

RESOLUTION 11-08-04

DIGEST

Election Law: Change in Ballot Designations

Amends Election Code 13107 to allow candidates who are not "judges" as defined by statute to more accurately describe their existing positions.

**RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE**

History:

No similar resolution found.

Reasons:

This resolution amends Election Code 13107 to allow candidates who are not "judges" as defined by statute to more accurately describe their existing positions. The resolution should be disapproved because, although there are problems implementing the prohibitions in *Luke*, this resolution is not an appropriate way to resolve them.

Elections Code section 13107 describes the permissible designations that may appear on a ballot under the name of each candidate. It also prohibits the Secretary of State or any other election official from accepting candidate designations that violate those rules or that are otherwise misleading, inaccurate or confusing.

The court in *Luke v. Superior Court* (1988) 199 Cal.App.3d 1360 held that a candidate who is not a judge as defined in state statutes may not use the title "judge" on the ballot or any derivative thereof. The *Luke* court's decision was based upon the statute's premise that the public is likely to view someone whose description includes "judge," "judicial," or other words as being an active judge of general jurisdiction, when that may not be the case (as with a commissioner or State Bar Court judge). Such a misleading description would create an unjustified per se image of credibility that other candidates would not enjoy.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates recommends that legislation be sponsored to amend Elections Code Sec. 13107 as follows:

- 1 §13107
- 2 (a) With the exception of candidates for Justice of the State Supreme Court or court
- 3 of appeal, immediately under the name of each candidate, and not separated from the name
- 4 by any line, may appear at the option of the candidate only one of the following
- 5 designations:
- 6 (1) Words designating the ~~elective~~ city, county, district, state, or federal office
- 7 which the candidate holds at the time of filing the nomination documents ~~to which he or~~
- 8 ~~she was elected by vote of the people, or to which he or she was appointed, in the case of a~~

1 superior court judge.

2 (2) The word "incumbent" if the candidate is a candidate for the same office which
3 he or she holds at the time of filing the nomination papers, and was elected to that office
4 by a vote of the people, or, in the case of a superior court judge, was appointed to that
5 office.

6 (3) No more than three words designating either the current principal professions,
7 vocations, or occupations of the candidate, or the principal professions, vocations, or
8 occupations of the candidate during the calendar year immediately preceding the filing of
9 nomination documents. Where the principal profession of a candidate who is not a judge
10 of a superior court is that of a judicial officer, the candidate may use his or her office title,
11 under subpara. (1), or may use a generic description, under this subparagraph, which may
12 include the word "judicial," but not the word "judge." For purposes of this section, all
13 California geographical names shall be considered to be one word. Hyphenated words that
14 appear in any generally available standard reference dictionary, published in the United
15 States at any time within the 10 calendar years immediately preceding the election for
16 which the words are counted, shall be considered as one word. Each part of all other
17 hyphenated words shall be counted as a separate word.

18 (4) The phrase "appointed incumbent" if the candidate holds an office other than a
19 judicial office by virtue of appointment, and the candidate is a candidate for election to the
20 same office, or, if the candidate is a candidate for election to the same office or to some
21 other office, the word "appointed" and the title of the office. In either instance, the
22 candidate may not use the unmodified word "incumbent" or any words designating the
23 office unmodified by the word "appointed." However, the phrase "appointed incumbent"
24 shall not be required of a candidate who seeks reelection to an office which he or she holds
25 and to which he or she was appointed, as a nominated candidate, in lieu of an election,
26 pursuant to Sections 5326 and 5328 of the Education Code or Section 7228, 7423, 7673,
27 10229, or 10515 of this code.

28 (b) Neither the Secretary of State nor any other elections official shall accept a
29 designation of which any of the following would be true: (1) It would mislead the voter.

30 (2) It would suggest an evaluation of a candidate, such as outstanding, leading,
31 expert, virtuous, or eminent.

32 (3) It abbreviates the word "retired" or places it following any word or words which
33 it modifies.

34 (4) It uses a word or prefix, such as "former" or "ex-," which means a prior status.
35 The only exception is the use of the word "retired."

36 (5) It uses the name of any political party, whether or not it has qualified for the
37 ballot.

38 (6) It uses a word or words referring to a racial, religious, or ethnic group.

39 (7) It refers to any activity prohibited by law.

40 (c) If, upon checking the nomination documents, the elections official finds the
41 designation to be in violation of any of the restrictions set forth in this section, the
42 elections official shall notify the candidate by registered or certified mail return receipt
43 requested, addressed to the mailing address appearing on the candidate's nomination
44 documents.

45 (1) The candidate shall, within three days from the date of receipt of the notice,

1 appear before the elections official or, in the case of the Secretary of State, notify the
2 Secretary of State by telephone, and provide an alternate designation.

3 (2) In the event the candidate fails to provide an alternate designation, no
4 designation shall appear after the candidate's name.

5 (d) No designation given by a candidate shall be changed by the candidate after the
6 final date for filing nomination documents, except as specifically requested by the
7 elections official as specified in subdivision (c) or as provided in subdivision (e).

8 (e) The designation shall remain the same for all purposes of both primary and
9 general elections, unless the candidate, at least 98 days prior to the general election,
10 requests in writing a different designation which the candidate is entitled to use at the time
11 of the request.

12 (f) In all cases, words so used shall be printed in 8-point roman uppercase and
13 lowercase type except that, if the designation selected is so long that it would conflict with
14 the space requirements of Sections 13207 and 13211, the elections official shall use a type
15 size for the designation for each candidate for that office sufficiently smaller to meet these
16 requirements.

17 (g) Whenever a foreign language translation of a candidate's designation is required
18 under the Voting Rights Act of 1965 (42 U.S.C. Sec. 1971), as amended, to appear on the
19 ballot in addition to the English language version, it shall be as short as possible, as
20 consistent as is practicable with this section, and shall employ abbreviations and initials
21 wherever possible in order to avoid undue length.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS:

Existing Law: An appointed officeholder who is seeking election to a Superior Court judgeship, and is not a member of that court, is limited to three words on the ballot stating the title of the office. An incumbent of that court is not so limited. A candidate who is a court commissioner or referee may not be designated a "judicial officer." A ballot designation may consist of more than one "principal" profession, vocation, or occupation of the candidate.

This Resolution: Would allow any candidate who holds a city, county, district, state, or federal office to state the title of the office in full. Would allow court commissioners and referees to use an accurate ballot designation which includes the word "judicial." Would limit the designation to *the* principal profession, vocation, or occupation of the candidate.

The Problem: Confusion reigns every two years in connection with judicial elections over the permissibility of ballot designations chosen by candidates. Writ proceedings routinely occur, with little or no time for appellate review.

Two years ago, a State Bar Court judge ran for a Los Angeles Superior Court open seat. An opponent challenged his designation as a "Judge, State Bar." A precise designation --"Judge,

State Bar Court” or “State Bar Court Judge”-- was precluded by section 13107(a)(3) which limits descriptions to three words. By contrast, under section 13107(a)(1), *elected* incumbents holding state, local or federal posts, or appointed Superior Court judges, are not limited to three words. An incumbent on the San Francisco Superior Court could be designated as “Judge, Superior Court of the State of California, in and for the County of San Francisco” while a non-incumbent of that court, such as the chief judge of the Workers’ Compensation Appeals Board, would have to struggle with squeezing a description into three words.

The WCAB chief judge could not use “administrative chief judge” because use of the word judge is restricted. Under *Luke v. Superior Court* (1988) 199 Cal.App.3d 1360, at 1363, “neither a court commissioner, nor any other individual who is not a 'judge,' as that term is defined in the Constitution and statutes of this state, may utilize a ballot designation containing the word ‘judge’ or a derivative thereof.” Few voters know that a commissioner or referee performs judicial duties. Allowing them to use the word “judicial” in ballot designations would promote public understanding of the role such candidates perform.

In 1994, the Court of Appeal, in *Andal v. Miller* (1994) 28 Cal.App.4th 358, held that reference in the statute to “current principal professions, vocations, or occupations”--in the plural--permitted more than one job to be listed. Numerous candidates list their main activities, followed by part-time activities that entail relatively small portions of their time. Candidates who teach law one night a week have used the description “law professor.”

Reference to more than one “principal” calling should be disallowed, not merely for sake of logic, but so that the voter will be accurately informed as to what the candidate primarily does to make a living.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute, or rule, except as follows. It would abrogate *Luke v. Superior Court* to the extent that *Luke* would apply the proscription of Elections Code §10211(b)(1) -- which bans any ballot designation that would “mislead the voter”-- to use by commissioners or referees of the word “judicial.”

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COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

This amendment is unnecessary; existing law proscribes ballot designations that would "mislead the voter" (Elections Code §10211(b)(1)), and the amendment would actually enable certain

candidates to mislead voters by implying that the candidate is *already a judge*, when the candidate is only a referee or a commissioner.