election has been held and is determined in favor of the incumbent, no new recall may be commenced for six months. Also, a recall may not be commenced against a local official in the final six months of his or her term.

⁸⁴ The Legislature has also voted to place advisory questions on the ballot on at least seven occasions. Most recently, SB 1272 (Lieu), *Statutes of 2014*, Chapter 175, proposed to put an advisory question on the November 2014 general election ballot. The California Supreme Court, however, removed that question (Prop. 49) from the ballot pending consideration of the question of whether the Legislature has the authority to place a non-binding measure on the ballot seeking the views of the electorate. In 2016, the Supreme Court ruled that the Legislature had the power to place advisory measures on the ballot. The Court opined that the Legislature could place the same measure on a future ballot, but would have to pass a new statute since SB 1272 was specifically crafted for the 2014 ballot. (*Howard Jarvis Taxpayer Association v. Alex Padilla*, opinion filed January 4, 2016.)

⁸⁵ *Constitution*, Article XVIII, Sections 1–4; Article XVI, Section 1; Article II, Section 10(c). For constitutional authority of Legislature to control its internal affairs, *See also, People’s Advocate v. Superior Court*, 181 Cal.App.3d 316.

⁸⁶ *Constitution*, Article II, Sections 8 and 9.

⁸⁷ Initiative and referendum measures may be voted upon at a statewide general election, or at a special statewide election called by the Governor. Measures placed on the ballot by the Legislature may be voted upon at a statewide primary election, a statewide general election, or at a special statewide election called by the Governor. For further information on ballot propositions, *see* The Initiative and the Referendum, *Infra*, page 42.

qualify; (3) Other legislative measures in the order in which they are approved by the Legislature; (4) Other initiative measures in the order in which they qualify; and (5) Referendum measures in the order in which they qualify.⁸⁸

Prior to the election, a ballot pamphlet prepared and published by the Secretary of State is mailed to the address of each registered voter.⁸⁹ The pamphlet contains the text of the measures to appear on the ballot, an official summary prepared by the Attorney General, an analysis of each proposition prepared by the Legislative Analyst, and arguments for and against each measure written by the proponents and opponents of the measures, a concise summary of the general meaning and effect of “yes” and “no” votes on each measure, and the total number of votes cast “for” and “against” the measure in the Senate and the Assembly if it is a measure passed by the Legislature.⁹⁰ Additionally, at each statewide election where state bond measures are on the ballot, the pamphlet must include a statement, prepared by the Legislative Analyst, discussing California’s current bonded indebtedness situation.⁹¹

If provisions of two or more measures, approved by the electors at the same election, conflict, the provisions of the measure receiving the highest affirmative vote prevail.⁹² Any ballot measure that is approved by a majority of the votes cast thereon, at any election, takes effect on the day after the election, unless the measure provides for a different effective date.⁹³

To prevent individuals or corporations from achieving unjust power or financial gain from the passage of a ballot measure, no proposed statute or amendment to the Constitution may be placed on the ballot that would name any individual to hold any office or identify or name any private corporation to perform any function or to have any power or duty.⁹⁴

The Initiative and the Referendum

In California, the Constitution provides the people with the power to propose statutes and amendments to the Constitution, and to approve or reject statutes or parts of statutes enacted by the Legislature. These powers which the people have reserved to themselves are called the “initiative” and “referendum,” respectively.⁹⁵

⁸⁸ *Elections Code*, Section 13115. Note, however, that in 1966 the Legislature enacted, and the Governor signed, Chapter 105, *Statutes of 1966*, which provided that notwithstanding these provisions of the *Elections Code*, Assembly Constitutional Amendment No. 13 would appear first, and be numbered 1-a on the ballot for the 1966 general election. This special numbering of propositions has been done several times (Nov. 1962 (Prop. 1A); Nov. 1966 (Prop. 1A); Nov. 1968 (Prop. 1A); June 1994 (Props. 1A, 1B, 1C); and Nov. 1998 (Prop. 1A); Nov. 2006 (Props. 1A, 1B, 1C, 1D, 1E); Nov. 2008 (Prop. 1A); May 2009 (Props. 1A, 1B, 1C, 1D, 1E, 1F)).

⁸⁹ *Elections Code*, Sections 9081, 9082 and 9094.

⁹⁰ *Elections Code*, Sections 9084–9087; *Government Code*, Sections 88001–88003; *Statutes of 1993*, Chapter 156. Case law precludes the Legislature from prescribing the language that will be used on the ballot label and for the ballot title and summary in the voter information guide. *See, e.g., Howard Jarvis Taxpayers Association v. Bowen* (2011-Case No. C060441).

⁹¹ *Elections Code*, Section 9088.

⁹² *Constitution*, Article II, Section 10(b); Article XVIII, Section 4.

⁹³ *Constitution*, Article II, Section 10(a); Article XVIII, Section 4.

⁹⁴ *Constitution*, Article II, Section 12. In 1947 an initiative amendment to the Constitution was adopted naming Mrs. Myrtle Williams to serve as the Director of the Department of Social Welfare and Assemblyman Gordon R. Hahn to serve in the event she declined to act; and if Mr. Hahn declined to act, Assemblyman John W. Evans was to act as director. Article XXV, Section 4, *Constitution of 1947*, repealed November 8, 1949.

⁹⁵ *Constitution*, Article II, Sections 8(a) and 9(a); Article XVIII, Section 3. Proposition 219, adopted June 2, 1998, prohibits statewide initiatives from being unevenly applied around California based on approval or disapproval percentages tallied in particular regions. For example, if a Proposition receives a majority statewide vote but was locally defeated in San Francisco, it is still a valid law in San Francisco.

The Initiative

By use of the initiative, the people have a direct means of enacting laws and adopting amendments to the Constitution, independent of the Legislature and the Governor. This is accomplished by submitting an initiative measure directly to the electors.

Prior to the circulation of an initiative petition, a draft of the proposal must be submitted to the Attorney General, who must prepare a title and a summary of the main purposes and provisions of the proposed measure.⁹⁶ In the event the Attorney General is a proponent of a proposed measure, the Legislative Counsel shall perform this function.

The initiative petition must set forth in full the proposed law or amendment to the Constitution. No initiative measure may relate to more than one subject.⁹⁷

Initiative petitions are presented to the Secretary of State after certification that they have been signed by qualified electors equal in number to at least 8 percent (if they are to amend the Constitution) or 5 percent (if it is a statute) of all the votes cast for all candidates for Governor at the last preceding general election at which a Governor was elected.⁹⁸ The total number of signatures required for initiative statutes that are proposed before the November 2018 gubernatorial election is 365,880. Initiatives amending the Constitution currently require 585,407 signatures.⁹⁹ Each house of the Legislature must assign initiative measures to its appropriate committees and hold joint public hearings on the subject not later than 131 days before the election date.¹⁰⁰

The Secretary of State must place the measure on the ballot at the next succeeding general election which is held at least 131 days after the qualification of the measure. Since the initiative and referendum processes were established in 1911, the state Constitution has always provided that qualified measures will appear on the ballot at the next general election held after a specified time period, or at any special election called by the Governor held prior to that general election. However, from 1972 to 2011, the Secretary of State interpreted the Elections Code to allow certified ballot initiatives to be placed on the ballot on the next statewide election, whether it is a special election, a primary election, or general election. In 2011, the Legislature and Governor clarified the law by enacting SB 202, which requires that initiatives only be placed on the November general election ballot.¹⁰¹

Initiative measures adopted by the people are not subject to the Governor's veto, nor can they be amended or repealed except by a vote of the electors, unless otherwise provided in the initiative measure. The Legislature may

⁹⁶ *Constitution*, Article II, Section 10(d); *Elections Code*, Sections 9001–9003, 9050 and 9051.

⁹⁷ *Constitution*, Article II, Section 8(b), 8(d). For example, the California Supreme Court prohibited the placement of Proposition 24 on the March 7, 2000 ballot because it violated the single subject rule. The Court ruled that the initiative embraced two subjects: (1) transferring reapportionment powers from the Legislature to the court; and (2) revision of legislative compensation laws. *Senate v. Jones* (1999) 21 Cal.4th 1142. There is a “single subject rule” that applies to bills passed by the Legislature as well (Article IV, Section 9).

⁹⁸ *Constitution*, Article II, Section 8(b).

⁹⁹ Secretary of State, Elections Division, Sacramento. 7,317,581 votes were cast in the November 2014 election.

¹⁰⁰ *Government Code*, Section 9034.

¹⁰¹ *Constitution*, Article II, Section 8(c). *Elections Code*, Section 9016.

enact a proposal to amend or repeal an initiative act. However, the amendment or repeal will not become effective until submitted to and approved by the electors.¹⁰²

The Referendum

The second power reserved to the people is known as the referendum. The referendum provides a means whereby the people can approve or reject laws or sections of laws passed by the Legislature and signed by the Governor. Citizens Redistricting Commission maps are also subject to referendum.¹⁰³

Prior to the circulation of any referendum petition for signature, a copy of the measures must be submitted to the Attorney General, who prepares a title and a summary of the measure.¹⁰⁴ The referendum measure may be placed on the ballot by presenting the Secretary of State with a petition certified to have been signed by electors equal in number to 5 percent of the total number of votes cast for all candidates for Governor at the last preceding gubernatorial election.¹⁰⁵ In 2016, 365,880 signatures were required to qualify a referendum measure for the statewide ballot. The petition must be presented within 90 days after the enactment of the statute in question.¹⁰⁶

The referendum may ask that any statute or section or part of any statute passed by the Legislature be submitted to the electors for their approval or rejection. The Secretary of State shall then submit to the electors, for their approval or rejection, such act, or such statute, section or part of such statute, at the next succeeding general election occurring at least 31 days after the referendum has qualified or at any special election which may be called by the Governor for the purpose of voting on the measure.¹⁰⁷

Any act that is the subject of a referendum on the ballot is automatically considered inactive until the referendum is decided at the polls. If a referendum petition is filed against a portion of a section or statute, the remainder of the act is not affected by the referendum petition or election.¹⁰⁸ A majority vote of the electors is required to approve a referendum measure.¹⁰⁹ If the referendum is approved, the statute in question (or section thereof) goes into effect. If less than a majority of votes are cast in favor of the referendum, the statute is nullified and does not become law.

Not all acts of the Legislature are subject to referendum. Statutes containing urgency clauses, appropriations for the usual current expenses of the state, tax levies, or those calling for special elections are not subject to the referendum power.¹¹⁰ The fact that these measures go into immediate effect logically exempts them from this process. This exception does not necessarily place a

¹⁰² *Constitution*, Article II, Section 10(c).

¹⁰³ *Constitution*, Article XXI, Sec. 2(i).

¹⁰⁴ *Constitution*, Article II, Section 10(d).

¹⁰⁵ *Constitution*, Article II, Section 9(b).

¹⁰⁶ *Id.*

¹⁰⁷ *Constitution*, Article II, Section 9.

¹⁰⁸ *Constitution*, Article II, Section 10(a).

¹⁰⁹ *Id.*

¹¹⁰ *Constitution*, Article II, Section 9(a).

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great hindrance on the referendum, since most bills passed by the Legislature and signed into law do not contain such urgency provisions, and therefore do not take immediate effect.

Referendum statutes approved by the people under the referendum provisions may be amended or repealed by the Legislature subsequent to their adoption.¹¹¹

¹¹¹ *Constitution*, Article II, Section 10(c).