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SUBJECT: School Board Elections: Candidate Qualifications and Governing Law

REQUESTED BY: Elizabeth Maland, City Clerk

PREPARED BY: City Attorney

INTRODUCTION

Next month, voters in District "D" of the San Diego Unified School District will be asked to vote for a candidate to serve as their representative to the District's five-member School Board. Only one candidate has qualified to have his name placed on the June primary ballot. However, at least one other candidate reportedly is gathering signatures by a May 20, 2008 deadline to attempt to qualify as a write-in candidate.

The prospect of a write-in candidacy for District "D" when only one person has qualified to have his name appear on the ballot has raised a legal issue of first impression. At issue is the number of votes a write-in candidate must receive in the June primary in order to advance to a November runoff election. The answer is complicated by the fact San Diego's School Board elections are governed by a complex mix of state and local law, requiring analysis as to which law must be applied to resolve the issue. To our knowledge, the question has never been considered before, and no prior opinions on the topic have been issued by the City Attorney, San Diego County Counsel or School District counsel.

Under one scenario, applying local law, a write-in candidate who has qualified for the primary ballot may advance to the November runoff election if he garners *a single vote* and merely places among the top two vote-getters in the June primary. Under another scenario, applying state law, the write-in candidate must meet a much higher threshold – at least 2,723 votes in this instance – in order to advance to the November election. This memorandum details local and state law governing School Board elections and considers the legal threshold that a write-in candidate must meet to qualify for the November ballot.

QUESTION PRESENTED

Does local or state law govern the issue of how a write-in candidate qualifies to advance from the June primary to the November runoff for a seat on the Board of Education for the San Diego Unified School District?

SHORT ANSWER

Local law will govern this issue. The San Diego City Charter and San Diego Municipal Code govern the issue of a School Board candidate's qualifications to be on the ballot and the procedures related to write-in candidates. Because the School Board election is consolidated, state law applies regarding certain aspects of the conduct of the election itself – including such issues as how the ballots are counted and how the Registrar is to run the election. However, the state law requiring write-in candidates to receive a certain percentage of votes to advance from a primary to a general election was not intended to apply to a School Board race in a Charter city. Thus, the top two vote-getters from the primary ballot, regardless of how many votes each receives on the June ballot, will advance to a runoff election in November and have their names printed on that ballot.

FACTUAL BACKGROUND

Since 1939, the San Diego City Charter has governed the election process for the five members of the Board of Education of the San Diego Unified School District [the School Board]. Attorneys from the City, the County of San Diego and the School District have long questioned why the Charter does so, because the City of San Diego has no jurisdiction over the School District. Yet proposals to amend the Charter or Municipal Code to remove all references to School Board elections have not been successful.

In 1984, in response to new state law, the School Board exercised its rights under the California Education Code to consolidate its elections with statewide primary and general elections. (See April 14, 1999 Report, No. 99-02, by then-City Clerk Charles Abdelnour to the City Council's Committee on Rules, Finance and Intergovernmental Relations.) This consolidation removed School Board elections from the regular City of San Diego municipal elections conducted by the City Clerk's Office (which, at that time, were held separately in odd-numbered years).[1] Responsibility for administering School Board elections shifted from the City Clerk to the County Registrar of Voters. In November 1985, the San Diego Municipal Code was amended to reflect this change. San Diego Municipal Code § 27.0106(a).

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[1] Voters later amended San Diego City Charter section 10 to provide that City officials also are elected on the same dates as statewide primary and general elections, in even-numbered years. Thus, elections for certain City offices now are held on the same ballot as elections of certain School Board members.

As a result, School Board elections have been governed by a mix of local and state law, which will be detailed within this memorandum: In general, local law, derived from the City Charter and San Diego Municipal Code, sets forth how candidates qualify for the ballot and the seat. State law, set forth in the California Elections Code and California Education Code, governs procedural issues for how the Registrar is to conduct the election.

These multiple potential sources of law have, at times, led to confusion in the School Board elections process. As set forth in a memo from 1999, "Although the Registrar administers the elections for members of the Board of Education, County Counsel has opined that their elections are still governed by our (City of San Diego) municipal code for nominations and recall procedures..." *Id.* at 4.

Thus, questions that arise regarding the conduct of an election for School Board, or a candidate's qualifications to be on the primary or general election ballot, require an analysis of local and state law.

ANALYSIS

To answer the question of which law must apply to resolve the issues related to a write-in candidacy for a School Board seat, we first must address a series of preliminary legal issues.

I. Jurisdiction of the School Board Election

Our Office has been asked by the City Clerk's Office to render an opinion on this issue. Yet, as set forth above, the County Registrar of Voters has responsibility for administering School Board elections. Because the City Attorney's Office does not advise the School Board or the Registrar of Voters, it was initially unclear whether our office would be the proper entity to issue this opinion. However, because "elections are still governed by" the San Diego City Charter and San Diego Municipal Code to some degree (See Clerk's Memo, cited above) and because we are informed by the City Clerk that the Registrar asked the City Clerk to resolve the issue, we provide this opinion. We note that we have had discussions with counsel for the School District and County Counsel to ensure that our office is the appropriate entity to do so.

II. Municipal Law Applies to Qualify a Candidate to Run for a Seat on the Board of Education.

A. The City's Election Code Ordinance States that it Provides an "Adequate and Complete Procedure" for School Board Races.

Generally, School District elections "shall be governed by the (California) Elections Code, except as otherwise provided in" the state Education Code. Cal. Educ. Code § 5300 [within Chapter 3, Conduct of Elections]. However, the state Education Code chapter regarding

School Board elections later states that it "shall apply to all district elections, except as otherwise provided by law, **or as otherwise provided in the charter of any city**. . . concerning which the provisions of such charters are afforded controlling force and effect by the Constitution or laws of the state." Cal. Educ. Code § 5301 (emphasis added).

As a Charter city, the City of San Diego has authority vested in it by the California Constitution to draft its own laws to govern the conduct of municipal elections. Cal. Const. Art. XI, § 5(b).

Elections of School Board members, who serve four-year, staggered terms, are thus lawfully included in the City's Election Code Ordinance. San Diego Municipal Code § 27.0103 (Definitions) [Election Code includes "an election of the San Diego Unified School District."]. Moreover, the City's Election Code, part of the San Diego Municipal Code, is intended to provide an "adequate and complete procedure" to govern those School Board elections:

> . . . the Council shall adopt an election code ordinance**, providing an adequate and complete procedure to govern municipal elections, including the nomination of candidates for all elective offices.** All elections provided for by this charter, whether for choice of officers or submission of questions to the voters, shall be conducted in the manner prescribed by said election code ordinance.

San Diego Charter § 8 (emphasis added).

Additionally, "Nominations of candidates for all elective offices shall be made in the manner prescribed by the election code ordinance. . ." San Diego Charter § 9 (emphasis added).

Recognizing there may be conflicts between local and state laws governing an election, the Municipal Code addresses the issue. According to the Municipal Code:

> **§27.0106 Elections to be Conducted under this Article; Effect of State Law**
>
> (a) All *elections* shall be conducted by the City *Clerk*, except that ***elections* for members of the governing board of the San Diego Unified School District shall be conducted by the *Registrar*** pursuant to Education Code Section 5303. This includes nomination procedures, and also applies to all special and recall *elections*.
>
> (b) The procedures for seating members of the governing board of the San Diego Unified School District shall be the same

> as those for electing or appointing members of the City *Council* pursuant to this article, unless the governing board, at its option, adopts a resolution to have nominations conducted pursuant to other law.
>
> (c) . . . [omitted here; involving recall procedures]
>
> **(d) All *elections* shall be conducted under the Charter and this article. The City *Clerk* and City *Council* may rely on state *elections* law for guidance if there is no controlling provision in this article.**

SDMC § 27.0106 (emphasis added).

With regard to subsection (a), California Education Code section 5303, to which the Code refers, states only that the Registrar of Voters "shall perform the duties incident to the preparation for, and holding of" all district elections. Thus, it means the Registrar performs duties related to nominations (verifying signatures, for example).

With regard to subsection (b), the Board of Education has not adopted a resolution to have nominations conducted pursuant to other law. Thus, the Municipal Code generally governs how School Board members are elected or appointed.

Finally, and significantly, subsection (d) makes clear the legislative intent that the Charter and Municipal Code are the governing law for elections for the School Board, and that state law may be used "for guidance" only if there is no "controlling provision" in the local law.[2]

B. The City's Election Code Allows Write-In Candidates to Qualify to Have Their Votes Counted in the Primary Election for a School Board Seat.

Applying the Municipal Code, there are two ways that a candidate may qualify to have his or her votes counted in the primary balloting for a School Board seat.

If a candidate seeks to have his or her name printed on the ballot, the candidate must timely submit required papers and a fee (or extra signatures to offset the fee, per the Code). The candidate also must comply with the following rule for nominating petitions:

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[2] San Diego Municipal Code section 27.0101, Purpose and Intent (of the Elections, Campaign Finance and Lobbying sections of the Code), also states in relevant part: "If there is any ambiguity or contradiction between the provisions of general law and the provisions of this article, the provisions of this article shall govern."

> Nominating petitions of candidates for the office of Board of Education **shall be signed by at least two hundred individuals residing in the district** and who at the time of signing shall have been registered voters for a period of at least thirty calendar days in the district from which the candidate seeks nomination.

SDMC § 27.0210(d)(emphasis added).

If a candidate fails to qualify to have his or her name printed on the ballot, the candidate may then attempt to qualify as a "write-in" candidate. The deadline to submit "write-in" nominating petitions is later, two weeks before the date of the election. S.D. Muni. Code section 27.0309 (Form of Nominating Petition Page for Write-in Candidates) states in relevant part:

> **27.0309 Form of Nominating Petition Page for Write-in Candidates**
>
> . . .
>
> (b) The following note shall appear on each nominating *petition* page for write-in *candidates*, immediately below the statement required by Section 27.0309(a) . . . **Nominating petitions for members of the Board of Education may be signed only by voters residing within the home district of the candidate, and must contain the signatures of at least 200 qualified voters. . .**

SDMC § 27.0309(emphasis added).

The required number of signatures and qualifications of those signing are confirmed in San Diego Municipal Code section 27.0311.

> **27.0311 Required Number of Signatures on Nominating Petition for Write-in Candidates**
>
> . . .
>
> (d) Nominating *petitions* of *candidates* for the office of Board of Education shall be signed by at least two hundred individuals residing in the district and who at the time of signing shall have been registered voters for a period of at least thirty calendar days in the district from which the candidate seeks nomination.

Thus, write-in candidates may qualify to have their votes counted in the primary election for a School Board seat by timely submitting 200 valid signatures in the manner detailed above.

III. The City Charter Does Not Allow a Candidate for School Board to Win the Seat in the Primary Election, But Requires a District-wide Runoff Election.

Under provisions of the City Charter, if a candidate for Mayor, Council or City Attorney receives a majority of the vote in a primary election, he or she wins the seat outright. San Diego Charter § 10. Although the Municipal Code states generally that procedures to seat a School Board member shall be the same as those to elect a member of the City Council, a Charter provision sets a different, specific rule for School Board races. When a provision of the Code and Charter are in conflict, the Charter provision prevails.

Instead, Charter section 66 requires the top *two* vote-getters in the June primary for a School Board seat to advance to the November ballot, regardless of the number of votes that either candidate has received. Section 66 states in relevant part:

> At the municipal primary election **there shall be chosen by the registered voters of each Board of Education District two candidates for the office of any Board of Education member from a District** whose term expires the succeeding December. **At the general municipal election the registered voters of the whole San Diego Unified School District shall select from among the candidates chosen at the primary election** in each district one candidate for the office of each Board of Education member whose term expires the succeeding December.

San Diego Charter § 66 (emphasis added).

Unlike City Council races, which are held as district-only elections, School Board races are a hybrid: School Board candidates first run in a district-only primary (approximately one-fifth of the School District's voters); the two candidates who make it to the runoff election in November face the voters of the entire School District.

For example, in the last primary election for the District "D" seat on March 2, 2004, a total of 20,663 voters chose two candidates to advance to the runoff. In the runoff election on November 2, 2004, a total of 272,257 people cast votes to select the winner of that seat.

IV. Application of California's "Write-In" Law

With these local laws in mind, we turn now to the key issue in the School Board race: California law requires that write-in candidates receive a certain percentage of the vote in a primary election in order to advance to a runoff election. As set forth above, local law applies to School Board races. However, because the School Board election has been consolidated on the

primary ballot with elections for statewide races, there is a legitimate question as to whether that state write-in law should apply.

A. Consolidation of an Election Means State Law Controls the Conduct of the Election.

The Municipal Code mandates that the Registrar shall conduct School Board elections in consolidation with statewide primary and general elections. As a general rule, local cities routinely vote to consolidate municipal elections with statewide elections to save money and resources. This gives control of the election to the County Registrar, which then bills cities for costs of its services. See, Cal. Elec. Code §10400, et seq. [whenever two or more elections. . . are called to be held on the same day, in the same territory... they may be consolidated]. State law authorizes conducting consolidated elections as if only one election were being held and only one form of ballot shall be used. Cal. Elec. Code §10411.

However, consolidation affects the law that applies to an election:

> Whenever an election is to be held on the same day as the statewide election, ...the election may be consolidated with the statewide election. If consolidated, **the consolidated election shall be held and conducted**, election officers appointed, voting precincts designated, **candidates nominated**, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, results declared, certificates of election issued, **and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the statewide or regularly scheduled election**.

Cal. Elec. Code §10418 (emphasis added).

Moreover, if School Board elections are consolidated, "the election of governing board members of the school district. . . shall be conducted in accordance with all applicable procedural requirements of the (California) Elections Code pertaining to that primary, general, or municipal election." Cal. Elec. Code § 1302(b)(3).

The phrase "candidates nominated" in Section 10418 could be construed to include the issue of who qualifies for the ballot. However, the precise question is whether "the provisions of law regulating the statewide or regularly scheduled election" include the state law provisions regarding write-in candidates, when applying that law to a School Board race in a Charter city.

B. California Elections Code Section 8605 Sets a Threshold for the Number of Votes a Write-In Candidate Must Receive to Advance to a November Runoff Election.

At issue is California Elections Code section 8605, a statute that requires write-in candidates in a primary election to receive a certain percentage of votes to advance to a run-off in the general election. The section precludes primary write-in candidates from having their names placed on the ensuing general election ballot unless they receive a certain number of votes. The law states:

> **8605. Name on ballot if write-in candidate.**
>
> No person whose name has been written in upon a ballot for an office at the direct primary may have his or her name placed upon the ballot as a candidate for that office for the ensuing general election unless one of the following is applicable:
>
> (a) **At that direct primary he or she received for that office votes equal in number to 1 percent of all votes cast for the office at the last preceding general election at which the office was filled. . .**
>
> [(b) and (c) omitted as inapplicable here]

Cal. Elec. Code § 8605 (emphasis added).

Although this law sets forth an obstacle for a write-in candidate, the law has survived constitutional challenge. In a challenge to California's predecessor statute (then-section 6661(a), stating the same 1 percent requirement), the Ninth Circuit stated in relevant part that, "Vote thresholds (like that in the statute) are quite common and have been reviewed on several occasions by the Supreme Court and the Ninth Circuit." *Lightfoot v. Eu*, 1992 U.S. App. LEXIS 15091 (9th Cir. 1992) [holding California may require write-in candidates to demonstrate modicum of support before granted a berth on the general ballot, and such law does not violate First Amendment rights of free association rights of political parties].

The Ninth Circuit stated:

> The State suggests that its interest in requiring the 1% threshold is to ensure that any candidate appearing on the general ballot has demonstrated a "modicum of support." In *Jenness* (*v. Forston*, 403 U.S. 431 (1971)), the Supreme Court first recognized that "there is surely an important state interest in requiring some preliminary showing of a significant modicum

> of support before printing the name of a political organization's candidate on the ballot – the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election". . .

Lightfoot, 1992 U.S. App. LEXIS 15091 at *18-19.

Moreover, a California appellate court has found additional reasons for the law:

> . . . The months before a primary election are a time for members to question candidates and examine their qualifications. . . On the other hand, a write-in candidate may enter the race up to 14 days before the election. The potential exists that a late entry write-in candidate will circumvent the intended high exposure months before the primary. The Legislature has wisely compensated for this possibility by requiring a minimal amount of support for a write-in candidate through the section in question.

Fridley v. Eu, 131 Cal. App. 3d 100, 105 (1982) (upholding predecessor statute).

In *Lightfoot*, the Ninth Circuit considered the issue where a political party (Libertarian) did not have a sufficient number of voters in any state Assembly district to enable its write-in candidates to meet the 1 percent threshold, even if he or she were to obtain every vote. The court nonetheless found the state's interest in imposing the threshold to be compelling. However, the law was being applied to a state legislative race with a partisan primary, which the California Elections Code was intended to govern.

This is distinguishable from a non-partisan School Board race governed by a City Charter and Municipal Code, in which a candidate will not advance as the nominee of a political party, and in which two different pools of voters participate in the primary and general elections. Assuming the same state write-in law were applied to the School Board race because of consolidation, this would mean a write-in candidate for "District D" must garner at least 1 percent of 272,257 votes, the number of people who voted in the last *general* election for the seat – or at least 2,723 votes. However, the primary election, held only in "District D" (one-fifth of the School District) will have a more likely turnout of about 20,000 voters. Thus, if the state law were to apply, the write-in candidate would likely need more than 13 percent of the vote to advance to the November ballot – a tortured outcome of what the law contemplated.

C. California's "Write-In" Laws Will Not Apply to a School Board Election in a Charter City.

1. The State's "Write-in" Laws Were Not Intended to Apply to City School Board Races in a Charter City.

Despite the fact consolidation generally would serve to apply state procedural law to the School Board race, the Legislature has made clear that state write-in laws are not intended to apply to elections in Charter cities. California Elections Code section 10103 states:

> **§ 10103. Application of provisions relating to write-in votes to municipal elections**
>
> Part 3 (commencing with Section 8600) of Division 8 and Chapter 7 (commencing with Section 15350) of Division 15, **relating to write-in votes, shall apply to municipal elections in general law cities**.

Cal. Elec. Code § 10103 (emphasis added).

Thus, although consolidation generally operates to apply state law to the conduct of an election in a Charter city, here the Legislature has specifically stated that the write-in laws only apply to general law cities. Accordingly, it did not intend for the 1 percent threshold in California Elections Code section 8605 to apply to elections in Charter cities. As set forth above, the state constitution allows Charter cities to set their own procedures for municipal elections. Cal. Const. Art. XI, §5(b).

This legislative intent becomes even more clear when read with the preceding section of the California Elections Code: Section 10102 discusses the application of state ballot designation law to municipal elections. That statute, by contrast, specifies that the state's ballot designation law applies to municipal elections, "**whether held in a general law or chartered city**." Cal. Elec. Code §10102 (emphasis added). Thus, if the Legislature wished for the write-in provisions to apply to Charter cities, it could have included a similar statement.

The Legislature has the power to establish reasonable regulations governing write-in procedures. *Fair v. Hernandez,* 116 Cal. App. 3d 868, 876 (1981), citing *Binns v. Hite,* 61 Cal. 2d 107, 111 (1964). The courts have the duty to enforce the statutory scheme for the conduct of elections according to their terms and evident intention. *Fair*, 116 Cal. App. 3d at 876, citing *Patterson v. Hanley,* 136 Cal. 265 (1902). The legislative intent underlying a statute must be ascertained from its language; if the language is clear there can be no room for interpretation, and effect must be given to the plain meaning of the language." *Fair,* 116 Cal. App. 3d at 876, citing *Livingston v. Heydon*, 27 Cal. App. 3d 672, 677 (1972). Here, the language is clear: the

Legislature expressly excluded Charter cities from the reach of the write-in provision; applying the provision to a Charter city because of consolidation would defy that intent.

2. The Legislative Intent of the State's "Write-In" Laws Does Not Support its Application to any School Board Race, Because General Law Cities Do Not Hold Two Elections for School Board.

Even stronger support exists for the notion that the state's write-in laws were not intended to apply to a School Board election. General law cities, to which Elections Code section 8605 is intended to apply, do not hold two elections for School Board candidates. According to California Elections Code section 1302(a), the regular election for School Board members in any school district is to be the "first Tuesday after the first Monday in November of each odd-numbered year." Alternatively, after the initial election of a School Board, the governing board may establish "the election... to regularly occur on the same day as the statewide direct primary election, the statewide general election, **or** the general municipal election. . ." Cal. Elec. Code § 1302(a) (emphasis added). Elections Code section 10600 confirms that "When one member of the governing board of a school district or community college district is to be elected, the candidate receiving the highest number of votes shall be elected." There is no discussion of candidates advancing to a runoff election.

Because School Board candidates in general law cities are intended to be elected in a single election, the section requiring a write-in candidate to receive a certain number of votes in a primary to advance to a runoff cannot apply. See Cal. Elec. Code § 1302. This affirms a legislative intent that the write-in provision not apply to a School Board election. Thus, it does not make sense to apply it through consolidation to a School Board election in a Charter city.

3. Application of this Law to a San Diego School Board Race Raises Significant Constitutional Issues.

Even assuming the write-in law were to apply here, its application would have a profound and unexpected effect. As set forth above, the law necessarily contemplates an election in which the pool of voters is the same in a primary and a general election – where 1 percent of the vote in a primary equates to 1 percent of the vote in a runoff.

However, in a San Diego School Board race, a candidate faces only one-fifth of the voters in the primary as he or she does in the runoff. Thus, a write-in candidate who seeks to qualify for the runoff ballot would need an estimated 13 percent of the vote to do so: in this case, at least 2,723 out of an expected 20,000 votes. This is a tortured application of the law and unduly burdensome.

Assuming the law were to have its intended effect, one would need to apply it so that a primary candidate receives at least 1 percent of the vote garnered in the *last primary election* for

that seat. This would operate as a more fair result and as what the Legislature may have intended. However, we cannot rewrite the law.

Thus, if a School Board candidate were held to the threshold actually set by the law (i.e., 13 percent of the primary vote to advance), the requirement could raise significant constitutional issues. Application of the standard to this race invokes significant issues of fundamental fairness, undue burden on the candidate, undue restriction of access to the ballot and voter rights. We do not attempt to resolve those issues here, except to say that we believe that application of this law in this context would be ripe for a constitutional challenge. These issues would need to be resolved and reconciled against the legislative intent of the statute – which we believe was an intent that the law *not be applied* to either a School Board race or an election in a Charter city that provides its own procedures in compliance with the state constitution.

4. Public Policy Favors Inclusion of Write-in Candidacies.

In an opinion overturning San Diego's prior ban on write-in candidates, the California Supreme Court expressed the importance of a voter's opportunity to vote for write-in candidates:

> A write-in ballot permits a voter to effectively exercise his *individual* constitutionally protected franchise. The use of write-in ballots does not and should not depend on the candidate's chance of success. There will always be voters whose views, interests or priorities are not in any way represented by the candidates appearing on the ballot. While candidates who do represent these voters' views may have little chance of success, it is important in a free society that political diversity be given expression.

Canaan v. Abdelnour, 40 Cal. 3d 703, 714 (1985) [overruled by *Edelstein v. City and County of San Francisco*, 29 Cal. 4th 164 (2002) to extent it is inconsistent]. [3]

California courts have emphasized the importance of allowing write-in candidacies as a means of full expression on the ballot. San Diego's local laws allowing write-in candidates for School Board, without requiring a write-in candidate to meet a separate threshold to advance to the general election ballot, comply with and support this policy. San Diego's write-in laws would effectively be rewritten if consolidation operated to impose the 1 percent threshold as an

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[3] As the constitutionality of San Diego's municipal write-in laws as applied to a primary or general election is not at issue, we need not address the history of state and federal laws regarding write-in voting. See *Burdick v. Takushi*, 504 U.S. 428 (1992) (upholding total ban on write-in voting in Hawaii, against a federal constitutional challenge); *Canaan v. Abdelnour,* 40 Cal. 3d 703 (1985) (striking down San Diego's prior ban on write-in voting in municipal general elections); and *Edelstein v. City and County of San Francisco*, 29 Cal. 4th 164 (2002) (upholding San Francisco's prohibition against write-in voting in mayoral general election; overruling *Canaan* to extent it is inconsistent).

additional requirement on write-in candidates, when it was never contemplated by the City Charter or Municipal Code.

CONCLUSION

We conclude that the state law requiring write-in candidates to receive a certain percentage of votes to advance from a primary to a general election was not intended to apply to a School Board race in a Charter city. Thus, it should not be applied to a San Diego School Board race solely because of consolidation. The San Diego City Charter and Municipal Code were expressly intended to provide a complete and adequate procedure for School Board elections. The Legislature expressly stated that the write-in law was intended to apply to general law cities, not a Charter city. Moreover, the fact that the state write-in law contemplates both a primary and a general election makes clear it was not intended to apply to School Board races, since general law cities elect School Board members in a single election. Finally, its application to a race with two different pools of voters in a primary and a general election would raise significant constitutional issues. As set forth above, application of this law to San Diego's School Board races would have a profound and tortured impact, defying local law and state legislative intent.

Thus, we conclude that, despite consolidation of the School Board election, the Charter and Municipal Code govern the issue of a write-in candidate's ability to advance from a primary to the general election. As set forth in Charter section 66, the top two vote-getters, regardless of the vote received in a School Board District, will advance to a runoff election in November.

Respectfully submitted,

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