**RESOLUTION 13-01-2017**

**DIGEST**
Elections Code: Presidential Tax Return Required for Placement on Ballot
Amends Elections Code sections 6901, 8304, and 8651 to require that candidates for President of the United States provide five years of income tax returns or be barred from the California ballot.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Elections Code sections 6901, 8304, and 8651 to require that candidates for President of the United States provide five years of income tax returns or be barred from the California ballot. This resolution should be disapproved because federal, not state law, governs eligibility for candidacy for the office of President of the United States and requiring all presidential candidates to disclose their tax returns is an over-broad invasion of privacy.

Outside of a financial disclosure by a candidate for public office sufficient to identify potential conflicts of interest, the nature of one's tax returns has limited relevance to qualifications for office. Additionally, federal and state laws protect the privacy of tax returns (see, e.g., 26 U.S.C. § 6103; Rev. & Tax Code, § 19542). The privilege against forced disclosure has been repeatedly affirmed in statute and by case law opinions, if for no other reason than to facilitate tax enforcement by encouraging full and truthful disclosures by the tax payer on the assurance the tax payer's statements will not be revealed or used for any other purpose. (See, e.g., *Schnabel v. Schnabel* (1993) 5 Cal.4th 704, 719-720.)

In recent times, many presidential candidates have released their tax returns. But as the recent election taught, not all voters expect or require it and will vote in favor of a candidate regardless of whether or not that candidate has disclosed his or her tax returns. Requiring candidates to disclose their returns as a condition of running for office could have a chilling effect on people who otherwise might seek public office and would disenfranchise the electorate from voting for the candidate of their choice. Mandating disclosure of tax returns as the linchpin for candidacy undermines the democratic process, the free and robust exchange of ideas of national importance, and pubic choice. Voters should not be prevented from voting for the presidential candidate of their choice regardless of the status of disclosure of the candidate's tax returns.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Elections Code sections 6901, 8304 and 8651 to read as follows:

§ 6901

a) Whenever a political party, in accordance with Section 6864, 7100, 7300, 7578, or

7843, submits to the Secretary of State its certified list of nominees for electors of President and Vice President of the United States, the Secretary of State shall notify each candidate for elector of his or her nomination by the party. ~~The~~

(b) The Secretary of State shall cause the names of the candidates for President and Vice President of the several political parties to be placed upon the ballot for the ensuing general election.

(c) Notwithstanding subdivision (b), the Secretary of State shall not cause the name of a political party's candidate for President to be placed upon the ballot for the ensuing general election unless the candidate, no later than 70 days before that general election, files with the Secretary of State a copy of his or her Federal income tax returns for the five most recent taxable years. The candidate shall also file copies of state tax returns for any state in which the candidate earned income for the five most recent taxable years.

(d) The Secretary of State shall redact a Presidential candidate's tax returns as necessary to protect privacy. After redacting the tax returns, the Secretary of State shall make them available to the public on the Secretary of State's Internet Web site.

(e) The Secretary of State shall adopt regulations to implement subdivisions (c) and (d).

§ 8304

(a) When a group of candidates for presidential electors designates the presidential and vice presidential candidates for whom all of the group pledge themselves to vote, the names of the presidential candidate and vice presidential candidate designated by that group shall be printed on the ballot pursuant to Chapter 2 (commencing with Section 13100) of Division 13.

(b) (1) Notwithstanding subdivision (a), the name of a candidate for President shall not be printed on a general election ballot as described in subdivision (a) unless the candidate, no later than 70 days before the general election, files with the Secretary of State a copy of his or her Federal income tax returns for the five most recent taxable years. The candidate shall also file copies of state tax returns for any state in which the candidate earned income for the five most recent taxable years.

(2) The Secretary of State shall redact the Presidential candidate's income tax returns as necessary to protect privacy. After redacting the income tax returns, the Secretary of State shall make them available to the public on the Secretary of State's Internet Web site.

(c) The Secretary of State shall adopt regulations to implement subdivision (b).

§ 8651

The declaration of write-in candidacy for presidential elector shall contain the following information:

(a) Candidate's name.

(b) Residence address.

(c) A declaration stating that he or she is a write-in candidate for the office of presidential elector.

(d) Oath or affirmation as set forth in Section 3 of Article XX of the California Constitution.

(e) The date of the general election.

(f) The names of the candidates for President and Vice President of the United States for which the group of presidential electors are pledged.

(g) (1) A copy of the Presidential candidate's Federal income tax returns for the five most recent taxable years. The candidate shall also file copies of state tax returns for any state in which the candidate earned income for the five most recent taxable years.

(2) The Secretary of State shall redact the Presidential candidate's income tax returns as necessary to protect privacy. After redacting the income tax returns, the Secretary of State shall make them available to the public on the Secretary of State's Internet Web site.

(h) The Secretary of State shall adopt regulations to implement subdivision (g).

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

**PROPONENT:** National Lawyers Guild – San Francisco Bay Area Chapter

**STATEMENT OF REASONS**

The Problem: Since the administration of Richard Nixon, presidential candidates have traditionally released their tax returns to provide transparency and allow voters to make an informed decision about the financial affairs of the candidates. This tradition arose from a questionable tax deduction related to a donation of presidential papers to the National Archives taken by President Nixon in 1969. During the Watergate scandal, this deduction was revealed which caused Nixon to release five years of his tax returns. However, there is no statutory requirement on the state or Federal level requiring a candidate to release tax information.

During the 2016 Presidential campaign, all candidates except Donald Trump released their tax returns. Mr. Trump won the election without releasing those returns. President Trump may be one of the wealthiest men to serve as President. He has financial investments throughout the United States and around the world. Without seeing his tax returns, citizens have no ability to determine what, if any, conflicts of interest he may have.

The Solution: This resolution would require all Presidential candidates to provide five years of state and Federal tax returns to appear on the ballot in California. As the most populous state and with the most electoral votes, this requirement would be a strong inducement for any candidate to release tax returns.

Combined with similar efforts in other states, these proposed amendments to California's Electoral Code would make an even stronger case for all candidates to provide voters with sufficient financial information to make an informed decision about their vote.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known

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**RESPONSIBLE FLOOR DELEGATE:** Richard P. Koch

## COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

### SANTA CLARA COUNTY BAR ASSOCIATION

This resolution seeks to require presidential candidates to produce his or her last 5 years of federal and state tax returns in order to have the candidate's name listed on the November general election ballot. The resolution is both overbroad and lacking in detail, and also improperly infringes on a voter's right to vote for the candidate of their choosing.

While it is tradition for presidential candidates to release tax returns as part of running for office, it is just that: tradition. Moreover, when candidates have released returns, it is typically federal only, not state, with no standing requirement for how years of returns must be made available. Here, the proponent provides no reasons why a candidate should release 5 years of returns, much less why state returns are also required, or how detailed the returns should be (i.e., is just the basic 1040 pages sufficient or must all schedules and worksheets be released as well?).

A further problem is the proponent's "solution" that candidates who fail to comply will not be placed on the November ballot. While the proponent, or this Conference, may not be pleased with Trump's decision not to release returns, the fact remains that over 60 million people nationally – and almost 4.5 million in California – voted for him anyway. Indeed, one has to wonder if this resolution reflects an actual concern (i.e., would it have been submitted if Hilary Clinton – who released returns – had won), or if it is simply a reaction to Trump winning the presidency. Denying the public their right to vote for their preferred candidate for president just because someone is offended that a victorious candidate did not comply with tradition should not be condoned.

Although Santa Clara County agrees that, in principle, presidential candidates should release tax returns, this resolution is not the solution. Therefore, Santa Clara County recommends disapproval.

**RESOLUTION 13-02-2017**

**DIGEST**
Elections Code: Requirement for Risk Limiting Audits
Adds Elections Code sections 15361 and 15362 to require risk limiting audits for all public elections.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution adds Elections Code sections 15361 and 15362 to require risk limiting audits for all public elections. This resolution should be disapproved because the proponent does not articulate a verifiable problem in California and the cost to the people of California would be in the millions of dollars per election cycle.

The resolution asserts that, "of late, public elections have been described as rigged, hacked, undercounted, overcounted, or simply untrustworthy." To address these concerns, which are not validated by academic or journalistic investigations or research, the resolution proposes an elaborate, time-consuming and costly process, requiring significant additional effort by elections officials and the office of the Secretary of State.

Traditionally, unless a recount is automatic or petitioned, usually based on a closely contested outcome, election results are known with some certainty hours after the polls close. Since the audit process within this resolution requires that audits be completed by the end of the statutory canvass period as specified in Elections Code section 15375, which is 28 days, elections would not be certain in California for a month after the election. It appears that the resolution contemplates an audit of every election that occurs in California beginning with the 2020 election. This could result in an era of wide-sweeping post-election uncertainty that does not currently exist. Moreover, election recounts are costly. Elections Code section 15624 and Code of Regulations section 20815 state that those costs are born by the voter or campaign committee requesting the recount and that the costs are to be paid up front to pay for the first day's recount work. That procedure, prepayment before recount, is repeated for each day the recount continues. Furthermore, there is an audit provision in Elections Code section 15360, designed to assure the validity and accuracy of elections systems in California. As stated previously, voters and campaign committees may challenge vote counts. The Secretary of State also has the power to implement and enforce certification procedures for voting systems under Elections Code section 19200, et seq.

The resolution does not include evidence or information that helps clarify why the validity of elections in California should be questioned. Without additional information, the costly and time-consuming proposal for risk-limiting audits should be disapproved.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add Elections Code sections 15361 and 15362 to read as follows:

§ 15361

(a) The Legislature finds and declares the following:

(1) Transparent, publicly observable auditing of election results is necessary to ensure effective election administration and justifiable public confidence in elections.

(2) Risk limiting audits provide efficient and cost-effective scientific quality control for election results.

(3) By definition, a risk-limiting audit strictly limits the probability that an incorrect electoral outcome will pass the audit without being corrected.

(4) California's current post-election one percent manual tally law does not meet this standard.

(b) Based on the findings and declarations in subdivision (a), it is the intent of the Legislature to enact legislation that would establish an election results audit process to be developed with the assistance of statistical experts, election integrity experts, and election officials, to develop best practices for risk-limiting audits, and to implement risk-limiting audits in California.

§ 15362

(a) Commencing with the general election held in the year 2020, and each election thereafter in which a voting system is used, the elections official conducting the election shall conduct a risk-limiting audit with a five percent risk limit ("audit") of every election contest in accordance with the requirements of this section.

(b) The following definitions shall apply to this section:

(1) A "risk-limiting audit with a five percent risk limit" means a post-election process that involves hand-to-eye, human inspection of ballots, in such a manner that if a full manual tally of all the ballots cast in the contest would show different winner or winners than the winner or winners reported by the voting system, there is at most a five percent chance that the post-election process will not lead to such a full manual tally. When this post-election process does lead to a full manual tally, the winner or winners according to that full manual tally replace the winner or winners as reported by the voting system, if they differ.

(3) A "full manual tally" means a determination of the winner, or winners, of a contest by tallying the votes as determined by a manual, hand-to-eye inspection of all cast ballots on which the contest appears, and without any reliance on the voting system used to produce the results under audit.

(4) A "ballot-level comparison audit" means a type of risk-limiting audit that involves both of the following steps:

(A) The election official uses an independent system to verify that the cast vote records created by the voting system yield the same election results as reported by the voting system.

(B) The elections official compares some or all of those cast vote records to a hand-to-eye, human interpretation of voter intent ascertained from the corresponding ballot marked by the voter or the voter-verified paper record copy, as defined by Section 19271.

(1) A "cast vote record" means an auditable document or electronic record that purports

to reflect the selection made on a voter's ballot and lists the contests on the ballot and the voter's selections for those contests. A cast vote record is not a ballot.

(c) Prior to the audit, the elections official shall do all of the following:

(1) The elections official shall prepare a written inventory, or manifest.

(A) The written inventory, or manifest, shall provide the location of every ballot cast and counted in the election as follows: (i) Voted polling place ballots; (ii) Paper record copies, as defined by Section 19271, if any, of voted polling place ballots; (iii) Voted vote by mail voter ballots; and (iv) Voted provisional voter ballots.

(B) The ballot manifest shall, at minimum, contain the following information about ballots cast and counted: (i) the total number of ballots cast and counted in the election (including undervotes, overvotes, and other invalid votes); (ii) the total number of ballots cast in each contest in the election (including undervotes, overvotes, and other invalid votes); and (iii) a precise description of the manner in which the ballots are physically stored, including the total number of physical groups of ballots, the numbering system for each group, a unique label for each group, and the number of ballots in each such group.

(C) The ballot manifest shall not be created in reliance on any part of the voting system used to tabulate votes.

(2)The elections official shall secure the ballots cast and counted, as defined in (c)(1)(A) of this section, from loss, theft, alteration, augmentation, substitution, damage, or destruction, by maintaining an accurate, written chain of custody record. The chain of custody record shall be posted and maintained on the elections official's Internet Web site. The chain of custody record shall be retained along with other ballot materials as required in Section 17300 et seq.

(d) Audits performed under this section shall determine voter intent directly from original, voter-verifiable ballots and paper record copies, as defined by Cal. Elec. Code § 19271, cast and counted in the contest. In particular, the audits shall not determine voter intent from ballot images, reproductions, re-made ballots, or by relying upon electronic or digital representations of ballots.

(e) An elections official shall be deemed in compliance with this section if the elections official conducts a ballot-level comparison audit with five percent risk limit, or a risk-limiting audit with five percent risk limit using other methods for conducting risk-limiting audits as may be approved by the Secretary of State.

(f) An elections official conducting a ballot-level comparison audit shall comply with the following requirements:

(1) Prior to the selection of the sample for a ballot level comparison audit, a cast vote record for every ballot cast in the contest shall be exported from the voting system and sent to the Secretary of State. The elections official must be able to identify the cast vote record that corresponds to any particular cast ballot on which the contest appears.

(2) The ballot manifest prepared under subsection (c)(1) must allow for each cast vote record to be matched to its corresponding unique physical ballot, or paper record as defined in Cal. Elec. Code § 19721, in a way that makes it possible to retrieve that ballot, or paper record.

(3) The elections official shall retain physical or electronic proof that the cast vote records relied upon in the audit are those used to tally the election results that were reported to the Secretary of State and the public.

(g) Except upon a finding of exigent circumstances as determined by the Secretary of State, the audits shall be completed by the end of the statutory canvass period as specified in the Elections Code.

(h) The public shall have the right to observe the audit process described in this section. Three days prior to the occurrence of each of the following, the elections official shall provide public notice of the audit and shall include in the notice information about the public's right to observe the audit, including observation of the following elements of the audit:

(1) The process for selecting the ballots to be inspected manually;

(2) Evidence that the ballots retrieved and inspected by the auditors were those selected by the process referenced in (1), above;

(3) For each ballot selected for manual inspection, the voter's mark(s) on the ballot for the contests under audit;

(4) For ballot-level comparison audits, a true and correct human-readable rendering of the cast vote record corresponding to each ballot selected for audit;

(5) The calculations and other information used to determine whether and when the audit of each contest is complete.

The public right to observe, under this subsection, does not include the right to interfere with the conduct of the audit.

(i) Upon completing the auditing mandated under this section, each county's election official shall report to the Secretary of State all information pertinent to the audits conducted in that county, including any and all information the Secretary of State deems necessary to verify that the audits were conducted properly. When the Secretary of State publishes the Statement of Vote for an election, the Secretary of State shall also publish these reports, together with any other documents that confirm the audits were conducted according to the provisions of this section.

(j) An elector may, upon a good-faith belief that an elections official did not properly conduct a risk limiting audit, submit a timely, written statement of these concerns to the Secretary of State. This written statement shall articulate specific facts that detail any relevant information, such as (1) the inability of the public to observe the audit adequately; (2) violations of law; or (3) failure to comply with audit procedures. Upon receipt of a publicly filed written statement as described in this subsection the Secretary of State shall publish the statement on the Secretary of State's Internet Web site and shall respond in a timely manner.

(k) The Secretary of State may promulgate rules as may be necessary to implement and administer the requirements of all parts of this section, including but not limited to establishing procedures for:

(1) ensuring security of ballots and documenting that those procedures were followed;

(2) ensuring the accuracy of ballot manifests produced by counties;

(3) establishing rules governing the format of ballot manifests, cast vote records, and other data involved in risk limiting audits;

(4) establishing methods to ensure that any cast vote records used in a risk-limiting audit are those used by the voting system to tally the election results sent to the Secretary of State and made public;

(5) establishing procedures for the random selection of ballots to be inspected manually during each audit;

(6) establishing the calculations and other methods to be used in the audit and to determine whether and when the audit of each contest is complete;

(7) establishing procedures and requirements for testing any software used to conduct risk-limiting audits under this section.

In connection with the promulgation of the rules, the Secretary of State shall consult

recognized statistical experts, equipment vendors, and elections officials, and shall consider publishing best practice guidelines for conducting risk-limiting audits.

(l) The Secretary of State may coordinate risk-limiting audits of contests that involve more than one county, including but not limited to selecting the ballots to be inspected manually, determining when the audit can stop, and determining whether a complete manual tally is required in order to meet the risk limit specified in this section.

(m) If an elections official fails to comply with this section, the Secretary of State may order a partial or full recount, or may call for a new election, as appropriate.

(n) An elections official may choose to comply with this section prior to the general election held in the year 2020. Compliance with this section for a given election shall be deemed to be compliance with Cal. Elec. Code § 15360 for that election.

(o) In the event that a risk limiting audit leads to a full manual tally of a contest, the results of the full manual tally shall become the official results for that contest.

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

**PROPONENT**: San Mateo County Bar Association

**STATEMENT OF REASONS**

The Problem: Public elections are the foundational process by which we establish and maintain our republic. But as of late, public elections have been described as rigged, hacked, undercounted, overcounted, or simply untrustworthy. Either these allegations are true or they are false. If true, we need a reliable process by which to audit and catch irregularities. If false, we need a scientifically verifiable way to report back to the electorate how we know—up to a 95% confidence—that the beacon of modern democracy does not, in fact, run rigged or otherwise faulty elections.

The Solution: Currently, California's audit procedure for testing the reliability of its elections is fairly weak. *See* Cal. Elec. Code § 15360. Experts in the field, such as Philip Stark at Berkeley and Ronald Rivest at MIT argue for more robust procedure, called risk-limiting audits. Risk-limiting audits address limitations and vulnerabilities of voting process and voting technology, including the accuracy of algorithms used to infer voter intent, configuration and programming errors, and malicious subversion. *See* Jennie Bretschneider et al., *Risk-Limiting Post-Election Audits*, Oct. 2012, *available at*, https://www.stat.berkeley.edu/~stark/Preprints/RLAwhitepaper12.pdf. Risk-limiting audits have been endorsed by the bi-partisan Presidential Commission on Election Administration, the League of Women Voters, the American Statistical Association, Common Cause, and Verified Voting (co-sponsor of this resolution).

Risk-limiting audits have three key benefits. First, they detect outcome-changing irregularities with a high degree of accuracy—at least 95% accuracy under the language of the proposed resolution. Second, risk-limiting audits designed by expert statisticians are proven to be scientifically sound. Finally, as compared against full recounts, risk-limiting audits are generally far less expensive, except when the contest outcome is incorrect.

Currently, only Colorado mandates a form of risk-limiting audits. *See Voting Systems Team Report To The Pilot Election Review Committee Mock Risk-Limiting Audits In Select UVS Pilot*

*Counties*, Dec. 2015, *available at*, http://www.sos.state.co.us/pubs/elections/VotingSystems/files/2015/20151217MockRLA-Report.pdf (last visited Feb. 26, 2017). But its statute is dangerously vague, inviting mischief if an anti-democratic Secretary of State were to decline to draft sensible regulations or simply refuse to order a recount upon finding irregularities. *See* Colo. Rev. Stat. § 1-7-515. The language of the proposed resolution, by contrast, sets out the basic framework for mandating risk-limiting audits, describes the key elements of these audits, provides for public transparency and commentary, and mandates the Secretary of State to enact a remedy when irregularities are found in the audit.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

**SIMILAR LAWS**: Cal. Elec. Code § 15560 provided for a five-county, voluntary, post-canvass risk limiting audit pilot program that ran in 2011.

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**RESPONSIBLE FLOOR DELEGATE**: B. Douglas Robbins

**RESOLUTION 13-03-2017**

**DIGEST**
Elections: Grouping Ballot Measures
Amends Election Code section 13115 and adds Election Code section 13115.5 to require that similar ballot measures be grouped together on the ballot.

**RESOLUTION COMMITTEE RECOMMENDATIONS**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Election Code 15115 and adds Election Code section 13115.5 to require that similar ballot measures be grouped together on the ballot. This resolution should be disapproved because the resolution does not address the need raised in the resolution's statement of reasons.

The proposed statutory language in this resolution does not provide a solution to the underlying issues noted in the resolution, namely, that citizens, not professionals, draft ballot initiatives, and the ease with which propositions can be added to the ballot. Moreover, our system of public initiatives allows the citizens to place contradictory and even confusing measures on a single ballot. For example, on the November 2016 ballot, there were two initiatives related to the death penalty in California. The first sought to remove capital punishment from among sentencing options in California. The second sought to reduce the amount time for appeals and petitions. In a different example, one initiative required money charged by stores for single use bags to go to environmental projects, while the other initiative was a referendum seeking to uphold 2014 legislation prohibiting the statewide sale of single use bags. In both examples, the proposals were confusing and potentially contradictory. A voter could vote for both initiatives, and in one case, both initiatives could have passed and become law even though the outcomes are contradictory.

This resolution suggests that a cure for the confusion would be placing the two potentially conflicting initiatives next to each other on the ballot with a warning about the potential conflict by the Attorney General and a statement that "likely only the provisions of the one receiving the most votes will become law, subject to a final court ruling." This provision would not have helped in either example noted above. It is doubtful that a single admonishment will fit for all possible conflicts that may arise between initiatives.

More importantly, designating placement of initiatives on a ballot runs counter to our notion of a randomized process that seeks to avoid the appearance of conflict or self-interest on the part of the State in preparing the ballot. Much of what the proponent seeks to fix, in terms of providing information clarifying potential conflicts, currently exists in the title and summary prepared by the Legislative Analyst's Office that is part of the current ballot pamphlets and available online. Finally, if there is to be a warning, it should be in the ballot pamphlet, not the ballot itself.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Elections Code section 13115 and add section 13115.5, to read as follows:

§ 13115

Except as provided in Section 13115.5, ~~T~~the order in which all state measures that are to be submitted to the voters shall appear on the ballot is as follows:

(a) Bond measures, including those proposed by initiative, in the order in which they qualify.

(b) Constitutional amendments, including those proposed by initiative, in the order in which they qualify.

(c) Legislative measures, other than those described in subdivision (a) or (b), in the order in which they are approved by the Legislature.

(d) Initiative measures, other than those described in subdivision (a) or (b), in the order in which they qualify.

(e) Referendum measures, in the order in which they qualify.

§ 13115.5

Notwithstanding Section 13115, the Attorney General shall determine which measures on the same ballot potentially conflict with each other and the Secretary of State shall group these measures consecutively. The ruling of the Attorney General on whether measures conflict is reviewable in a final and expedited hearing in the Sacramento County Superior Court. Such measures shall be accompanied by a warning label on the ballot stating the Attorney General has concluded that the measures appear to conflict with each other and that likely only the provisions of the one receiving the most votes will become law, subject to a final court ruling.

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

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

The Problem: When voting, we do not just elect lawmakers, but make law through propositions. Often, the laws passed in these cannot be modified by the legislature. Such a process should be as straightforward to us, the voters, as possible, but is not. Sometimes propositions conflict with each other such that only one of them can go into effect; usually, the one with the most "yes" votes then prevails if they both get majority approval. The voters get no indication of any of that while voting. Compounding this problem is that conflicting propositions can appear in different places on the list, further confusing voters and favoring the one that happens to appear first due to ballot fatigue. A recent illustration was in 2004, Propositions 60 and 62. 60 did nothing but codify the status quo and was put on by the legislature to thwart 62. Proposition 60 got 68%, while 62 got 46%, suggesting that 14% voted yes on both. If there had been an indication on the ballot that the two measures were in conflict and only one could prevail, that might not have happened.

The Solution: This resolution requires conflicting propositions to be listed one right after the other and to notify people when they vote that only one of them can take effect. That will ensure voters can more easily compare and contrast propositions on the same topic and are better informed of the ramifications of their vote.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

**AUTHOR AND/OR PERMANENT CONTACT:** Ben Rudin, 3830 Valley Centre Dr., Ste. 705 #231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

**RESPONSIBLE FLOOR DELEGATE:** Ben Rudin

**RESOLUTION 13-04-2017**

**DIGEST**
Education: Alternative Make-Up Policy for Missed Tests
Amends Education Code section 48205 to give teachers the discretion to have pupils take exams before a planned absence if the exam will be missed due to a planned absence.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Education Code section 48205 to give teachers the discretion to have pupils take exams before a planned absence if the exam will be missed due to a planned absence. This resolution should be approved in principle because it provides teachers with greater flexibility and clarity with regard to when they may require students to take scheduled exams that conflict with students' planned absences.

Currently, Education Code section 48205 requires teachers to provide students with opportunities to make up tests that they miss due to an absence excused due to one of the ten reasons enumerated in this section, but it fails to clarify whether teachers can require students to take the exam before a planned absence instead of after. Specifically, subdivision (b) of Education Code section 48205 provides only that the pupil with an excused absence shall be allowed to complete "all assignments and tests missed during the absence . . . ." Although Education Code section 48205 is silent on the timeframe that students must take the missed exam, this is a determination best left for the individual instructor based upon the nature of the absence, the subject of the examination, and the instructor's motivation to reduce cheating. This resolution provides that clarification by allowing teachers to issue the exam prior the pupil's planned absence, which also infers that the instructor may issue the exam after the pupil's planned absence as well, thereby providing the teacher with full discretion on when to issue the exam to the pupil in question.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Education Code section 48205, to read as follows:

§ 48205
(a) Notwithstanding Section 48200, a pupil shall be excused from school when the absence is:
(1) Due to his or her illness.
(2) Due to quarantine under the direction of a county or city health officer.
(3) For the purpose of having medical, dental, optometrical, or chiropractic services rendered.

(4) For the purpose of attending the funeral services of a member of his or her immediate family, so long as the absence is not more than one day if the service is conducted in California and not more than three days if the service is conducted outside California.

(5) For the purpose of jury duty in the manner provided for by law.

(6) Due to the illness or medical appointment during school hours of a child of whom the pupil is the custodial parent.

(7) For justifiable personal reasons, including, but not limited to, an appearance in court, attendance at a funeral service, observance of a holiday or ceremony of his or her religion, attendance at religious retreats, attendance at an employment conference, or attendance at an educational conference on the legislative or judicial process offered by a nonprofit organization when the pupil's absence is requested in writing by the parent or guardian and approved by the principal or a designated representative pursuant to uniform standards established by the governing board.

(8) For the purpose of serving as a member of a precinct board for an election pursuant to Section 12302 of the Elections Code.

(9) For the purpose of spending time with a member of the pupil's immediate family, who is an active duty member of the uniformed services, as defined in Section 49701, and has been called to duty for, is on leave from, or has immediately returned from, deployment to a combat zone or combat support position. Absences granted pursuant to this paragraph shall be granted for a period of time to be determined at the discretion of the superintendent of the school district.

(b) A pupil absent from school under this section shall be allowed to complete all assignments and tests missed during the absence that can be reasonably provided and, upon satisfactory completion within a reasonable period of time, shall be given full credit therefor. The teacher of the class from which a pupil is absent shall determine which tests and assignments shall be reasonably equivalent to, but not necessarily identical to, the tests and assignments that the pupil missed during the absence. <u>When the absence is planned and would reasonably be known by the pupil or pupil's custodial parent(s) at least a week in advance, the teacher may require the pupil complete, before the absence, any tests the pupil will miss.</u>

(c) For purposes of this section, attendance at religious retreats shall not exceed four hours per semester.

(d) Absences pursuant to this section are deemed to be absences in computing average daily attendance and shall not generate state apportionment payments.

(e) "Immediate family," as used in this section, has the same meaning as set forth in Section 45194, except that references therein to "employee" shall be deemed to be references to "pupil."

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

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

<u>The Problem</u>: Existing law requires teachers to provide students opportunities to make up tests that they miss during an excused absence. That is good and necessary. However, it fails to make clear whether teachers can require students to take tests before a planned absence instead of after.

Such an option makes sense because when students get to make up a test after, they get additional time to study and may inquire from their friends about what is on it. Teachers may give a different test to negate the second advantage, but cannot negate the first benefit. When students get sick or have some other sudden justification, the additional study time is an unavoidable problem, but when the absence is planned (e.g. travel), teachers should have every right to require students take the test(s) before the absence, not after, and whether they can is legally unclear.

The Solution: This resolution clarifies that teachers may require students to take the test beforehand when they have a planned absence that would be reasonably known to them at least a week in advance. That ensures more flexibility for teachers and clarity in the education code.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

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**RESPONSIBLE FLOOR DELEGATE:** Ben Rudin

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## COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

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### SANTA CLARA COUNTY BAR ASSOCIATION

This resolution seeks to allow a teacher to require students to complete tests prior to the scheduled test date, when the student will be absent on the date scheduled for the test due to a planned or known absence. While the concept would seem to make sense in theory, the actual resolution does not solve the problem, but only creates new ones.

The primary justification for this resolution is to prevent students from getting more time to prepare for the test than their fellow students. However, this ignores the possibility that the scheduled absence may coincide with a time period where a student would be taking multiple tests. By forcing the student to potentially take all of his or her exams "early," this resolution would result in the student having less time to prepare (e.g., a student who would normally have exams on days 2, 6, and 9 of an absence, would potentially need to study for, and take, all 3 prior to being gone, thereby losing the gap days between exams that they otherwise would have had). Moreover, because the resolution puts the decision on when the exam must be taken solely in the hands of the teacher – "the teacher may require the pupil complete, before the absence, any tests the pupil will miss" – this is not an unlikely or impossible scenario.

As a result, this resolution gives all control to the teacher, ignores what may be best for the student, and ultimately penalizes the student just because there are those rare occasions where an absence may give a particular student or two a few extra days of study time.

Because the proponent has not demonstrated this is a major problem that needs to be addressed with legislation, much less one of such importance that the rule should be imposed state wide (vs. just in the author's local school district), Santa Clara County recommends disapproval.

**RESOLUTION 13-05-2017**

**DIGEST**
Budget: Funding Diversion from Prison to Schools and Tuition Control
Adds Government Code section 12225.5 to divert funding from prisons to colleges and control the cost of education.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution adds Government Code section 12225.5 to divert funding from prisons to colleges and control the cost of education. This resolution should be disapproved because the costs of education and prisons are both necessary and unrelated budgetary requirements.

This resolution would remove money from the prison budget and, instead, allocate those funds to colleges. At first blush, the appeal of diverting funds from the California Department of Corrections and Rehabilitation ("CDCR") to lower the cost of public education and baccalaureate degrees in the state colleges and universities is attractive, with the goal in thirty years of achieving a 1:4 ratio of prison to education funding. However, this rob Peter to pay Paul approach is neither the answer to the issue of how to fund education nor practical. Normative judgments aside, both are vital programs and institutions which the State must adequately fund and manage.

The CDCR is not over-funded. California prisons have already been subject to a number of lawsuits in federal court relating to overcrowding and poor medical treatment. There are constitutional implications to these issues. Diverting more money from the prisons to fund state college degrees will not solve the issue of providing constitutionally-adequate conditions in prison, and not incarcerating those who commit imprisonable offenses is not the answer either. Beyond constitutional and humanitarian concerns, there is the concern for the safety of prison staff, and the public.

The high cost of higher education amid budgetary constraints is a problem, and one which affects low income citizens significantly. How the state can best provide public access to quality education within the state college and university system, and properly run the state prison system along with the numerous other responsibilities, agencies, functions and services of state government, in the end is about revenue, budgeting, and management. However, the resolution is not the solution to the problem.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add Government Code section 13335.5 to read as follows:

§ 13335.5

(a) The Legislature finds and declares all of the following:

(1) California's public baccalaureate institutions are vital to the economic well-being of the state.

(2) The costs of education at California's public baccalaureate institutions have increased by an unconscionable amount, imposing an undue burden on low-income families and students.

(3) The high cost of education at California's public baccalaureate institutions creates a serious risk to the health, welfare, and economic well-being of the state by discouraging students from low-income families from pursuing the highest and best possible educations available to them.

(4) The increase of student debt carried by graduates threatens the economic well-being of the state by depressing the actual incomes of young working people and reducing consumer spending statewide.

(5) The high cost of education at California's public baccalaureate institutions deepens income inequality in the state by denying access to education for California's low-income students and by burdening graduates with excessive student loan debt upon entering the workforce.

(6) In recent decades, California's budget appropriations have shifted dramatically away from public baccalaureate institutions and towards the state's prison system. The budgetary shift from education to incarceration creates substantial and unacceptable risks for the long-term health and welfare of the state of California.

(b) Definitions.

(1) As used herein "public baccalaureate institutions" shall mean and refer to those institutions referred to in Education Code section 66010, subsections (2) and (3). The provisions of this section shall not apply to the California Community Colleges.

(2) "Governing Boards" shall mean and refer to the Trustees of the California State University, and the Regents of the University of California.

(c) Realignment of Funding and Tuition Controls

(1) It is the declared intent of the Legislature that, within thirty years of the effective date of this act, funding allocated to public baccalaureate institutions shall be at least four times greater than the total funding allocated to state prisons and prison operations.

(2) It is further declared that it is the intent of the Legislature to ensure that, within thirty years of the effective date of this act, no public baccalaureate institution shall cause to be paid, by any student eligible for in-state resident tuition, any amount of cost of attendance that could not reasonably be repaid by that student within five years of matriculation from any program for which tuition is charged.

(A) For purposes of this section, the financial resources and ability to pay costs of attendance of a student and a student's family may be taken into consideration.

(B) For purposes of this section, cost of attendance shall be determined to costs reasonably foreseeable to be incurred by a student, including fees, textbooks, costs of living adjustments related to the location of the public baccalaureate institution, and the reasonable

ability of a student to earn an income while enrolled at a public baccalaureate institution without an adverse impact on the educational curriculum of that student.

(d) Implementation

(1) Within one year of the effective date of this section, the Department of Corrections and Rehabilitations shall adopt regulations in order to reduce spending on state prisons and prison operations. All such regulations shall be reasonably tailored to ensure that reductions in spending shall not create an unreasonable risk to the health, welfare, and safety of the state and its residents.

(2) Within one year of the effective date of this section, the Governing Boards shall adopt regulations in order to reduce the cost of attendance at public baccalaureate institutions. All such regulations shall be reasonably tailored to ensure that public baccalaureate institutions provide the highest reasonable quality of education to the greatest reasonable number of individuals eligible to receive residential tuition in the state.

(3) Within one year of the effective date of this section, the Department of Finance, in consultation with the Department of Education and the Department of Justice, shall adopt regulations in order to review the proposed and promulgated regulations of the Governing Boards and the Department of Corrections in order to ensure the orderly implementation of and compliance with this section.

(4) Within one year of the promulgation of regulations pursuant to subsections (d)(1)-(3), the Department of Finance, in consultation with the Department of Education, the Department of Justice, the Department of Corrections, and the Governing Boards, shall prepare biennial reports to the Legislature regarding the implementation of this section. All such reports shall be made available to the public for review and commentary.

(5) Within one year of the effective date of this section, the Department of Finance shall promulgate regulations to develop a public comment procedure regarding reports submitted to pursuant to this section. The Department of Finance, in coordination with the Department of Education, the Department of Justice, the Department of Corrections, and the Governing Boards, shall provide meaningful responses to public comments submitted pursuant to this section, as well as to ensure the integration of meaningful public comments to the extent that such comments are consistent with and further the purpose and intent of this section.

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

**PROPONENTS:** Stephen V. Elzie, Duncan Crabtree-Ireland, Joel B. Douglas, Robin Bernstein-Lev, Eric Noonan, Pamela M. Villanueva, Arwen Johnson, Nick K. Stewart-Oaten, Natasha E. Khamashta, Vivian McPayah-Obiamalu, Charles Wake

**STATEMENT OF REASONS**

The Problem: The cost of higher education for California's students has spiraled out of control. Simultaneously, more and more funding is going to prisons. In 1970-71, approximately 11.9% of the general fund went to UC and CSU, compared with 2.8% towards corrections (roughly 4.25-to-1). In 2017-18, corrections will receive 9.1% of the general fund, with UC and CSU receiving roughly 5.9%.

California's higher education system now relies heavily on private bond markets, skyrocketing tuition costs, and federal student loans. The 2017-2018 Governor's report indicates that UC and CSU budgets include "tuition and fees revenues and other funds the universities report as discretionary." This is a serious problem. UC for example, is funded in large part by General Revenue Bonds, which are guaranteed by 100% of all student tuition. In order to maintain its bond rating and to continue to be a leader in global public education, UC has been given no choice but to endlessly increase tuition on its students.

The Solution: Public institutional backed by astronomical amounts of student loan debt (that is held by the federal government, a significant portion of which is likely to prove to be bad debt) being monetized and sold off to the bond market is a recipe for economic disaster with far-reaching consequences. Even without regard to the inequities of tuition, this system is on track to create an economic nuclear time bomb, inflating a bubble that could prove to be far greater and more damaging than the one that burst in 2007-2008.

For students, access to higher education is currently dependent largely on federal loans and forgiveness programs. High monthly payments still create a drag on consumer spending, while limiting economic mobility in the state. The loan-and-forgiveness system is also a moral hazard, in that it encourages students to attend high-cost programs, fully expecting that they will never pay the full amount of the debt that they are taking on.

This proposal requires the state to re-align its spending priorities to those of 1970, when schools were funded at five times the rate of prisons. Today, prison funding is more than double than that of schools. This proposal also imposes tuition controls to make college affordable for all. With a 30-year window for implementation, this proposal creates a framework for the gradual realignment of California's spending priorities in an effort to turn away from the economic calamity that the state is currently driving aggressively towards.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute, or rule other than those expressly identified.

**CURRENT OR PRIOR RELATION LEGISLATION**
Not known.

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**RESPONSIBLE FLOOR DELEGATE:** Stephen V. Elzie

## COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

**SANTA CLARA COUNTY BAR ASSOCIATION**

This resolution seeks to divert funding from prisons to public colleges/universities and to control the cost of education, such that, within 30 years, funding allocated to public universities is to be 4 times that allocated to prisons and in-state tuition should be at an amount that can reasonably be repaid within 5 years of graduation. Because the resolution, though, seeks to primarily, if not solely, to accomplish this via a reduction in prison spending, it is simply unworkable.

While finding for public universities in 1970 may have been at a 4-to-1 ratio to that spent on corrections, an effort to repeat that standard ignores differences between then and now. Forty-five years ago, it cost lest to go to an in-state college or university, the prison population was lower, and Proposition 13 – which had a significant effect on tax revenue – did not yet exist.

Nowadays, the state is highly dependent on tax revenues to supply money to the general fund; the prison population (for better or worse) is larger than it was in 1970 and requires resources; and the Legislature, thanks to propositions that constitutionally mandate how funds are spent, has little leeway in how funds can be allocated.

In today's budgets, well over half of the money allocated for expenditures is for health care and K-12 education, and the educational funding has a constitutional minimum that must be met. By contrast, corrections and higher education – combined – represent less than 20% of the overall budget. As the resolution does not appear to divert funds from other spending sources, there isn't enough "wiggle room" in the corrections budget alone to be able to reduce prion spending and at the same time increase spending to the universities to achieve a 4-to-1 ratio while maintaining public safety.

The resolution also does not address the significant consequences of reducing in-state tuition to an amount that can be paid off in 5 years. Given that roughly two-thirds of the student body at the UC and Cal State systems are California residents, that is a major loss of revenue to those institutions that would need to be recovered in some other fashion.

Too many things have changed since 1970 to be able to declare that we should do now what we did then. Moreover, to the extent this resolution was to become binding law, it provides no exceptions for when budgetary shortfalls could make it impossible to meet the suggested ratio, nor does it have any rules for what would happen if the ratio is not met. While the idea is a laudable one, it is not tenable. As it is, we have enough mandated expenditures, or limits on raising funds (again, see Prop. 13), that have contributed to the position we find ourselves in now. Adding yet another one it not the answer. Santa Clara County recommends disapproval.

**RESOLUTION 13-06-2017**

**DIGEST**

Schools: Students' Right to Privacy in Restrooms and Locker Rooms

Amends Education Code section 231 to allow student access to facilities, which correspond to their asserted gender identity, and to require accommodation of a student's desire for increased privacy in school restrooms and locker rooms for any reason.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Education Code section 231 to allow student access to facilities, which correspond to their asserted gender identity, and to require accommodation of a student's desire for increased privacy in school restrooms and locker rooms for any reason. This resolution should be approved in principle because schools should make reasonable accommodations to address known problems associated with student privacy, sensitivity and esteem, along with issues of bullying and harassment, most significantly occurring in the context of restrooms and gymnasium locker rooms, and assure a safe and healthy educational environment for all students.

Currently most schools provide multi-stall toilet facilities and locker rooms with open changing areas, usually without supervision. This is a setting that can easily exacerbate a child's understandable sensitivity and desire for privacy, and permits stares, bullying and harassment from other students. This is particularly poignant for the transgender or gay student or someone with a disability. It is a heartfelt problem that cannot be ignored.

The resolution offers students reasonable alternatives to having to endure a potentially embarrassing if not hurtful situation. The proposed policies and accommodations are not onerous. The Los Angeles Unified School District already implemented a policy (BUL-6224.0 (Feb. 7, 2014)) recognizing student privacy, accommodating a student's gender identity and allowing access to restrooms and locker rooms corresponding with their asserted gender identity at school, and directing the school administer to make every effort to provide a student with reasonable access to an alternative restroom, such as a single-stall restroom or the health office restroom, if a student desires increased privacy, regardless of the reason. It also provides locker room accommodations similar to the provisions set forth in the subject resolution. Similar policies have been implemented in San Francisco and Sacramento. School districts across the nation are seeking solutions. Dozens of state legislatures have visited the issue with a variety of measures pending in an effort to address the problem. This resolution offers a workable approach, modeled after the LAUSD.

The resolution may not be perfect. Still it offers worthy ideas and an approach which merits approval in principle. The outlined proposal, coupled with the need for education and behavioral enforcement, are reasonably calculated at curbing this real problem.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Education Code section 231 to read as follows:

§ 231

(a) Nothing herein shall be construed to prohibit any educational institution from maintaining separate multiple-user toilet facilities, locker rooms, or living facilities for the different sexes, so long as comparable facilities are provided.

(b) Students shall have access to restrooms that correspond to their gender identity asserted at school. If a student desires increased privacy, regardless of the underlying reason, the school administrator shall make every effort to provide the student with reasonable access to an alternative restroom, such as a single-stall restroom or the health office restroom. No student shall be compelled to use an alternative restroom.

(c) If there is a request for increased privacy when changing clothing in a locker room area, *any* student shall be provided access to a reasonable accommodation, including:

(A) Assignment of a student locker in near proximity to the coaches' office or a supportive peer group.

(B) Use of a private area within the public area of the locker room facility, such as a nearby restroom stall with a door or an area separated by a curtain or privacy shield.

(C) Use of a nearby private area, such as a nearby restroom or a health office restroom.

(D) A separate changing schedule.

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

**PROPONENT:** Bar Association of San Francisco

**STATEMENT OF REASONS**

The Problem: Most California K-12 schools were built with multi-stall restrooms and locker rooms with open changing areas. Multi-stall toilet facilities and open locker rooms are locations where student-to-student bullying and harassment may occur. This is because adult school staff members are not nearby to provide direct supervision and because one or more students can easily target an isolated student, based on the student's religion, race, disability, sexual orientation, or gender identity. As a result, there are many students who may appreciate the opportunity for greater privacy when using a multi-stall toilet facility or an open locker room.

In addition, because students are at school for several hours at a time, it is highly likely that they may need to use the restroom – with a multi-stall restroom as the only option. Further, every high school student is required to complete two years of physical education in order to graduate.

The Solution: This resolution is modeled after the restroom and locker room sections of Los Angeles Unified School District's policy number BUL-6224.0 (Feb 7, 2014). This resolution will ensure the right to privacy for all students, regardless of their religion, race, disability, sexual orientation, or gender identity. In addition, the term "multiple-user toilet facilities" is being added to section 231 because AB 1732 (Ting, 2016) prohibited gendered single-user

facilities. As a result, any single-user toilet facility on a school campus must be gender neutral.

According to the Centers for Disease Control and Prevention:

All students, regardless of sexual orientation, reported the lowest levels of depression, suicidal feelings, alcohol and marijuana use, and unexcused absences from school when they were in a positive school climate and not experiencing homophobic teasing.

*See* Centers for Disease Control and Prevention, "Lesbian, Gay, Bisexual, and Transgender Health," available at: https://www.cdc.gov/lgbthealth/youth.htm. The CDC recommends creating a school environment where bullying and harassment are not allowed, where students support each other with student-organized clubs, and where schools provide trainings to staff members about creating safe and supportive school environments. These types of holistic support systems are ideal. California school districts can also take simple, no-cost actions to make *all* K-12 students feel comfortable in physical spaces within schools where student-to-student conflicts related to religion, race, disability, sexual orientation, or gender identity may occur. And as the CDC reported, if all students are able to feel comfortable within their school environments, then they will experience less anxiety.

*See also* Time Magazine, "Battle of the Bathroom: From Schools to Statehouses, What's Really at Stake," (May 30, 2016); National Geographic, "Special Issue: Gender Revolution," (Jan. 2017).

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
AB 1266 (Ammiano, 2013): to require that a pupil be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records. Filed with Secretary of State Aug. 12, 2013.

AB 2246 (O'Donnell, 2016): to add section 215 to the CA Education Code, to require all grade 7-12 schools to implement suicide prevention programs as of the 2017-2018 school year. The suicide prevention programs must address: youth bereaved by suicide; youth with disabilities, mental illness, or substance use disorders; youth experiencing homelessness or in out-of-home settings; and lesbian, gay, bisexual, transgender, or questioning youth. Filed with Secretary of State Sept. 26, 2016.

AB 1732 (Ting, 2016): to require all single-user toilet facilities in any government agency, including a public school, to be identified as all-gender toilet facilities. Filed with Secretary of State Sept. 29, 2016.

Education Code section 51225.3(a): a pupil shall complete two courses in physical education in order to graduate from high school, unless the pupil has been exempted pursuant to the Education Code.

*See* Federal Management Regulation; Nondiscrimination Clarification in the Federal Workplace, 81 FR 55148 (Aug. 18, 2016): The prohibition against sex discrimination contained with the Federal Management Regulations (FMR) includes discrimination due to gender identity, and is consistent with the legal interpretations issued by other Federal agencies, including the EEOC, ED, and DOJ, as well as guidance issued by the Office of Personnel Management (OPM).

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