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 have 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. *Penal Code*, Section 17.
[5] *Constitution*, Article II, Section 7.
[6] *Castro v. State of California*, 2 Cal.3d 223.
[7] 42 U.S.C.A. 1973aa. This section was held to be constitutional by the United States Supreme Court, *Oregon v. Mitchell*, 400 U.S. 112.
[8] 42 U.S.C.A. 1973aa-1; *Dunn v. Blumstein*, 405 U.S. 330; *Keene v. Mihaly*, 11 Cal.App.3d 1037; *Young v. Gnoss*, 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. Registration for new residents shall now be in progress beginning with the 14th day prior to an election and ending on the seventh day prior to Election Day. This registration must be executed in the county elections office and the new resident shall vote a new resident's ballot in that office.[9]

The Legislature has also made provision for the casting of absentee ballots by registered voters who do not wish to cast their ballots at the polling place or who expect to be absent from their precincts or who are unable to vote because of disability on the day on which the election is held.[10] Any registered voter may choose to cast an absentee ballot and any voter may apply to become a permanent absentee voter.[11] Additionally, an absentee voter who, because of illness or disability, is unable to return his or her ballot by mail or in person may designate an immediate relative to deliver the ballot to an elections official.[12]

The voter must apply to the county clerk or other proper official for an absentee ballot. The application must be made not more than 28, nor less than 8, days prior to the election. However, any ballots received prior to the 29th day shall be kept and processed during the application period. Ballots must be received by the clerk from whom they were obtained by the time the polls close on election day.[13] Those voters who are registered as permanent absentees need not re-register for each election cycle. In the 2010 General Election, 48.44 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. When the count has been completed, the ballots and copies of the tally sheets are forwarded to the county clerk.[14]

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.[15] The City and County of San Francisco was at

---

[9] *Elections Code*, Sections 332, 2035, 2107, 3400, and 13306. *See also*, AB 1094, 1999–2000 Regular Session.

[10] *Elections Code*, Sections 3000–3023. *Elections Code*, Section 3005 permits voters living in a precinct which contains 250 or less registered voters and which contains no polling place to cast their votes by absentee ballot.

[11] *Elections Code*, Sections 3003 and 3201.

[12] *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*).

[13] *Elections Code*, Sections 3001 and 3020.

[14] *Elections Code*, Sections 307, 320, 14434 and 15100–15281. *See also*, 47 *Op. Atty. Gen.* 167.

[15] *Elections Code*, Sections 315, 344, 345, 355, 358, 360–362 and 19004–19301.

the forefront of mechanical voting; it has 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.[16] This bond act assisted counties in purchasing updated voting systems. All federally qualified voting systems must receive approval of the Secretary of State prior to being purchased or contracted for by local jurisdictions.[17]

Primary and General Elections

California holds primary and general elections to choose most of its state officeholders. The law regulates the direct nomination of candidates for public office by electors, political parties, or organizations of electors without conventions 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.[18]

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 1% of the total votes cast at the preceding gubernatorial election (e.g., 103,004 registrations for the 2014 general election). 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 (e.g., 1,030,040 signatures for the 2014 general election).[19]

If a party can no longer garner at least 2% of the votes cast statewide for any one of its candidates running for any office in the last gubernatorial election, it can be deemed disqualified. Both the Reform Party and the Peace and Freedom Party were disqualified in 1999 because they did not meet this vote threshold in the 1998 election. Both parties then notified the Secretary of State that they intended to requalify based upon the number of registered voters. The Reform Party managed to requalify, only to be disqualified in the next election cycle; the Peace and Freedom Party launched a voter registration drive to successfully regain its official status.[20]

At present, there are six officially qualified political parties in California: the American Independent, the Democratic, the Green, the Libertarian, the Peace and Freedom, and the Republican. The Green Party qualified in 1992,

---

[16] *See* Proposition 41, adopted March 5, 2002, and Statutes of 2001, Chapter 902.
[17] *Elections Code*, Sections 19201–19301.
[18] *See generally, Elections Code.*
[19] For more specific information on political party qualification process, *see Elections Code*, Sections 5000–5200.
[20] *Elections Code*, Section 5100(a). In the November 1998 election, the Peace and Freedom candidate that got closest to the 2% threshold received 1.85% of the vote for State Treasurer. The Reform Party's best showing was in the race for State Controller, where the Reform candidate received only 1.26% of the vote.

whereas the Libertarian Party achieved qualified status in 1980. The Natural Law Party was a qualified political party from 1995 to 2010.[21]

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 changed her party affiliation to Independent.

Interestingly, the third largest voter registration designation in California is "decline to state," constituting 20.3% of voter registrations.[22]

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.[23] To implement the new procedures, the 1909 Legislature passed the Direct Primary Law, which allowed voters to directly vote for candidates from various political parties, abolishing the old system of political conventions (and party "machines") from selecting the candidates.[24]

In 1913, the Direct Primary Law was amended by the Legislature to allow candidates to "crossfile" with multiple political parties.[25] 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.[26]

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 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.[27] The Republican measure was passed by the voters and the

---

[21] Sixteen 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. "*1996 Elections Calendar*," Secretary of State, Sacramento, p. 2.

[22] As of October 2010, political party registrations were: 44.1% Democrat, 31.0% Republican, 20.3% decline to state, 4.7% other.

[23] *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).

[24] *Statutes of 1909*, Chapter 405.

[25] *Statutes of 1913*, Chapter 690.

[26] *Francis J. Heney* v. *Frank C. Jordan* (1918) 179 Cal. 24.

[27] 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%.

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.[28]

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 allows 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.[29] 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."[30] By allowing non-party members to participate in another party's nomination process, the political parties were forced to associate with those who did not share their beliefs.

---

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

[29] 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).

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

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" could vote in any party's primary if the party rules allowed for it. As of April 2010, over 3.5 million Californians (20.3% of voters) were registered as "decline to state."

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.

Candidates for these offices have the option to display their political affiliation. 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

Like the direct open primary, 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 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. Initiatives also often appear on primary ballots, therefore making primary elections more than just a simple party nomination process but, instead, substantial policy-oriented elections.

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.[31] Many other states soon followed suit, moving up their primaries

[31] *Statutes of 1993*, Chapter 828.

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.[32] 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.[33] 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.[34] As of May 2011, presidential and statewide direct primaries are held on different dates pursuant to the Elections Code, but legislation is pending to consolidate the elections in June 2012.

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 6, 2012).[35]

Special Elections and Filling Vacancies

The Constitution gives the Governor the authority to call a special statewide election for initiative and referendum measures and to fill vacancies in elected offices.[36] The Governor must call a special election if a vacancy should occur in the office of either Assembly Member, State Senator, or in California's delegation in the House of Representatives or the United States Senate.[37] The Governor has 14 calendar days after a vacancy to call a special election to fill the vacant seat.[38] The special election must be held at least 112 days, but no more than 126 days after the Governor issues the proclamation. However, the 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.[39] 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.[40] The seat will remain vacant until the next general election. Special primary elections are generally held eight Tuesdays before a special general election

[32] *Statutes of 1998*, Chapter 913.
[33] *Statutes of 2004*, Chapter 817.
[34] *Statutes of 2007*, Chapters 2 and 199. *See also, Elections Code*, Sections 240, 315, 1001, 1201, 1500.
[35] *Elections Code*, Sections 324 and 1200.
[36] *Constitution*, Article II, Sections 8(c) and 9(c).
[37] *United States Constitution*, Article I, Section 4; *Constitution*, Article IV, Section 2(d); *Elections Code*, Sections 2650 and 2651. For filling a vacancy by appointment for the office of U.S. Senator from California, *see Elections Code*, Section 25001 and 44 *Op. Atty. Gen.* 30.
[38] *Government Code*, Section 1773, *Elections Code*, Section 10700.
[39] *Elections Code*, Section 10703.
[40] *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.

called by the Governor.[41] A special primary election follows the Governor's proclamation and all of the candidates, regardless of political affiliation, are listed on a single ballot. If any one candidate receives a majority of all the votes cast at this special primary election, he or she shall be elected and no additional special election shall be called. In the event that no one receives a majority of all votes cast, the top two candidates, regardless of party affiliation, are placed on the ballot at the ensuing special general election.[42]

Partisan and Nonpartisan Offices

In California there are two classes of offices to which candidates are elected—partisan and nonpartisan. Partisan offices are offices for which a political party may nominate a candidate. Nonpartisan offices are offices for which no political party may nominate a candidate.[43] 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.[44] The Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, Controller, Insurance Commissioner and United States Senators are partisan officers elected by a vote of the electors of the entire state. Assembly Members, State Senators, Representatives in the United States Congress and Members of the State Board of Equalization are also partisan officers, but they are elected by the voters in the districts they represent.

Candidates for partisan offices are nominated by the voters at the "Top Two" primary election in June and elected or defeated by all the qualified voters at the general election in November.

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.[45] 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.

---

[41] *Elections Code*, Section 10704.
[42] *Constitution*, Article II, Sections 5 and 6.
[43] *Elections Code*, Sections 334, 337 and 338.
[44] *California Democratic Party v. Lungren*, 919 F.Supp. 1397 (N.D. Cal. 1996).
[45] *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.

Any candidate for a judicial, school, county, municipal, or other nonpartisan office, who at a primary election receives a majority of all votes cast for candidates for the office, shall be elected to that office[46] and that office does not appear on the general election ballot.[47]

If no candidate receives a majority of the total votes cast for a nonpartisan office in the primary election, the names of the two candidates receiving the highest number of votes will appear on the general election ballot.[48]

In the event two or more candidates are to be elected to a given nonpartisan office, and a greater number of candidates receive a majority than the number to be elected, the candidates, equal in number to the offices to be filled, who have received the highest votes of those securing a majority, shall be elected.[49]

The Elections Code also provides for situations where numerous candidates are running for numerous nonpartisan offices in a primary (e.g., five persons running for three school board seats), which may cause some of the offices to be filled immediately, and others to be filled at the general election ("runoff"):

> "If no candidate has been elected to a nonpartisan office . . . or if the number of candidates elected at the primary election is less than the total number to be elected to that office, then candidates for that office at the ensuing election shall be those candidates not elected at the primary who received the next higher number of votes cast for nomination to that office, equal in number to twice the number remaining to be elected to that office, or less, if the total number of candidates not elected is less."[50]

For example, if there were three nonpartisan offices to be filled and there were six candidates for these offices, and if only one of the candidates received a majority of the votes cast at the primary election, the other two offices would remain vacant and the four candidates who received the next highest vote, but did not attain a majority, would become candidates at the ensuing election. On the other hand, if there were only four candidates running for three nonpartisan offices and only one candidate received a majority of the votes cast, the other three would become candidates for the remaining two offices at the ensuing election.

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.[51] 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

[46] *Elections Code*, Sections 334 and 8140.
[47] *Elections Code*, Section 8140.
[48] *Elections Code*, Sections 8141 and 8142. *See also*, 20 *Op. Atty. Gen.* 53.
[49] *Elections Code*, Section 8140.
[50] *Elections Code*, Section 8142.
[51] 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.[52]

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 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 candidates in state elections and 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,[53] 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.

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

[53] 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;[54] 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

[54] *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.[55]

In the controversial 2000 election, Al Gore received 50,999,897 popular votes, and George W. Bush received 50,456,002 votes.[56] However, Mr. Bush garnered 271 electoral votes, while Al Gore received only 266 electoral votes.[57] In Florida, where Mr. Bush won by only 537 votes (2,912,790 to

[55] *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.
[56] Federal Elections Commission, *2000 Official Presidential General Election Results*, updated December 2001.
[57] 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.[58]

Each political party has its own method for selecting its electors. The Democratic Party allows each Democratic Congressional nominee and each U.S. Senatorial nominee to appoint a person as a Democratic elector. If there is no party nominee for a particular district, the State Party designates a presidential elector for that respective district.[59]

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 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 Central Committee fills any vacancies.[60]

[58] *Elections Code*, Sections 7100 and 7300.
[59] *Elections Code*, Sections 7050 and 7100.
[60] *Elections Code*, Sections 7250 and 7300.

An Electoral College teller collects ballots from California's slate of presidential electors in 2000. In California, the electors meet in the Assembly Chamber several weeks after the general election. The ballots are then sent to the U.S. Senate, where the totals from all 50 states are tallied.

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.[61]

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.[62]

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

[61] *Elections Code,* Sections 6900–6909.
[62] *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.[63]

Recall Elections[64]

The Constitution provides that every elective public officer of the State of California may be removed from office at any time, even immediately upon assuming such office, by the electors entitled to vote for a successor of such incumbent. This procedure is known as the recall.[65]

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. The petition must be circulated in not less than five counties and must be signed by qualified electors in each of these 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.[66]

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.[67]

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.[68]

The notice of intention must include a statement of the grounds upon which the recall is being sought.[69] This statement, along with a rejoinder 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 shall appear on the petition.[70]

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

---

[63] *United States Constitution,* Article II, Section 1.

[64] *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 16, Ch. 1–4.

[65] 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.

[66] *Constitution,* Article II, Section 14(b).

[67] *Id.*

[68] *Elections Code*, Sections 11020, 11021, 11022 and 11023.

[69] *Elections Code*, Section 11020.

[70] *Elections Code*, Section 11041.

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.[71]

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.[72]

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.[73]

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.[74]

If a majority or exactly half of those voting on the recall of the incumbent state officer vote "No," the incumbent shall continue in office, and be repaid from the State Treasury any amount legally expended as expenses of such election. No proceedings for another recall election shall be initiated against a successful incumbent within six months after such a recall election.[75]

If the majority voting at a recall election vote "Yes," the incumbent shall be deemed removed from office, upon the qualification of a successor.[76]

Candidates may be nominated for an office to be filled at a recall election in the same manner prescribed for nominating such candidates for that office at a regular election. The nominating petition must be filed with the Secretary of State not less than 59 days preceding the recall election.[77]

The names of any candidates so nominated shall appear on the recall ballot below the question of recall. No vote cast for a candidate is counted unless the voter also voted on the question of recall. The name of the person against whom the recall petition is filed cannot appear on the ballot as a candidate to

---

[71] *Elections Code,* Sections 11101, 11102 and 11105.

[72] *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.*

[73] *Elections Code,* Sections 11320 and 11325.

[74] *Elections Code,* Sections 11320, 11322 and 11323.

[75] *Constitution,* Article II, Section 18; *Elections Code,* Section 11383.

[76] *Constitution,* Article II, Section 15; *Elections Code,* Section 11384.

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

succeed himself or herself. If the officer is recalled, the candidate who receives the highest number of votes at the 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.[78]

As of May 2010, there have been 154 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.[79] 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.[80]

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 initiatives. Measures are placed on the ballot in various ways: the Legislature may propose laws, bond measures, or constitutional amendments; or citizens may propose (via the initiative and referendum) their own laws, constitutional amendments, or the repeal of laws the Legislature has enacted. In any case, an amendment to or a revision of the Constitution, bond issues, and acts amending or repealing initiative acts (proposed by the Legislature),[81] and initiative and referendum measures (proposed by the people)[82] must be approved by the electorate before they become effective.[83]

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 qualify; (3) Other legislative measures in the order in which they are

[78] *Constitution*, Article II, Section 15; *Elections Code*, Sections 11381, 11382, 11385 and 11386.

[79] 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 three 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.

[80] *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 within the final six months of his or her term.

[81] *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.

[82] *Constitution*, Article II, Sections 8 and 9.

[83] These measures may be voted upon at the general election, the direct primary election, or at a special election called by the Governor. For further information on ballot propositions, *see* The Initiative and the Referendum, Infra, page 43.

approved by the Legislature; (4) Initiative measures in the order in which they qualify; and (5) Referendum measures in the order in which they qualify.[84]

Prior to the election, a ballot pamphlet prepared and published by the Secretary of State is mailed to the address of each registered voter.[85] 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.[86] 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.[87]

If any provision or 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.[88] Any amendment to the Constitution, proposed by the Legislature, and submitted to the people for ratification, takes effect the day after its adoption by a majority vote of the people at the election.[89] Any act, law, or amendment to the Constitution submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon, at any election, shall take effect the day after the election.[90]

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.[91]

---

[84] *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).

[85] *Elections Code*, Sections 9081, 9082 and 9094.

[86] *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).

[87] *Elections Code*, Section 9088.

[88] *Constitution*, Article II, Section 10(b); Article XVIII, Section 4.

[89] *Constitution*, Article XVIII, Section 4.

[90] *Constitution*, Article II, Section 10(a).

[91] *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.

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.[92]

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 the 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.[93] 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.[94]

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.[95] The total number of signatures required for initiative statutes which qualify before the November 2014 gubernatorial election is 504,760. Initiatives amending the Constitution currently require 807,615 signatures.[96]

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, or on the ballot at any statewide special election which is held prior to the general election.[97]

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 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.[98]

---

[92] *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.

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

[94] *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).

[95] *Constitution*, Article II, Section 8(b).

[96] Secretary of State, Elections Division, Sacramento. 10,300,392 votes were cast in the November 2010 election.

[97] *Constitution*, Article II, Section 8(c).

[98] *Constitution*, Article II, Section 10(c).

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.[99]

Prior to the circulation of any referendum petition for signature, a draft of the proposition must be submitted to the Attorney General, who prepares a title and a summary of the measure.[100] 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.[101] Currently, 504,760 signatures are 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.[102]

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.[103]

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.[104] A majority vote of the electors is required to approve a referendum measure.[105] If the referendum is approved, the statute in question (or section thereof) is nullified the day after the election, unless the measure provides otherwise. If the referendum fails, the statute that was in question goes into effect in accordance with the law.

However, 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.[106] The fact that these measures go into immediate effect logically exempts them from this process. This exception does not necessarily place a 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. As this book went to print, legal

---

[99] *Constitution*, Article XXI, Sec. 2(i).
[100] *Constitution*, Article II, Section 10(d).
[101] *Constitution*, Article II, Section 9(b).
[102] *Id.*
[103] *Constitution*, Article II, Section 9.
[104] *Constitution*, Article II, Section 10(a).
[105] *Id.*
[106] *Constitution*, Article II, Section 9(a).

questions were raised regarding the applicability of the referendum to budget related bills (which now take effect immediately under the provisions of Proposition 25 of 2010).

Referendum statutes approved by the people under the referendum provisions may be amended or repealed by the Legislature subsequent to their adoption.[107]

[107] *Constitution*, Article II, Section 10(c).

Governor Edmund G. Brown Jr. and legislators at the signing of Assembly Bill 312 in September 1981. AB 312 created the Martin Luther King, Jr. state holiday.