

SEP 13 2019

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No. S257302

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

Deputy

JESSICA MILLAN PATTERSON, and
CALIFORNIA REPUBLICAN PARTY,

Petitioners,

v.

ALEX PADILLA,
California Secretary of State, in his official capacity,

Respondent.

IN RESPONSE TO ORDER TO SHOW CAUSE RE:
EMERGENCY PETITION FOR WRIT OF MANDATE

**APPLICATION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF OF DEAN ERWIN CHEMERINSKY
IN SUPPORT OF RESPONDENT;
PROPOSED AMICUS CURIAE BRIEF**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

The undersigned certifies that there are no interested entities or persons required to be listed under rule 8.208 of the California Rules of Court.

Dated: September 13, 2019

Respectfully submitted,

By: /s/ Maxwell V. Pritt
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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF
TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF
JUSTICE OF THE SUPREME COURT OF CALIFORNIA, AND TO THE
HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF
CALIFORNIA, and pursuant to rule 8.520(f) of the California Rules of
Court, leave is hereby requested to file the attached brief as *amicus curiae*
on behalf of Erwin Chemerinsky, Dean of University of California,
Berkeley, School of Law, in support of Respondent.

INTEREST OF AMICUS CURIAE¹

Amicus Erwin Chemerinsky (“Dean Chemerinsky”) seeks leave to appear *amicus curiae* as a legal scholar to assist this Court in determining whether SB 27 is, as Petitioners contend, irreconcilable with article II, section 5, subdivision (c) of the California Constitution. As a California-based law professor and constitutional law scholar, Dean Chemerinsky has developed expertise regarding constitutional and election law under both the federal and California Constitutions. The proposed *amicus* brief elaborates on three historical and interpretative points that are key to demonstrating that the California Legislature acted within its broad authority in enacting SB 27.

Dean Chemerinsky is well positioned to assist the Court in these matters. He is Dean and Jesse H. Choper Distinguished Professor of Law at University of California, Berkeley, School of Law. Before being named Dean of Berkeley Law, he was the founding Dean and Distinguished Professor of Law, and the Raymond Pryke Professor of First Amendment Law, at the University of California, Irvine School of Law. Dean

¹ *Amicus curiae* affirms that no counsel for any party authored this brief in whole or in part, and that no party, party’s counsel, or person or entity other than *amicus curie* or his counsel contributed money intended to fund preparing or submitting this brief.

Chemerinsky previously taught at Duke Law School for four years and at the University of Southern California for 21 years. Dean Chemerinsky is a nationally prominent expert on constitutional law and civil liberties and is the author of eight books—including his treatise *Constitutional Law: Principles and Policies*, the casebook *Constitutional Law*, and more than 200 articles in top law reviews. He frequently argues cases before the nation’s highest courts and also serves as a commentator on legal issues for national and local media. In 2016, Dean Chemerinsky was named a fellow of the American Academy of Arts and Sciences. And in 2017, *National Jurist* magazine again named Dean Chemerinsky as the most influential person in legal education in the United States.

CONCLUSION

For the foregoing reasons, Dean Chemerinsky respectfully asks that the Court grant his application for leave to appear as *amicus curiae* and allow the attached brief to be filed.

Dated: September 13, 2019 Respectfully submitted,

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TABLE OF CONTENTS

I. SUMMARY OF ARGUMENT 9

II. BACKGROUND..... 10

 A. 1970s Election Reforms 10

 B. Passage And Purposes Of SB 27 12

III. ARGUMENT 13

 A. SB 27 Does Not Conflict With Section 5(c) And Is Consistent With The Legislature’s Plenary Control Over Elections, Absent Specific Limitations. 13

 1. The Plain Text of Article II, Section 5(c) Is Consistent With The Legislature’s Authority To Enact SB 27..... 13

 2. The Legislature Has All Powers Not Prohibited To It By The California Constitution, Including Plenary Authority Over Elections. 14

 3. The Legislature Has Authority Over Elections And Over The Secretary Of State. 17

 4. The Legislature Has Authority To And Has Properly Legislated Concerning The Secretary of State’s Exercise Of Discretion. 18

 B. A Comparison of Section 5(c) to Similar Provisions in Other States Highlights the Appropriateness of Legislative Implementation in California. 20

 C. SB 27 Promotes the Same Objectives of Openness and Transparency That Motivated Proposition 4 and Other 1970s Election Reforms. 23

IV. CONCLUSION 27

DECLARATION OF MAXWELL V. PRITT 28

CERTIFICATE OF COMPLIANCE 30

CERTIFICATE OF SERVICE..... 31

TABLE OF AUTHORITIES

CASES

<i>Anderson v. Phillips</i> (1975) 13 Cal.3d 733	19
<i>Belluso v. Poythress</i> (N.D. Ga. 1980) 485 F.Supp. 904.....	22
<i>Brown v. Chiang</i> (2011) 198 Cal.App.4th 1203	17
<i>Burton v. Shelley</i> (Cal., Aug. 7, 2003, No. S117834) 2003 WL 21962000.....	18, 19
<i>California Cannabis Coalition v. City of Upland</i> (2017) 3 Cal.5th 924	24
<i>California Housing Finance Agency v. Patitucci</i> (1978) 22 Cal.3d 171	16
<i>California Mfrs. Assn. v. Public Utilities Com.</i> (1979) 24 Cal.3d 836	21
<i>Common Cause v. Board of Supervisors</i> (1989) 49 Cal.3d 432	19
<i>County of Riverside v. Superior Court</i> (2003) 30 Cal.4th 278	15
<i>Cty. of San Diego v. Bowen</i> (2008) 166 Cal.App.4th 501	18
<i>Davis v. City of Berkeley</i> (1990) 51 Cal.3d 227	16
<i>Doe v. Saenz</i> (2006) 140 Cal.App.4th 960	21
<i>Fitts v. Superior Court</i> (1936) 6 Cal.2d 230	16
<i>In re Ricky H.</i> (1970) 2 Cal.3d 513	19

<i>Kay v. Austin</i> (6th Cir. 1980) 621 F.2d 809	22
<i>Labor and Farm Party v. Elections Bd.</i> (1984) 117 Wis.2d 351	21, 22
<i>Libertarian Party v. Eu</i> (1980) 28 Cal.3d 535	14
<i>Lindell Co. v. Board of Permit Appeals</i> (1943) 23 Cal.2d 303	19
<i>Love v. Baehr</i> (1874) 47 Cal. 364	17
<i>Marine Forests Soc’y v. California Coastal Com.</i> (2005) 36 Cal.4th 1	16
<i>Mathews v. Harris</i> (2017) 7 Cal.App.5th 334	19
<i>McCarthy v. Elections Bd.</i> (1992) 166 Wis.2d 481	22
<i>Methodist Hosp. of Sacramento v. Saylor</i> (1971) 5 Cal.3d 685	15, 16
<i>People v. Birkett</i> (1999) 21 Cal.4th 226	16
<i>People v. Giordano</i> (2007) 42 Cal.4th 644	16
<i>People v. Tilton</i> (1869) 37 Cal. 614	16
<i>Quinn v. Stone</i> (Fla. 1972) 259 So.2d 492	22
<i>Tirapelle v. Davis</i> (1993) 20 Cal.App.4th 1317	17
<i>Yorty v. Stone</i> (Fla. 1972) 259 So.2d 146	23

STATUTES

United States Code

2 U.S.C. § 431 *et seq.* 10
26 U.S.C. § 9001 *et seq.* 10

California Elections Code

Cal. Elec. Code, § 6000 18
Cal. Elec. Code, § 6061 15
Cal. Elec. Code, § 6343 15
Cal. Elec. Code, § 6523 15
Cal. Elec. Code, § 6723 15
Cal. Elec. Code, § 6853.5 15
Cal. Elec. Code, § 6881 12, 13, 25
Cal. Elec. Code, § 6883 12
Cal. Elec. Code, § 8900 13
Cal. Elec. Code, § 8902 12

California Government Code

Cal. Gov. Code, § 81000 9, 10, 25
Cal. Gov. Code, § 81001 11

Federal Statutes

Federal Election Campaign Act of 1971
Pub.L. No. 92-225 (Feb. 78, 1972) 86 Stat. 3 9, 10
Federal Election Campaign Act of 1974
Pub.L. No. 93-443 (Oct. 15, 1974) 88 Stat. 1263 10

Other Codes

Conn. Gen. Stat. Ann. § 9-465 22

Md. Code Ann., Elec. Law § 8-502.....	22
Mich. Comp. Laws Ann. § 168.614	22
Neb. Rev. Stat. Ann. § 32-614	22
Tenn. Code Ann. § 2-5-205(a)(1).....	21, 22
Wis. Stat. Ann. § 8.12.....	21, 22
Wis. Stat. Ann. § 8.12(b).....	21

CONSTITUTIONAL PROVISIONS

California Constitution

Cal. Const. art. II, § 5	passim
Cal. Const. art. V, § 1	17
Sen. Const. Amend. 3 (Reg. Ses. 1971)	12

California Senate Bills

Cal. Senate Bill 27	passim
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California Proposition 4	passim
Diamond et al., <i>California’s Political Reform Act: Greater Access to the Initiative Process</i> (1975) 7 Sw.U. L.Rev. 453.....	10, 11
Eagly & Chaiken, <i>The Psychology of Attitudes</i> (1993).....	25
Editorial, <i>Cast a ‘No’ Vote on Proposition 4</i> , San Mateo Times and Daily News Leader (June 2, 1972)	12, 26
Editorial, <i>Open Primary Wins Strong Voter Favor</i> , Redlands Daily Facts (June 8, 1972).....	11

Editorial, <i>Taking Primaries Out of Smoke-Filled Room</i> Pomona Progress Bulletin (May 21, 1972)	11
Ford, <i>Chapter 16: Combating Dark Money in California Politics</i> (2014) 46 McGeorge L.Rev. 335.....	10, 11
Gillooly, <i>Larouche v. Kezer: A cursory Look at Connecticut's Hopelessly Vague Media Recognition Statute</i> (1995) 15 QLR 269, 271.....	22
Greenberg & Tannenbaum, <i>The Effects of Bylines on Attitude Change</i> (1961) 38 Journalism & Mass Comm. Q. 535.....	25
Haas, <i>Effects of Source Characteristics on Cognitive Responses and Persuasion,</i> Cognitive Responses in Persuasion (Petty, Ostrom & Brock, eds., 1981), p. 32	25
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<http://www.surveysusa.com/client/PollReport.aspx?g=949b0f46-a4a4-4480-b675-711e9d6fd657> [as of Sept. 12, 2019] 26

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I. SUMMARY OF ARGUMENT

The Secretary of State's Preliminary Opposition and Response to the Order to Show Cause comprehensively identify relevant legislative history, historical practice, and constitutional principles that make clear the constitutionality of SB 27 under the California Constitution.

This brief elaborates on three points supporting that conclusion. *First*, the text of California Constitution article II, section 5, subdivision (c) ("section 5(c)") does not limit, and in fact supports, the Legislature's ability to enact SB 27. Petitioners fail to show there is even a conflict to be resolved between the terms of the two provisions. Moreover, SB 27 is consistent with the Legislature's plenary authority to enact legislation, including regarding elections, in the absence of specific constitutional limitations. All powers not limited by the California Constitution are permitted to the Legislature—a structure that differs from the federal separation of powers arrangement—and this Court provides significant deference to the Legislature's enactments implementing the California Constitution. The Legislature was empowered to enact SB 27 whether through its plenary powers over elections generally or implementation of the term "recognized" in section 5(c) specifically. *Second*, a comparison of article II, section 5(c) to similar provisions in other states reinforces that California has made a considered choice *not* to endow the Secretary of State with sole authority to place candidates on the primary ballot as Petitioners contend. *Third*, SB 27 is consistent with and indeed promotes the same goals of openness in presidential primaries as Proposition 4 (which enacted the constitutional language at issue), particularly when viewed in the context of the wave of reforms contemporaneous to Proposition 4, including the Federal Election Campaign Act and the California Political Reform Act.

II. BACKGROUND

A. 1970s Election Reforms

California's election reforms in the 1970s must be viewed in the context of the nationwide focus on election reform at the time, intended to promote fairer elections through informed voter choice and control. In 1972, Congress passed the Federal Election Campaign Act ("FECA"), enacting provisions for disclosure of contributions directed at the issue of hidden money in politics. (Federal Election Campaign Act of 1971, Pub.L. No. 92-225 (Feb. 7, 1972) 86 Stat. 3.) After the Watergate scandal, Congress in 1974 amended FECA to place limits on campaign contributions and expenditures. (Federal Election Campaign Act Amendments of 1974, Pub.L. No. 93-443 (Oct. 15, 1974) 88 Stat. 1263; see also 2 U.S.C. §§ 431–455.) The 1974 amendment also established funding for presidential elections, presidential primaries, and national party nominating conventions. (26 U.S.C. §§ 9001–9042.)

Likewise, California undertook significant election reform in the 1970s. The Legislature placed on the ballot, and the voters approved, the Political Reform Act of 1974, "the cornerstone of campaign finance and reporting laws in California." (Ford, *Chapter 16: Combating Dark Money in California Politics* (2014) 46 McGeorge L.Rev. 335, 337; see Diamond et al., *California's Political Reform Act: Greater Access to the Initiative Process* (1975) 7 Sw.U. L.Rev. 453 (hereafter *California's Political Reform Act*)). The Political Reform Act was the "most comprehensive political reform package since the adoption of the initiative, referendum and recall into the California constitution in 1911." (*Id.* at p. 454.) "The drafters of [the Political Reform Act] designed a schematic series of laws to provide California residents and voters a greater degree of governmental supervision over the political process. These laws were deemed necessary because the legislative and executive departments had been generally

unresponsive to political reform.” (*Id.* at pp. 463–464.) One of the “fundamental tenets of the act,” (Ford, *supra*, 46 McGeorge L.Rev. at p. 337) was that “[p]ublic officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Gov. Code, § 81001, subd. (b).)

Also in this period, political parties’ control over presidential primaries was increasingly viewed as hampering voter choice in California elections. Of particular concern was that political parties were limiting the candidates who appeared in presidential primaries to so-called “favorite sons.” (See Editorial, *Open Primary Wins Strong Voter Favor*, Redlands Daily Facts (June 8, 1972) p. 18, attached as Exhibit A [“That Proposition 4 was strongly favored by the voters is no occasion for surprise. The public has long been fed up with the artificial primaries in which a Governor has kept the main candidates from other states off the ballot by declaring himself a Favorite Son. The Legislature, supported by the voters, has clipped the wings of our Governors.”]; Kossen, *The Last Winner Take All?*, San Francisco Examiner (May 28, 1972) p. 8, attached as Exhibit B [“Four years ago [Reagan] was not the first Governor to limit the voters’ choice in the primary by running as a ‘favorite son.’ Yet Reagan will be the last for the foreseeable future, if Proposition 4 is adopted in next week’s election. This would provide for an open primary, similar to Oregon’s where the ballot contains names of all recognized candidates.”]; Editorial, *Taking Primaries Out of Smoke-Filled Room*, Pomona Progress Bulletin (May 21, 1972) p. B-2, attached as Exhibit C [“An open primary will take the selection of a candidate out of the smoke-filled rooms and into the voters’ hands where it belongs.”].) In addition to the “favorite son” problem, candidates seeking to prevail at brokered nominating conventions would sometimes *not* put themselves on the ballot in California—a then-late

primary state—if they believed they would lose the California primary and appear weak going into the party nominating convention. (Editorial, *Cast a 'No' Vote on Proposition 4*, San Mateo Times and Daily News Leader (June 2, 1972) p. 28, attached as Exhibit D [“The California primary is a late one, coming just a few weeks before national party conventions. If a candidate finds himself forced to run here he risks a defeat that would damage his chances at the convention even if he had the support of his party in other states.”].)

Against this backdrop and context, the Legislature placed SCA 3 (later designated Proposition 4) on the ballot, and it was approved by California voters in June 1972. As relevant here, Proposition 4 stated that the “Legislature shall provide for an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California” (Sen. Const. Amend. 3 (Reg. Ses. 1971), OSC Response Ex. K.)¹ The Legislature did not at the time define the term “recognized” or otherwise explain how the Secretary of State should implement this provision; nor did the legislative analysis or ballot materials do so.

B. Passage And Purposes Of SB 27

On July 30, 2019, the Legislature passed and the Governor signed into law SB 27, recognizing an interest in California voters making “informed, educated choices in the voting booth.” (Elec. Code, § 6881.) SB 27 requires presidential and gubernatorial candidates to disclose five years of redacted tax returns to appear on a primary ballot. (Elec. Code, §§ 6883, 8902.) The Legislature found that “a Presidential [and

¹ Previous similar proposed legislation containing provisions vesting “sole discretion” in the Secretary of State did not pass the Legislature or were vetoed by the Governor. (See Response to OSC at pp. 14–15 & Exs. A–C.)

gubernatorial] candidate’s income tax returns provide voters with essential information regarding the candidate’s potential conflicts of interest, business dealings, financial status, and charitable donations. The information in tax returns therefore helps voters to make a more informed decision.” (Elec. Code, § 6881; see Elec. Code, § 8900.) The Legislature explained that voters “can better estimate the risks of any given Presidential [or gubernatorial] candidate engaging in corruption or the appearance of corruption if they have access to candidates’ tax returns.” (Elec. Code, § 6881; see Elec. Code, § 8900.)

III. ARGUMENT

A. SB 27 Does Not Conflict With Section 5(c) And Is Consistent With The Legislature’s Plenary Control Over Elections, Absent Specific Limitations.

1. The Plain Text of Article II, Section 5(c) Is Consistent With The Legislature’s Authority To Enact SB 27.

Despite three rounds of briefing, Petitioners still have not identified any inconsistency between the requirements of SB 27 and the text of California Constitution article II, section 5(c). Article II, section 5(c) is directed at “The Legislature” and provides:

The Legislature shall provide for partisan elections for presidential candidates, and political party and party central committees, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

This provision affirms the Legislature’s authority over presidential primary elections and refers to the Secretary’s recognition authority in the context of what “[t]he Legislature shall provide.” It does not define what it means to be a “recognized” candidate.

To prevail, Petitioners need section 5(c) to include additional content that it simply does not contain. Petitioners repeatedly assert that the constitutional provision is not susceptible to legislative interpretation because the Secretary of State has sole or nondelegable authority to “recognize” candidates. (See OSC Reply at pp. 16 [“exclusively delegated”], 17 [“exclusive delegation”]; Pet’n Reply at pp. 6 [“exclusively delegated authority”], 6 [“sole authority”], 10 [“sole and exclusive constitutional duty”], 11 [“constitutional delegation of authority and duty in the Secretary of State”].) But section 5(c) contains no such term.² Nor do almost all of the legislative history and ballot materials that even Petitioners identify. (See OSC Reply at pp. 17–18 [all except a comment in the ballot argument *against* Proposition 4].) Moreover, Petitioners provide no explanation of what the “recognition” power must entail as a substantive matter, other than simply asserting that section 5(c) imposes a mandatory duty.

2. The Legislature Has All Powers Not Prohibited To It By The California Constitution, Including Plenary Authority Over Elections.

The Legislature’s plenary authority, including over elections, reinforces the conclusion that SB 27 is compatible with article II, section 5(c). “Article II of the California Constitution vests the Legislature with plenary power over the conduct of elections in this state.” (*Libertarian Party v. Eu* (1980) 28 Cal.3d 535, 540 [reversing a writ of mandate granted by the trial court to force the Secretary of State to list candidates’ party affiliation as Libertarian even though the Libertarian Party had not qualified as a party for that election].) Petitioners do not dispute this plenary

² Perhaps most confusing is Petitioners’ imagined block quote provision in their Petition Reply Brief (at p. 8), which is a complete rewrite of section 5(c) rather than a “[c]lear directive” as Petitioners claim.

authority. Indeed, they appear to agree that, if there is a limitation on the Legislature's power to enact SB 27 with respect to the presidential primary election in the California Constitution, it must be found within section 5(c). (OSC Reply at p. 16, footnote omitted [“In fact, the only limitation on legislative power with respect to the open Presidential Primary election under the California Constitution is that the power to identify the candidates running for President and to place their names on the ballot is exclusively delegated to the Secretary of State.”].)

SB 27's requirements are not meaningfully different than other exercises of the Legislature's authority that Petitioners admit are consistent with section 5(c). For instance, Petitioners recognize that the Legislature has permissibly “provided the ‘manner’ in which” petitions to appear on presidential primary ballots “may be circulated.” (OSC Reply at p. 16, citing Elec. Code, §§ 6061, 6343, 6523, 6723, 6853.5.) Yet Petitioners do not explain how their cited statutes regarding the number of signatures required for petitions (Elec. Code, §§ 6061, 6343, 6523, 6853.5) or regarding the requirement for Peace and Freedom Party candidates to form a committee, certify delegates, and file a petition to appear on the ballot (Elec. Code, § 6723) differ in kind from the requirements of SB 27. All of these requirements represent the Legislature “provid[ing] for partisan elections for presidential candidates . . . including an open presidential primary” under section 5(c).

“In deciding whether the Legislature has exceeded its power, [this Court is] guided ‘by well settled rules of constitutional construction.’” (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 284, quoting *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.) “[P]erhaps most significantly, unlike the United States Congress, which possesses only those specific powers delegated to it by the federal Constitution, it is well established that the California Legislature possesses

plenary legislative authority except as specifically limited by the California Constitution.” (*Marine Forests Soc’y v. California Coastal Com.* (2005) 36 Cal.4th 1, 31; see also *Fitts v. Superior Court* (1936) 6 Cal.2d 230, 234 [holding that California courts “do not look to the [California] Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited. In other words, unless restrained by constitutional provision, the legislature is vested with the whole of the legislative power of the state”]; *California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 175 [same]; *People v. Tilton* (1869) 37 Cal. 614, 626 [“State Constitutions are not grants of power to the Legislature. Full power exists when there is no limitation.”].)

In light of this plenary authority, the “Legislature’s interpretation of uncertain constitutional terms, as reflected in subsequently enacted legislation, is entitled to great deference by the courts.” (*Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 242; see *People v. Birkett* (1999) 21 Cal.4th 226, 244 [same].) The Legislature does not need to show that its interpretation of a constitutional provision is “‘more probably than not’ the meaning intended by those who framed or adopted the proposal.” (*Methodist Hosp. of Sacramento v. Saylor, supra*, 5 Cal.3d at p. 693.) “When the Legislature has ‘adopted a plausible interpretation of the constitutional provision,’” California courts “defer to its determination.” *People v. Giordano* (2007) 42 Cal.4th 644, 656, quoting *Birkett, supra*, 21 Cal.4th at p. 244.) The courts will not invalidate a legislative act under the California Constitution “unless there is a plain and unmistakable conflict between the statute and the Constitution.” (*Methodist Hosp. of Sacramento v. Saylor, supra*, 5 Cal.3d at p. 693.)

3. The Legislature Has Authority Over Elections And Over The Secretary Of State.

The Legislature holds—and has held, since long before Proposition 4—broad powers to control the duties and activities of constitutional officers, including the Secretary of State. (See *Love v. Baehr* (1874) 47 Cal. 364, 368 [“In the performance of this duty, the Legislature may rightfully exercise a wide discretion. It may assign to each of these officers any duties, which, by the most liberal interpretation, can be held to come within the general scope of that class of duties which have usually appertained to such offices, as they were understood by the framers of the Constitution.”].) “And while the California Constitution vests the ‘supreme executive power’ of the state in the Governor (Cal. Const., art. V, § 1), it ‘follows a minimalist approach’ with respect to the Controller and the other officers, ‘that is, it provides for the office but primarily leaves it to the Legislature to define the duties and functions’ of the office.” (*Brown v. Chiang* (2011) 198 Cal.App.4th 1203, 1230, quoting *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1327.)

As the Secretary of State’s Response to the Order to Show Cause explains, SCA 3 (later Proposition 4) recognized that this plenary legislative authority would mean the Legislature would implement and interpret the measure, without any stated limitation on its interpretation of the relevant terms. (Response to OSC at pp. 25–26; Assem. Comm. On Const. Amends. Staff Analysis: SCA 3 (Alquist), Pet’n Ex. C, emphasis added [“requires *Legislature* to provide for an open presidential primary”].) This is fully consistent with the text of section 5(c), the “shall” language of which is directed at the Legislature.³

³ Petitioners notably do not rule out that the Legislature had the authority to interpret section 5(c)’s “recognized” language, as it did in enacting

4. The Legislature Has Authority To And Has Properly Legislated Concerning The Secretary of State's Exercise Of Discretion.

The Legislature, exercising the powers described above, has provided considerable authority and discretion to the Secretary of State (*Cty. of San Diego v. Bowen* (2008) 166 Cal.App.4th 501, 509 [“Our analysis begins with the sweeping grant of authority provided by the Legislature to the Secretary with respect to the conduct of elections generally.”].) “The Secretary of State is the constitutional officer charged with administering California’s election laws [citations], and his interpretations of those laws are entitled to substantial judicial deference.” (*Burton v. Shelley* (Cal., Aug. 7, 2003) 03 Cal. Daily Op. Serv. 7066, at *1.) Even though many of the Secretary of State’s responsibilities are ministerial, it is indisputable (and Petitioners appear to concede (see Pet’n Reply at p. 5 [describing section 5(c) as “the crown jewel” of the Secretary of State’s “constitutional authority under the California Constitution”])) that the Secretary of State also has discretionary duties.⁴

Elections Code section 6000.1 in 2019, stating that this provision “is not at issue in this case” and “is better left for another day.” (OSC Reply at p. 6 fn. 1.)

⁴ To argue for their entitlement to a writ of mandate, Petitioners in places appear to argue that the Secretary of State’s responsibilities under section 5(c) lack discretion, but even those references reveal that the Secretary of State must first make findings regarding whether a candidate is sufficiently recognized. (Pet’n at pp. 26 [“Secretary of State’s ministerial duty is to place the candidate on the ballot” if he or she is “recognized” under article II, section 5(c)], 32 [Secretary of State is “charged with a clear, present ministerial duty to ensure that the constitutional provision at issue is enforced”]; Pet’n Reply at p. 19 [“perform his constitutional duty to place candidates ‘recognized’ throughout the State, and Nation, on the March 2020 Presidential primary ballot”].)

A writ of mandate “will not issue to control the manner in which a public official, particularly a constitutional officer like the Secretary of State, exercises discretion.” (*Burton v. Shelley*, *supra*, 2003 WL 21962000, at *3 (conc. opn. of Kennard, J.), citing *Anderson v. Phillips* (1975) 13 Cal.3d 733, 737; *Lindell Co. v. Board of Permit Appeals* (1943) 23 Cal.2d 303, 315; see also *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.) Thus, this Court has applied a “clear error” standard to the Secretary of State’s exercise of discretion. *Burton v. Shelley*, *supra*, 2003 WL 21962000, at *2.

Here, the Legislature—through SB 27— has permissibly used its plenary authority to guide actions within the Secretary of State’s sphere of discretion.⁵ (See *id.* at *3 [“The current recall provisions contain ambiguities which require the Secretary of State to exercise his discretion. If the Legislature disagrees with the manner in which the Secretary of State has exercised his discretion, it is within the Legislature’s province to specify other procedures.”].) Notably, the Legislature had this authority even before SCA 3 amended the California Constitution, which was not “necessary—either as a grant or limitation of legislative power” because the California Constitution “already expressly provide[d] for legislative power over primaries.” (Assem. Comm. on Elec. And Const. Amends. Analysis of SCA 3 (Alquist), OSC Response Ex. I.)

⁵ It is not, as Petitioners assert, the Secretary of State’s “burden” to prove that the Legislature could enact SB 27. (OSC Reply at p. 20.) “A party *challenging* the constitutionality of a statute carries a heavy burden. The courts will presume a statute is valid unless its unconstitutionality “clearly, positively and unmistakably appears”; mere doubt is not sufficient reason for a judicial declaration of invalidity.” (*Mathews v. Harris* (2017) 7 Cal.App.5th 334, 349, quoting *In re Ricky H.* (1970) 2 Cal.3d 513, 519, emphasis added.)

Petitioners seek to paint SB 27 as a novel deviation, but that the 1970s initiatives, legislation, and public discourse did not include a discussion of a requirement for candidates to release their tax returns is likely best explained by the fact that candidates have consistently released their tax returns since then. Bach, *Will We Ever See Trump's Tax Returns—And Does It Matter?*, *Fortune* (Apr. 10, 2019), <<https://fortune.com/2019/04/10/trump-tax-returns/>> [as of Sept. 12, 2019]; NPR, *A History of Presidential Tax Returns* (Feb. 15, 2019) <<https://www.npr.org/2019/02/15/695054845/a-history-of-presidential-tax-returns>> [as of Sept. 12, 2019].) Indeed, the consistency with which Republican and Democratic presidential candidates have released their taxes over decades indicates that “recognized” presidential candidates nationally and in California do so. But regardless of any claimed novelty, the Legislature permissibly enacted SB 27 based on its plenary authority over elections.

B. A Comparison of Section 5(c) to Similar Provisions in Other States Highlights the Appropriateness of Legislative Implementation in California.

The authority of the Legislature to enact SB 27, consistent with article II, section 5(c), is further supported by comparison to similar statutes in other states. Other state statutes expressly delegate relevant duties *solely* to the secretary of state or an administrative body and provide greater specificity regarding the “recognition” authority. California’s constitutional provision, by contrast, leaves room for the Legislature to implement additional requirements regarding presidential primary elections and to guide the discretion vested in the Secretary of State by section 5(c).

As the Secretary of State highlights, the Legislature did not pass or the Governor vetoed several proposed enactments that would have given the Secretary of State “sole discretion” over the “recognition” of

candidates, with the final version approved by the voters (Proposition 4) not reflecting sole delegation or exclusive authority. (See OSC Response at pp. 15–16.) “As a general principle, the Legislature’s rejection of specific language constitutes persuasive evidence a statute should not be interpreted to include the omitted language.”⁶ (*Doe v. Saenz* (2006) 140 Cal.App.4th 960, 985; see *California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 845–846.) In contrast, Oregon enacted the type of “sole discretion” language that California rejected. (See OSC Response at p. 14 n.1.) Other states have as well, further demonstrating that the California Legislature’s rejection of a “sole discretion” model was likely intentional and meaningful. (Compare, e.g., Tenn. Code Ann. § 2-5-205(a)(1) [“The names of candidates for president of the United States shall be printed on the ballot for the presidential preference primary only if they are: (1) The names of persons whom the secretary of state, in the secretary of state’s sole discretion, has determined are generally advocated or recognized as candidates in national news media throughout the United States.”]; Wis. Stat. Ann. § 8.12(b)⁷ [giving “sole discretion” to a committee “to determine that a candidacy is generally advocated or recognized in the national news media throughout the United States”].)

Some states, including some of the same states that vest sole discretion in the secretary of state or a candidate selection committee to make the required determination, also provide that the secretary of state or other candidate selection committee should be guided specifically by

⁶ Petitioners elevate legislative digest language over the statutory and constitutional text in arguing that this change of wording is without meaning. (OSC Reply at pp. 9–10.)

⁷ This provision was enacted in 1967. (See *Labor and Farm Party v. Elections Bd.* (1984) 117 Wis.2d 351, 356 [344 N.W.2d 177, 179].)

candidates' recognition in the news media in determining whether to include a candidate on the presidential primary ballot.⁸ (See, e.g., Conn. Gen. Stat. Ann. § 9-465 [enacted 1977]; Mich. Comp. Laws Ann. § 168.614a; Md. Code Ann., Elec. Law § 8-502(c)(2); Neb. Rev. Stat. Ann. § 32-614; Tenn. Code Ann. § 2-5-205(a)(1); Wis. Stat. Ann. § 8.12(1)(b).) Courts have recognized that even more specific provisions like these continue to allow discretion. (See *Kay v. Austin* (6th Cir. 1980) 621 F.2d 809, 812 [upholding Michigan's provision because its terms were "capable of narrow and reasonable applications, which the Secretary of State appears to have given them"]; *Belluso v. Poythress* (N.D. Ga. 1980) 485 F.Supp. 904, 908 [describing Georgia's standard as "admittedly broad"]; *Quinn v. Stone* (Fla. 1972) 259 So.2d 492, 494 [recognizing the discretion implicit in Florida's provisions and upholding exclusion of a candidate]; *Labor & Farm Party v. Elections Bd., State of Wis., supra*, 344 N.W.2d at p. 178 [describing Wisconsin's provision as "ambiguous"]; *McCarthy v. Elections Bd.* (1992) 166 Wis.2d 481, 244 [identifying limited circumstances in which the selection committee abused its discretion by not considering at all the recognition standard as to some candidates]; see also Gillooly, *Larouche v. Kezer: A cursory look at Connecticut's Hopelessly Vague Media Recognition Statute* (1995) 15 QLR 269, 271.) Because even more specific provisions than article II, section 5(c) still allow for discretion, it follows that the section 5(c) allows for further Legislature interpretation.

⁸ A 1970 Analysis of SCA 3 for the Assembly Committee of Elections and Constitutional Amendments stated that candidates would be selected "based on national or statewide recognition in the news media." (OSC Response Ex. I.) But those terms were not included in Proposition 4 and have been only one component of the Secretary of State's findings on recognition in the past. (OSC Response at pp. 19–23.)

C. SB 27 Promotes the Same Objectives of Openness and Transparency That Motivated Proposition 4 and Other 1970s Election Reforms.

Proposition 4, enacted in 1972, came in the midst of a wave of nationwide election reform intended to promote openness and transparency. It must be understood in that broader context.

Contemporaneous with approving Proposition 4, California voters were also instituting a series of elections disclosure laws to make the choice of political candidates informed and meaningful.⁹ (See *supra*, pp. 10–11.) Consistent with those broader policy aims, Proposition 4 sought to empower voters and prevent top-down political anointments in presidential primaries. (Voter Information Guide, Pet’n Ex. D.) Specifically, Proposition 4 meant to address the issue that California had “usually nominated supported favorite sons, or incumbent presidents [who had] run unopposed in the primary.” (Staff Analysis, OSC Response Ex. M.) As its proponents put it, Proposition 4 promised to “give voters a meaningful voice in choosing their party’s presidential nominee.” (Voter Information Guide, Pet’n Ex. D.)

SB 27 advances the same objectives of transparency and openness that motivated Proposition 4. (See *California Cannabis Coalition v. City of*

⁹ California was not alone in those goals. For example, the Florida Supreme Court explained in applying an analogous provision that a “matter of such magnitude as the selection of the best possible candidate for the highest position in this nation should be controlled by the public’s right to a complete expression of their views and not by the individual’s personal and tactical choices which he exercises as he pursues this goal. (*Yorty v. Stone* (Fla. 1972) 259 So.2d 146, 149.) Denying a request from the Los Angeles mayor to be kept off of the Florida presidential primary ballot, the court explained that the “people of Florida should not be denied the right to express themselves in such a choice on any announced candidate, while other states are granted that right of choice, as such candidate chooses.” (*Id.*)

Upland (2017) 3 Cal.5th 924, 933 [When “construing constitutional provisions and statutes,” courts’ “primary concern is giving effect to the intended purpose of the provisions at issue.”].) Indeed, the tradition of presidential candidates releasing their taxes dates back to tax evasion by President Richard Nixon relating to the backdated donation of presidential papers in 1969 that was uncovered in 1973—the same time period in which Proposition 4 was passed. (Zuckoff, *Why We Ask to See Candidates’ Tax Returns*, New York Times (Aug. 5, 2016) <<https://www.nytimes.com/2016/08/06/opinion/why-we-ask-to-see-candidates-tax-returns.html>> [as of Sept. 12, 2019].) “Presidential tax transparency bolsters the confidence of individual income taxpayers that their elected leader also pays part of the price ‘for civilized society.’ Disclosure dispels the pernicious notion that ‘only the little people pay taxes,’ a notion that undermines tax morale and tax compliance where it takes root.” (Hemel, *Can New York Publish President Trump’s State Tax Returns?* (2017) 127 Yale L.J. F. 62 <<http://www.yalelawjournal.org/forum/can-new-york-publish-president-trumps-state-tax-returns>> [as of Sept. 12, 2019], footnotes omitted.) Tax returns provide essential information regarding conflicts of interest, foreign investments, business success or failures, and compliance with tax laws. (See Rosenthal, *Congress Should Request the President’s Tax Returns*, Tax Policy Center (Feb. 8, 2019) <<https://www.taxpolicycenter.org/taxvox/congress-should-request-presidents-tax-returns>> [as of Sept. 12, 2019] [“disclosing tax returns of presidents, vice presidents, and candidates for these offices is important because it increases public confidence in the government and support for our voluntary tax system” and “enhances the ability of Congress to oversee the executive branch, which is critical to our checks and balances”]; Wonderlich, *Congress Should Mandate Tax Return Disclosure for Presidential Candidates*, Sunlight Foundation (May 12, 2016) <[24](https://sunlightfoundation.com/2016/05/12/congress-should-</p></div><div data-bbox=)

mandate-tax-return-disclosure-for-presidential-candidates/> [as of Sept. 12, 2019].)

In passing SB 27, the Legislature made specific findings regarding the importance of disclosure of recent income tax returns to voters making “informed, educated choices in the voting booth.”¹⁰ (Elec. Code, § 6881.) It explained that “income tax returns provide voters with essential information regarding the candidate’s potential conflicts of interest, business dealings, financial status, and charitable donations.” (Elec. Code, § 6881; see Elec. Code, § 8900.) The disclosure requirements in SB 27, like those in the Political Reform Act of 1974, enable California voters to make an informed decision on who to support for president or governor. By giving voters the opportunity to make a meaningful choice when choosing between candidates, SB 27 promotes the precise objectives that motivated Proposition 4.

Notably, Petitioners have not fully explained how SB 27 hinders Proposition 4’s objectives. Nor could they. For one, there appears to be little risk of the “favorite son” device making a reappearance thanks to SB

¹⁰ Research on disclosure suggests the Legislature correctly determined that voters care about information regarding the source of campaign message and can use that information effectively to inform their decisionmaking. (See Eagly & Chaiken, *The Psychology of Attitudes* (1993); Haas, *Effects of Source Characteristics on Cognitive Responses and Persuasion*, in *Cognitive Responses in Persuasion* (Petty, Ostrom & Brock, eds., 1981), at p. 32.) Disclosures are only effective, however, if the voter receives the disclosure before or at the same time as receiving the campaign message. (See Greenberg & Tannenbaum, *The Effects of Bylines on Attitude Change* (1961) 38 *Journalism & Mass Comm. Q.* 535.) SB 27’s requirement that disclosures be made several months before the primary is essential to its efficacy.

27.¹¹ Indeed, a Californian last won a major party's California presidential primary nearly four decades ago when Ronald Reagan won the Republican presidential primary in California. In the current Democratic race for president, a candidate from Delaware leads the polls in the California primary.¹² In any event, the decision to release one's taxes is within the sole control of *the candidate*, not of the state political party or current officeholders—who were the target of Proposition 4's concerns. Petitioner's theory that SB 27 would mark the return of candidate gamesmanship is also purely speculative. (See OSC Reply at p. 5 [SB 27 allows a candidate to "refuse to release 5 years of personal tax returns to Respondent and he or she will not be on the ballot, even though that person is in fact a 'recognized candidate.'"].) It appears to depend both on a history of brokered political party conventions that no longer exists, and on the historically late timing of the California presidential primary that is no longer the case. (See Pet'n Reply at 11 [noting current date and shift in timing]; *Cast a 'No' Vote on Proposition 4, supra* ["The California primary is a late one, coming just a few weeks before national party conventions."].)

¹¹ As two scholars explained, "we don't tend to worry about the 'favorite son' phenomenon posing an obstacle to decisive electoral choice in the same way that the Framers did two centuries ago." (Levinson & Young, *Who's Afraid of the Twelfth Amendment?* (2001) 29 Fla. St.U. L.Rev. 925, 952 [discussing the decline of the importance of a "favorite son" principle in the related context of the Electoral College].)

¹² The leading Californian in the race is currently third or fourth ranked in polling. (See *SurveyUSA Election Poll #24948*, SurveyUSA (Aug. 6, 2019) <<http://www.surveyusa.com/client/PollReport.aspx?g=949b0f46-a4a4-4480-b675-711e9d6fd657>> [as of Sept. 12, 2019].) In 1992, former Governor Jerry Brown lost to President Bill Clinton in California. (Roberts, *Clinton Clinches Demo Nomination*, S.F. Chronicle (June 3, 1992) A1, attached as Exhibit E.)

Petitioners identify no reason to believe that will occur during the 2020 presidential election or in any future election.¹³

IV. CONCLUSION

Because SB 27 is consistent with the text, history, and purpose of article II, section 5(c), and in light of the Legislature's plenary authority, *amicus* respectfully urges the Court to deny the writ of mandate.

Dated: September 13, 2019 Respectfully submitted,

By: /s/ Maxwell V. Pritt

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¹³ President Trump—the first major party candidate not to release his taxes or at least a summary of his taxes (as with Gerald Ford)—is evidently not interested in strategically withholding his tax returns to avoid appearing on the California presidential primary ballot given that he is separately suing in federal court to have SB 27 invalidated on federal law grounds.

DECLARATION OF MAXWELL V. PRITT

I, Maxwell V. Pritt, declare:

1. I am an attorney admitted to practice before the courts of the State of California and before this Court. I am a partner at the law firm of Boies Schiller Flexner LLP and counsel for *amicus curiae* Dean Erwin Chemerinsky in this matter. I have personal knowledge of the matters set forth in this declaration, and would testify to the same if called on by the Court.
2. Attached to the *Amicus Curiae* Brief of Dean Erwin Chemerinsky in Support of Respondent are Exhibits A through E.
3. Attached as **Exhibit A** is a true and correct copy of the editorial *Open Primary Wins Strong Voter Favor*, Redlands Daily Facts (June 8, 1972) p. 18, retrieved from the NewspaperArchive online database.
4. Attached as **Exhibit B** is a true and correct copy of the newspaper article *The Last Winner Take All?*, San Francisco Examiner (May 28, 1972) p. 8, written by Sydney Kossen and retrieved from the NewsBank online database.
5. Attached as **Exhibit C** is a true and correct copy of the editorial *Taking Primaries Out of Smoke-Filled Room*, Pomona Progress Bulletin (May 21, 1972) p. B-2, retrieved from the NewspaperArchive online database.
6. Attached as **Exhibit D** is a true and correct copy of the editorial *Cast a 'No' Vote on Proposition 4*, San Mateo Times and Daily News Leader (June 2, 1972) p. 28, retrieved from the NewspaperArchive online database.
7. Attached as **Exhibit E** is a true and correct copy of the newspaper article *Clinton Clinches Demo Nomination*, S.F. Chronicle (June

3, 1992) p. A1, authored by Jerry Roberts and retrieved from the NewsBank online database.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on September 13, 2019, in San Francisco, California.

/s/ Maxwell V. Pritt

Maxwell V. Pritt

CERTIFICATE OF COMPLIANCE

I, the undersigned, hereby certify that pursuant to California Rule of Court, rule 8.204(c)(1), the enclosed brief was produced using 13-point Roman type font and has approximately 5,846 words, including footnotes, based on the word count of Microsoft Word, the computer program used to prepare this brief, not including the cover, the tables of contents and authorities, signature blocks, the certificate of service, and this certificate.

Dated: September 13, 2019

Respectfully submitted,

By: /s/ Maxwell V. Pritt
Maxwell V. Pritt (SBN 253155)
BOIES SCHILLER FLEXNER LLP

Counsel for Amicus Curiae
Erwin Chemerinsky

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am employed in the County of San Francisco, State of California. I am a citizen of the United States, over the age of eighteen years and not a party this action. My business address is 44 Montgomery Street, 41st Floor, San Francisco, CA 94104.

On September 13, 2019, I served a copy of the following:

**APPLICATION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF OF DEAN ERWIN CHEMERINSKY
IN SUPPORT OF RESPONDENT;
PROPOSED AMICUS CURIAE BRIEF**

on the parties of this action by electronically mailing a true and correct copy through Boies Schiller Flexner LLP’s electronic mail system to the email addresses set forth below:

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I further certify that in accordance with Code of Civil Procedure section 1013 and following ordinary business practices, I also placed a true and correct copy of the above document(s) into a sealed, fully pre-paid envelope for collection and mailing with the United States Postal Service to the mailing addresses set forth above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on September 13, 2019, in San Francisco, California.

By: /s/ Malika Amaru
Malika Amaru

EXHIBIT A

EXHIBIT B

Page 8 Section A 0600 S.F. Sunday Examiner & Chronicle, May 28, 1972

June 6 May Be Last for 'Winner-Take-All'

—From Page 1
28, are at stake in the New York primary June 28 that they could be split down the middle, sliced or fragmented. New York delegates run in Congressional districts. Some already are committed.
Other New York delegates have been detached from the illustrious presidential campaign of Sen. Edmund Muskie. They are being wooed by McGovern and Humphrey backers, along with other uncommitted congressional voters.
With 11 primaries behind him, McGovern today has 411,617 less than 500

pledged delegate votes. Alabama Gov. George Wallace is in second place with about 300, and Humphrey stands third with around 280.
As a write-in candidate, the wounded Wallace cannot win in California. But voters would jump the Minnesota Democrat ahead of McGovern.
McGovern is counting on wins here and New York to boost his totals. He is in the lead in the California pivotal primary because there is no in-state caucus to depend on it.
With 11 primaries behind him, McGovern today has 411,617 less than 500

pledged delegate votes. Alabama Gov. George Wallace is in second place with about 300, and Humphrey stands third with around 280.
As a write-in candidate, the wounded Wallace cannot win in California. But voters would jump the Minnesota Democrat ahead of McGovern.
McGovern is counting on wins here and New York to boost his totals. He is in the lead in the California pivotal primary because there is no in-state caucus to depend on it.
With 11 primaries behind him, McGovern today has 411,617 less than 500

playing a neutral "party line" role until the primary. They show all-over as a contrast to the spirit of 1970's voters, which is supposed to involve more than party in partisan decisions.
Murphy agrees. In a telephone interview from his Ohio law office, the rhythm of chairman observed.
"There's nothing exclusive about a primary."
The main division on the party's choice of a presidential nominee is made by the convention. So it's not fair to favor a candidate who showed some strength to take no vote in the nomination.

If Sam Yorty, who is an exact week's ballot, drove 1 percent of the vote, the next-richest Los Angeles mayor would win 1 percent of the delegates, if the present change were in effect.
Because this primary is so crucial, it's head-to-head Humphrey vs McGovern contest already is viewed by some as a dirty campaign.
Changes are being that Humphrey was a World War II draft dodger (he was drafted for atomic bombing) (readers) and that McGovern favors amnesty for all draft-dodgers (he would have been judged on its merits,

only after all U.S. servicemen are out of Vietnam).
"If Humphrey could count on picking up 40 to 60 California delegates," a staff member says, "he would hold some money back for New York."
All-Out
Instead, Humphrey appears to be going for broke in a media-conscious California where even a practical candidate here has budget cuts for close to \$1 million in a contested presidential primary.
The all-or-nothing rule applies to the California Republican ballot, too. Treas-

urer Nixon is cited as a coach to sweep up his home state's 98 convention votes over more than 100 delegates from conservative Ohio Congressman John Ashbrook.
There's no widespread Republican support for election date change.
California Republicans have had primary problems in the past, however, as in 1968 when Governor Reagan, hampering his own presidential dream, kept Richard Nixon out of the ballot.
That was the same year that California Democrats sent an orphan delegation to Chicago, pledged to the assassinated Sen. Robert F. Kennedy, who had won the entire delegation with 66 percent of the primary vote.
Favorite Son
Reagan now is chairman of the California Committee to Elect 136 President.

Four years ago he was not the first Governor to limit the voters' choice in the primary by running as a "favorite son."
Yet Reagan will be the last for the foreseeable future, if Proposition 4 is adopted in next week's election. This would provide for no more primary, except in Oregon's where the ballot contains names of all registered candidates. The secretary of state also would accept those candidates who qualify by circulating petitions. This is apart from winner-take-all.
If the Legislature doesn't start reworking the law now — giving California a proportional primary or a system of electing delegates by congressional districts — then the national parties or local groups are likely to unilaterally petition for a change.

<p>40" Backing Chair A very important piece of furniture... \$19.99</p>	<p>Devils Size Wash A great wash... \$2.99</p>	<p>Black & Decker A great power tool... \$22.99</p>	<p>Reversible Wagon A great wagon... \$13.99</p>	<p>5-Shed Driveway A great driveway... \$11.99</p>
<p>Corded Bell A great bell... \$9.</p>	<p>Highly Adjustable Lamp A great lamp... \$3.99</p>	<p>Men's 3-Piece Suit A great suit... \$2.99</p>	<p>Hand-Painted Ceramic Vases A great vase... \$4.99</p>	<p>7-1/2" Fresh Water Bed A great bed... \$2.99</p>
<p>The Water Sprayer A great sprayer... \$3.99</p>	<p>Short-Cut Tennis Shoes A great shoe... \$1.99</p>	<p>Hand-Painted Ceramic Vases A great vase... \$4.99</p>	<p>20" x 27" 10-Speed Bicycle A great bicycle... \$12.99</p>	<p>Colorful Beamed Chair A great chair... \$8.99</p>
<p>Value Strong Tennis Racket A great racket... \$1.99</p>	<p>4-1/2 Quart Assorted Wines A great wine... \$9.</p>	<p>Car Stereo Speaker System A great speaker... \$9.99</p>	<p>Solid Washbasin A great washbasin... \$3.49</p>	<p>Basic Wash-Drainage for Bucket A great bucket... \$2.99</p>
<p>Half-Dozen Eggs By Six & Sixes A great egg... \$5.99</p>	<p>Planter Pots from Mexico A great pot... \$1.99</p>	<p>"Safari Trail" Range of Skis A great ski... \$2.99</p>	<p>Solid Shell A great shell... \$1.29</p>	<p>Reusable Grill Skewers A great skewer... \$1.99</p>

EXHIBIT C

Progress-Bulletin

Serving Pomona Valley for 87 Years

Editor: David H. Reynolds, President... Publisher: Charles F. Anderson...

EDITORIALS

Archie Bunker—A Lovable Jerk

Is there any aerial significance in the fact that for the second year in a row the comedy series "All in the Family," dominated television's Emmy Awards?

Taking Primaries Out Of Smoke-Filled Room

Proposition 13 on the June primary ballot is designed to amend the state constitution to give voters a voice in choosing their state's presidential nominee.

Cheers for No-Sniff

Chem-smelling by noseplugs is a serious afflictive problem that has been overlooked by the nation's research about the increasing use of hard drugs.

Thought for Today

If there was heaven instead with Christ, and the show of his vision of Christ is seated at the right hand of God, let your minds on things that are above, not on things that are on earth.

Washington Window

Atmosphere Of Unreality About Summit

By STEWART HENSLEY UPI Diplomatic Reporter

WASHINGTON (UPI) — There is an atmosphere of unreality about the way arrangements for the summit proceed, which Soviet officials are prepared from leaving or entering Moscow harbor by American ships.

Secret Process

The Soviet Union's economy is in a bad way, did not produce a profit in 1970 and last week over the billion of dollars of foreign aid.

Jack Anderson

Secret Service Computer Didn't Have Bremer's Name on File

Immediately after the kidnapping of Dr. George Jackson, the secret service turned through its computer files.

Yesterday's

- Looking backward through the files of his newspaper. 28 Years Ago May 15, 1942... 29 Years Ago May 15, 1943... 30 Years Ago May 15, 1944...



JACK ANDERSON

Secret Service Computer Didn't Have Bremer's Name on File

Immediately after the kidnapping of Dr. George Jackson, the secret service turned through its computer files.

Answers

- Q - Who is the computer... A - The computer... Q - How many... A - The number...

Letters From P-8 Readers

As Others See It... Letters

League Position... The League position is that we are not in a position to...

J. K. (DOC) PERROL

Gossip for Today

Today let's talk about women! It's still OK to separate the men from the boys but, if you know what is good for you, just don't try to separate the women from the girls.

Bruce Bossart

Humphrey All-Out To Bag California

Sen. Hubert Humphrey's strategy to win California will be done just that with the state he has filed in 37 of the state's 37 congressional districts.

Barbs

Do you believe, and if so, do you fight back? An article says about the way you should react to a bad situation.

Side Glances



"I don't worry about growing old gracefully any more—these days, a person's lucky if he manages to grow old at all!"

EXHIBIT D

To give its readers the widest range of information The Times prints the briefest and most interesting version of many of the nation's leading columns. Their opinions are not necessarily those of The Times.

Cast a 'No' Vote on Proposition 4

Legislative Constitutional Amendment Proposition 4, to be decided by California voters next Tuesday, under the label of "Open Presidential Primary" is inauspicious and unneeded. It would require the Legislature to provide for an open presidential election in which the presidential candidates on the California primary ballot would include the names of all such candidates who are found by the Secretary of State to be recognized candidates in California or elsewhere in the nation. Any candidate wishing to withdraw from the ballot would have to file an affidavit that he is not a candidate.

The result could be a lengthy list of names in a sort of "free-for-all" race as opposed to the present law which requires qualification by petition. Such a list could also overload voting machines already crowded to capacity.

Effect of the proposition is the Secretary of State, himself a partisan-elected office holder, the decision as to which names of candidates would be placed on the ballot automatically. Other candidates not recognized by the Secretary of State would be required to circulate petitions.

The "open primary" label is misleading since the ballot is not new created for candidates who qualify.

In use this amendment would liberate forces at various points to enter the California primary even if they were not their preferred campaign plan. The alternative is to declare themselves as non-candidates in California with possible destruction of their campaigns in other states.

The California primary is a state one, coming just a few weeks before national party conventions. If a candidate finds himself forced to run here he risks a defeat that would damage his chances at the convention even if he had the support of his party in other states.

The net result of this proposal is the endangering of the primary system on a national scale. National procedures are special benefits to California voters. It is a bad measure and should be defeated. Vote "No" on Proposition 4.

Beware of Proposition 7

There are two major faults in State Ballot Proposition 7 that should warn the wary taxpayer to vote "No" on next Tuesday.

It is a Legislative Constitutional Amendment which would provide that the Legislature may provide the valuation of single-family dwellings for property tax purposes at any value greater than which would result in a higher property tax for single-family dwelling purposes.

The first major fault is that it would weaken the present California practice of assessing property for its best and most valuable use. It is a departure

from the Constitutional standard that all property be assessed uniformly according to the value when it would be sold. It is a precedent for other schemes to take special classifications that favor a few taxpayers.

The second major fault is that whatever tax deductions this measure might bring to approximately five per cent of the state's total revenue. The benefits affected would have to be made up by an increased tax load on the remaining 95 per cent of the state's revenue.

Proposition 7 is dangerous tinkering with the equitable tax structure. Vote "No."

The Public Voice

Editor, The Times:

We have several Democratic voters for designation votes at a nominating caucus for the office of President of the United States. I am a registered Democrat and taxpayer. I am refusing to vote for any of them. I will vote for the Republican candidate. I am not a Republican. I am not a Democrat. I am not a Socialist. I am not a Communist. I am not a Fascist. I am not a Jew. I am not a Negro. I am not a Jew. I am not a Negro. I am not a Jew. I am not a Negro.

The Times column letters from all its readers on all viewpoints. However, the editors reserve the right to edit or reject letters when they feel that the letters may be libelous, or not in the public interest, or contain profanity, or are otherwise objectionable. Letters should be typed on one side of the paper, and should be addressed to the Editor, The Times, P.O. Box 100, San Mateo, California 94401. Letters should be accompanied by a return address. Letters should be typed on one side of the paper, and should be addressed to the Editor, The Times, P.O. Box 100, San Mateo, California 94401. Letters should be accompanied by a return address.

Letter writers should identify themselves by name and address. Reasonable requests for anonymity will be honored. All letters should be typed and must have a page and one-half if typewritten, but preferably shorter.

A President elected in 1988, tried these same tactics and we had a depression and it was a mess, but had good enough to feel the repercussions. On the other hand, if this candidate's golden egg, near, near and longer, where, it should not be long before we are all on welfare, and where would the money come from then? Working people pay the taxes for times on welfare, or has he overlooked this fact?

Use of the candidate takes a great deal about the economy of the country and no one should be hungry. In his campaign speeches he talks like he is the good guy but the golden egg and has enough golden eggs to give to every man, woman and child. One aspect to the economy, are the law-abiding individuals here in the U.S. who today in the acts of the unscrupulous politicians and killings of innocent people, including the bombing, property damage and stealing are costing the taxpayers millions of dollars, whether it is real estate or not. Estimate what necessary aspects by more stringent laws and it, too, would help the economy.

Any man of woman could easily take his place - he wouldn't even be in the House for the call of voters. What he has been with - an ego trip!

Another using this candidate's proposals, are big cuts in the defense budget and elimination of programs within the "no-missile area" leaving the ground force under that but the ability to negotiate these plans, thousands and thousands of people, both black and white, will be joining along with the armed forces, cadets, corps, there are departments listed with their needs at civil service, aerospace, electronic firms, industries, do not forget the firms that rely on the purchasing power of these people.

He is a man of woman could easily take his place - he wouldn't even be in the House for the call of voters. What he has been with - an ego trip!



Now We're Getting Into the Marbles!

Washington Merry-Go-Round

Congressman Celler Helps a Conglomerate

By JACK ANDERSON - I have grave doubts as to whether or not there will be any revision of the body of the Hudson River. It is a scenic beauty a sacred site to be unencumbered at all and any cost.

As far as I am concerned, the Hudson River is a scenic beauty a sacred site to be unencumbered at all and any cost. As far as I am concerned, the Hudson River is a scenic beauty a sacred site to be unencumbered at all and any cost.

The conglomerate, Fischbach and Moore, does commercial work for power plants, industrial facilities, office buildings and other installations. It has received government contracts for a variety of projects ranging from the FBI's new headquarters in Washington to anti-ballistic missiles sites in North Carolina.

Again in 1971, Celler supported the controversial 1981 anti-ballistic missile site. I think Lockheed is worth saving. It's a great company. It's a great company. It's a great company.

Dick West

An Undelivered Address

WASHINGTON (UPI) - I'm assuming my daughter's college graduation this week, in connection with which there's a hard luck story I'd like to hand you. Back in my childhood days I used to fancy that by the time my daughter finished college I would be a millionaire in each of my four children's names.

Victor Riesel

A Gigantic Meat Steal

CHICAGO - There is a growing and a nationally headquartered here with a leadership methodically slash facilities after hundreds of thousands of dollars of investment against all odds on all fronts - across the globe - except the underworld of organized crime.

Now it appears that this union, the Amalgamated Meat Cutters and Butcher Workmen (A.M.C.B.W.), in the past year of a local allegedly tied up with Mafia chieftain "Little Augie" Pappas, and a half-dozen big shot and Charles "Lucky" Luciano was not so lucky. They and their interests don't understand that, according to the authorities.

All this in spite of testimony and documents in the hands of the Federal Bureau of Investigation. The FBI has the records of the Amalgamated Meat Cutters and Butcher Workmen (A.M.C.B.W.) in the past year of a local allegedly tied up with Mafia chieftain "Little Augie" Pappas, and a half-dozen big shot and Charles "Lucky" Luciano was not so lucky.

At the same time there come reports that one of the major union vice presidents, the vice president, Bernard "Boss" Celler, returned recently from Miami and he was "shocked and amazed" by the state of affairs in the underworld.

But it is strange that Caldwell's name should be mentioned in connection with this case. He is a well-known name in the underworld.

Ervin D. Canham

Equality Key To Relations

The Equal Rights Amendment is the key to U.S.-S.S.R. relations. It is the key to equality.

The Soviet has achieved it. They have been looking for a long time. And now it is finally achieved. It is the key to equality.

The equality of course is not a simple matter. It is a complex matter. It is a complex matter. It is a complex matter.

The U.S.S.R. is in trouble. It is in trouble. It is in trouble. It is in trouble. It is in trouble.

EXHIBIT E

ELECTION SPECIAL **SAN JOSE BALLPARK DEFEATED**

San Francisco Chronicle

THE LARGEST DAILY CIRCULATION IN NORTHERN CALIFORNIA

WEDNESDAY, JUNE 3, 1992

415-777-1111 35 CENTS

Feinstein and Boxer Win Easy Victory for Seymour on GOP Side Clinton Clinches Demo Nomination

Herschensohn holds lead over Campbell

*By Susan Yoncheva
Chronicle Political Writer*
Barbara Boxer and Dianne Feinstein made history last night, capturing the attention of the nation by becoming the first two women nominated simultaneously for the U.S. Senate in California.

While the two Bay Area Democrats easily won their races, Republican Bruce Herschensohn began polling away from Tom Campbell in a suspenseful race where as many as 10 percent of the ballots remained uncounted. However, early this morning the Associated Press declared that Herschensohn had won the right to face Boxer for the six-year seat being vacated by Alan Cranston.

In the fourth contest, appointed Republican Senator John Seymour won handily over conservative Representative Bill Dannemeyer.

Whereas Feinstein's big win for the two-year seat had been expected, Boxer's thumping of Lieutenant Governor Leo McCarthy and Representative Mel Levine was not. The two women candidates' smashing victories all but overshadowed the tense contest between Campbell and Herschensohn for the long Senate seat and Seymour's easy victory for the short seat.

"The tide has been unleashed," said political analyst Marvin Field. "For those who expect California women to go to the Senate, the first hurdle has been cleared. Women are sweeping — but not in the traditional sense."

In the past year, sexual harassment, parental leave and abortion became dominant issues that defined not only the women's agenda but the agenda for the country.

The difference was perhaps best illustrated in the Campbell-Herschensohn race, in which the Peninsula congressman was pro-choice and the Los Angeles television commentator was anti-abortion. Pre-election polls showed that abortion played a key role in defining each candidate's support.

Ram Kuwata, Feinstein's campaign manager, said, "The message of today's election is that Californians are calling for change. Voters want people who aren't part of the old boy network."

The remarkable victories by Feinstein and Boxer ensure two

Page A12 Col. 5



Dianne Feinstein told supporters, "Californians have sent the country a message — the status quo must go."



Senate candidate Barbara Boxer (left) celebrated with her husband, Stewart, and her daughter, Nicole.

San Jose Voters Reject Plan to Build Ballpark

*By David A. Sylvester and Carl Natta
Chronicle Staff Writers*

The ballot proposition to build a new ballpark for the Giants in San Jose was defeated yesterday.

It was the fourth straight election loss for Giants owner Bob Lurie, who has been trying for years to move the team out of San Francisco's Candlestick Park.

His latest try, Measure G on San Jose's ballot, would have financed a new stadium mostly through a utility tax. It was decisively defeated

yesterday, by about 10 percentage points.

Last night, in a concussive speech before volunteers who had helped the campaign, Lurie praised the dedication of the workers and the Yes on G campaign. However, he said, "It didn't work."

There has been widespread speculation, some of it encouraged by the Giants, that the team will now move out of Northern California. But Lurie offered no indication.

Page A11 Col. 1

State Had Perot On Its Mind If Not on Ballots

50% would have voted for Texan, survey shows

*By Sabia Russell
and Ken Hoover
Chronicle Staff Writers*

His name was not on the primary ballot, and write-ins would not be counted, but that did not stop Ross Perot's most enthusiastic backers yesterday from expressing their support for him — in a variety of ways.

"We've been replacing paper for voting pamphlets, waiting-out problems and covering up names with masking tape," said Marin County Registrar of Voters Howard Hanson, who said Perot's name had been written in various places in virtually all 150 Marin County precincts.

At a polling station in San Francisco's Ingleside Terraces, about half of the 70 voters who had checked in by midday had Ross Perot on their mind. Dozens mentioned their support for him while chatting with poll workers, although only a few said they would write his name on the ballot after poll worker John Mellickin told them that the write-in was a throw-away vote.

Not everyone was convinced,

Page A11 Col. 4

Bush wins in California — many say they favor Perot

*By Jerry Roberts
Chronicle Political Editor*

Setting up a wild, three-way presidential campaign, Bill Clinton clinched the Democratic nomination and President Bush completed an unbroken string of Republican primary victories yesterday amid widespread signs of bipartisan support for Ross Perot.

Arkansas Governor Clinton defeated party rival Jerry Brown in the California primary hours after crossing the threshold of 2,145 Democratic National Convention delegates needed for his nomination with solid victories in five other states that voted yesterday.

With state turnout a very low 44 percent, yesterday's balloting capped a turbulent and unpredictable primary season shaped by a national recession, urban riots and coast-to-coast anger at the status quo — and the rhetoric of the candidates matched the political climate.

As the nation watched, the Democrats used a populist, outsider tone in a victory speech delivered to 2,000 cheering supporters at the Biltmore Hotel in Los Angeles.

"I am tired of seeing the people who work hard and play by the rules get the shaft," Clinton said, moments after California's polls closed. "We want to put the focus of the status quo and short-term greed on notice. The party is over, we're in for a change, and we want our country back."

Bush, who opened up his re-election week ago, won six more votes yesterday, giving him 38 wins out of 38 primary contests in 1992.

In a statement issued at the White House, the president promised to "revivify the Washington lawmaking gridlock and set a new course for the next American century."

"With an unbroken string of primary victories behind us, I will continue to present my credentials and ideas to the American people," he said. "This November, we can break the Washington lawmaking gridlock and set a new course for the next American century."

Even in celebration, however, Clinton and Bush were haunted by the specter of Texas billionaire Perot, whose unpledged independent candidacy has captured the imagination of angry and disillusioned voters across the nation and sent him soaring ahead of the Republicans and Democrat in pre-election polls.

CALIFORNIA PRIMARY RESULTS

★ PRESIDENT ★

50% of precincts reporting

DEMOCRATS

Bill Clinton 49%

Jerry Brown 29%

Uncommitted/Other 12%

REPUBLICANS

George Bush 25%

Pat Buchanan 7%

★ U.S. SENATE ★

69% of precincts reporting

2-year seats

DEMOCRATS

Dianne Feinstein 37%

Gray Davis 33%

Joseph M. Alito 5%

REPUBLICANS

John Seymour 52%

Bill Dannemeyer 26%

Pat Buchanan 9%

4-year seats

DEMOCRATS

Barbara Boxer 43%

Leo McCarthy 32%

Mel Levine 22%

★ SANTA CLARA COUNTY BALLPARK ★

42% of precincts reporting

Yes 45% No 55%

★ DIVIDE CALIFORNIA ★ IN TWO MEASURES

(Requires two-thirds vote)

Yes 52% No 48%

CHRONICLE GRAPHIC

limited voters across the nation and sent him soaring ahead of the Republicans and Democrat in pre-election polls.

Interviews conducted by the

Back Page C.1

THE TOP STORIES INSIDE

A WARNING TO U.S.

A top U.N. official yesterday warned the United States that by not signing a "bio-diversity" treaty, it could deny its biotechnology companies easy access to the developing world's rich genetic resources. **PAGE A2**

HELP FOR AILING HEARTS

A new device, inspired by an uncanny use of a shower plunger to revive his unconscious father, is showing promise as an improved CPR technique. **PAGE A15**

A BLOW TO EUROPEAN UNITY

Dutch voters stifled the engine of European unification last night with a stunning rejection of the treaty that was to create a United States of Europe. The vote sent shock waves throughout the continent. **PAGE A17**



A plunger-like device may revolutionize CPR

INSIDE

CITYLINE: 24-Hour Information (415) 913-5000

SPORTS

Beals... 04... A10
Bullman... 01... A10
Cass... 01... A10
Crawford... 09... A7
Arias... 06... Bay Area... A3
Kasson... 09... Oakland... A5
Joh... 01... People... A0
Hiro... 02... People... A0
Coville... 08... Sports... A1
Cass... 08... Sports... A1
Gardner... 01... TV... A1
Holt... 01... Theater... A1
Holt... 01... Theater... A1
Holt... 01... Theater... A1

BUSINESS

A lot of California lawmakers think airline food is good enough to be taxed. **PAGE C1**

PEOPLE

Built or rebuilt your own personal city with one of the latest computer games. **PAGE B3**

DATEBOOK

Paul Simon was secretly married during the weekend, columnist Liz Smith reports. **PAGE B1**



FOOD AND HOME RECEIPTS TODAY

WORLD

SPACE DISCOVERY: Astronomers detected gigantic star-forming clusters created from the wreckage of vanishing planet.

BATH BOMBERS: A U.S. official warned the U.S. that it may lose out if it does not sign "biodiversity" pact.

EUROPEAN UNION: Danish voters rejected the treaty that was to create a United States of Europe.

GORBACHEV WASHED: Russian President Yeltsin warned his predecessor not to quit criticizing the government.

MULTI-LANGUE: The military-backed government has picked a conservative politician to be prime minister of Haiti.

NATION

COMPROHENSIBLE POSSIBLE: President Bush signed a willingness to negotiate on an emergency urban aid bill.

THOMAS AND POOL: Clarence Thomas requested a hard-core pornography theater while at Yale, a book says.

SPECIAL PROSECUTOR: A federal judge joined the call for a special probe into President Bush's Iraq policies.

FILE BY JORDAN: S.F. Mayor Jordan went before a U.S. Senate panel to seek more money to treat AIDS patients.

CHINA TRADE: President Bush decided to renew favorable trade status for China, despite widespread complaints.

TOP OF THE NEWS

CALIFORNIA

PRIMARY WINS: Bill Clinton and President Bush won California primaries and widespread support for Ross Perot.

STATE SENATE: Barbara Boer, Dianne Feinstein and John Seymour easily won re-election for the U.S. Senate.

PEROT BACKERS: Ross Perot was on the minds of many state voters, although not on their ballots.

BC DEMANDS: Demands for increased diversity on the UC board of regents has recently escalated.

BAY AREA

GIANTS STADIUM: The proposition to build a new ballpark for the Giants in San Jose was defeated by voters.

BETTER CPB: A toilet plunger inspired a device that may revive heart attack victims more effectively.

GUNMAN SLAIN: Two Gilroy police officers were wounded by a gunman who was then shot to death by police.

CRUISE GANG: U.S. and local police searched 23 Bay Area homes and businesses in a probe of the Wo Hop To.

CAREER CRISIS: The area's sole employment agency serving disabled youth may close for lack of funds.

KEY INDEX RISES: The government's main economic forecasting gauge showed surprising strength in April.

GIANTS LOSE, AS WELL: The Giants lost to New York, 4-2, and fell into second place, while the A's beat Boston, 5-4.

TOP SEEDS ADVANCE: The top four women's seeds got to the semifinals of the French Open tennis tournament.

BAY AREA: Morning low clouds, otherwise sunny. High, 66-65. Low, 50-42.

CLINTON CLINCHES NOMINATION — BUSH SWEEPS

From Page 1

television networks with voters as they held polling places confirmed Perot's growing strength in California and other states won by Bush and Clinton.



Arkansas Governor Bill Clinton addressed supporters in Los Angeles as his wife, Hillary, watched.

In California, for example, Perot finished first in a projected three-way match-up based on exit polls. Among Democratic voters, 35 percent said they would vote for Clinton in a three-way race, while 49 percent favored Clinton. On the Republican side, 43 percent said they would back Perot and 47 percent said they would stick with the president.

Perot, who is expected to announce his candidacy later this month, made himself available for television interviews in the state, and said his silent support came because "the American voters are concerned about keeping the American dream alive for the next generation."

"I won't engage in muckracking," he said. "I submit that the people deserve better than that. This whole process that's been set up here has established where they throw rocks together all day but nothing to do with selecting a good president for the people. I will not put that level. I will keep my effort on how we rebuild America."

Jerry Brown, who for a time successfully carried the outdoors' banner now held by Perot, was defiant in a speech to about 200 supporters, refusing to endorse Clinton despite his rival's triumph and sweep of yesterday's primaries.

"We're still here," said Brown, as his supporters chanted his famous 800 number. "No matter what happens, we're not going away. We'll fight inside the convention, outside the convention... and even after the election."

The voting in California, Ohio, New Jersey, Arkansas, New Mexico and Montana ended a campaign of ten dominated by political out-

STRONG SUPPORT FOR PEROT IN CALIFORNIA

From Page 1

however one man grabbed a podium from Melick's desk before bolting into a voting booth — for the Democrats.

Elsewhere around the Bay Area, supporters of the Texas billionaire self-inducted candidacy consider their choice to interviewers for television networks, who conducted surveys that showed Perot would have won a three-way race against President Bush and Democratic candidate Bill Clinton yesterday.

In a hypothetical three-way race, based on the exit polls, Perot was the first choice of 50 percent of those who voted yesterday, ahead of Clinton with 30 percent, Bush with 20 percent and 5 percent for someone else.

"It's phenomenal," said California Poll director Mervyn Feld, who did the projection. "It's like a revolution in American politics."

While election watchers struggled against Clinton generated problems that showed voting and political professionals calculated his political impact, it was business as usual for Perot's corps of volunteers in San Francisco, a neon sign with his name and the Rose Star of Texas on it marks the billionaire businessman's headquarters.

The dozen volunteers inside reflect much of what Bill Perot's unannounced campaign for the presidency is all about: white, middle-class citizens disillusioned with Bush, unimpressed by Clinton and jangling for a leader with a candid message.

"I'm a business person. He's a business person. He talks my language," said Linda Zacharin, a commercial real estate broker who

helps run the local headquarters. Supporters were telling callers yesterday not to bother writing in Ross Perot on the primary ballot, said Zacharin.

Marionette Lunderbach, who voted for Bush and Reagan in earlier primary elections, was stationed at a phone bank answering calls from Perot supporters. "Ross Perot is the kind of guy who knows you can use computers to track dead-end failures across the country. That's what I'm looking for," she said.

Another phone bank volunteer, Montessori schoolteacher Meghan Tideman, gaped when she learned her that fellow volunteer had voted for Bush. She could never stomach the Republicans but admires Perot for his opposition to the Persian Gulf war.

Angry Over Pay Raises
"What really did it for me was the great budget summit for followed by the congressional pay raise. The deficit is destroying this country, but they gave themselves a \$40,000 pay raise. Most people don't make \$40,000 in a year," she said.

Chris Lehmann, a 25-year-old who cut his political teeth working for the Viet Nam Veterans movement that brought California the Proposition 130 auto insurance reform measure, is now working as a volunteer office manager at Perot headquarters.

As a student in Texas, he watched Perot win a longshot campaign to require that Texas high school students have passing grades to qualify to play on football teams. "I just don't believe the promises anymore."

ers and anti-incumbent fervor. It seemed somewhat ironic that both major parties' nominations were captured by career politicians who had spent years honing insider skills of calculation and compromise.

Survival Instead of Triumph

For both Bush and Clinton, the primaries were more a matter of survival than triumph. The president appeared all but unshakable just a year ago, after the U.S. victory in the war against Iraq. But the painful recession, coupled with outrage that accompanied his breaking of his 1991 campaign pledge not to raise taxes, sent his support plummeting.

In the weeks that followed, Bush frenetically campaigned across the country. Eventually, an error organization and fundraiser named by Bush's name, extreme right-wing positions, steady and his recommitment bid and he dispatched the conservative commentator.

Despite recent signs of an economic recovery, long heralded by Bush as the medicine needed to cure his political ills, the president's support remains low, as Americans overwhelmingly complain that the nation is on the wrong track.

Clinton endured his own set of primary miseries. The 45-year-old governor deflected his candidacy at a time when Bush's ratings were high and better-known national Democrats were faring poorly.

An expert on education, health and other policy matters, Clinton led off the moderate Democratic Leadership Council in forging a national domestic agenda aimed at striking a middle course between liberal spending programs and conservative free-market policies.

Casting himself as an agent of change, Clinton put forth detailed proposals on the economy, the environment and education and quickly emerged as the front-runner in a field of relative unknowns.

Clinton Controversies

Weeks after the race began, however, his campaign was rocked by controversy over his character. Questions of adultery, draft dodging and personal finances, each of which he answered in detail, overshadowed his message of middle-class tax relief, a new national health care system and expanded education proposals.

Doubts about his character plagued him throughout much of the primary season. It was not until he won a pivotal victory in the New York primary April 7 that he began to refocus attention on his platform and repair the political damage he had sustained.

Last night, Clinton sounded those themes again, as he declared that "the election for America's future begins tomorrow," attacked what he called Bush's "voterless leadership" and detailed proposals on welfare reform, college tuition assistance, health care and other issues.

"In the end, words have to give way to deeds," Clinton said, asking voters to support him because he has a plan.

YESTERDAY'S OTHER PRIMARY RESULTS

Table with columns for State, Party, % of precincts, % of vote, and % of vote. Includes data for Alabama, Michigan, New Jersey, and New Mexico.

Table with columns for State, Party, % of precincts, % of vote, and % of vote. Includes data for Ohio and Delegate Countdown.

Coming Up: June 9, North Dakota Republican primary; Democrats elect delegates in Connecticut; July 13-14, Democratic National Convention, New York City; August 17-20, Republican National Convention, Houston.

Clinton clinched nomination with 2,517 delegates to date. Bush delegates to date: 1,811.

CALIFORNIA VOTE FOR PRESIDENT

Table showing % of precincts reporting and vote for Democrat, Republican, and American Independent candidates.

Clinton's victory was a surprise, as he had been considered a longshot. He won 50% of the vote, while Bush won 30% and Perot won 20%.

Clinton's victory was a surprise, as he had been considered a longshot. He won 50% of the vote, while Bush won 30% and Perot won 20%.

Perot Filled the Vacuum

Into the vacuum rushed Perot, who declared on the Larry King television program that he would launch an independent campaign if voters put his name on the ballot in 10 states.

Last night, it was Perot who took the spotlight as the unlikely front-runner as the presidential campaign entered its next phase.

Advertisement for FABLBY/Phil Frank featuring various slogans and images related to the 1992 election.