

AMENDED IN SENATE FEBRUARY 19, 2009

Senate Constitutional Amendment

No. 4

**Introduced by Senators Ducheny, Alquist, Ashburn, Florez, Negrete
McLeod, and Steinberg Senator Maldonado
(Coauthors: Senators Correa and Wolk)**

December 1, 2008

Senate Constitutional Amendment No. 4—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending ~~Section 8~~ *Sections 5 and 6* of Article II thereof, relating to ~~initiatives elections~~.

LEGISLATIVE COUNSEL'S DIGEST

SCA 4, as amended, ~~Ducheny Maldonado~~. ~~Initiative measures:~~
~~funding source~~. *Elections: open primaries.*

Existing provisions of the California Constitution require the Legislature to provide for primary elections for partisan offices, including an open presidential primary election, as specified. The California Constitution also provides that all judicial, school, county, and city offices are nonpartisan offices, and a political party or party central committee is prohibited from endorsing, supporting, or opposing a candidate for such an office.

This measure, which would be known as the "Top Two Primaries Act," would provide for a "voter-nominated primary election" for each state elective office and congressional office in California, in which a voter may vote at the primary election for any candidate for a congressional or state elective office without regard to the political party preference disclosed by the candidate or the voter. The measure would further provide that a candidate for a congressional or state elective office generally may choose whether to have his or her political

party preference indicated upon the ballot for that office in the manner to be provided by statute. The measure would prohibit a political party or party central committee from nominating a candidate for a congressional or state elective office at the primary, but the measure would permit a political party or party central committee to endorse, support, or oppose a candidate for congressional or state elective office. The 2 candidates receiving the 2 highest vote totals for each office at a primary election, regardless of party preference, would then compete for the office at the ensuing general election. This measure would require the Legislature to provide for partisan elections for presidential candidates, political party committees, and party central steering committees.

This measure would designate the Superintendent of Public Instruction as a nonpartisan office.

If the measure is approved by the voters, it would become operative on January 1, 2011.

~~The California Constitution provides that the electors may propose statutes or amendments to the state constitution through the initiative process by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by a certain number of electors.~~

~~This measure would prohibit an initiative measure that would result in a net increase in state government costs from being submitted to the electors or having any effect unless and until the Legislative Analyst and the Director of Finance jointly determine that the initiative measure provides for additional revenues in an amount that meets or exceeds the net increase in costs.~~

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 *Resolved by the Senate, the Assembly concurring, That the*
2 *Legislature of the State of California at its 2009–10 Regular*
3 *Session commencing on the first day of December 2008, two-thirds*
4 *of the membership of each house concurring, hereby proposes to*
5 *the people of the State of California that the Constitution of the*
6 *State be amended as follows:*

7 *First—This measure shall be known and maybe cited as the*
8 *“Top Two Candidates Open Primary Act.”*

9 *Second—The People of the State of California hereby find and*
10 *declare all of the following:*

1 (a) *Purpose.* The Top Two Candidates Open Primary Act is
2 hereby adopted by the People of California to protect and preserve
3 the right of every Californian to vote for the candidate of his or
4 her choice. This act, along with legislation already enacted by the
5 Legislature to implement this act, are intended to implement an
6 open primary system in California as set forth below.

7 (b) *Top Two Candidate Open Primary.* All registered voters
8 otherwise qualified to vote shall be guaranteed the unrestricted
9 right to vote for the candidate of their choice in all state and
10 congressional elections. All candidates for a given state or
11 congressional office shall be listed on a single primary ballot. The
12 top two candidates, as determined by the voters in an open primary,
13 shall advance to a general election in which the winner shall be
14 the candidate receiving the greatest number of votes cast in an
15 open general election.

16 (c) *Open Voter Registration.* At the time they register, all voters
17 shall have the freedom to choose whether or not to disclose their
18 party preference. No voter shall be denied the right to vote for the
19 candidate of his or her choice in either a primary or a general
20 election for statewide constitutional office, the State Legislature,
21 or the Congress of the United States based upon his or her
22 disclosure or nondisclosure of party preference. Existing voter
23 registrations, which specify a political party affiliation, shall be
24 deemed to have disclosed that party as the voter's political party
25 preference unless a new affidavit of registration is filed.

26 (d) *Open Candidate Disclosure.* At the time they file to run for
27 public office, all candidates shall have the choice to declare a
28 party preference. The preference chosen shall accompany the
29 candidate's name on both the primary and general election ballots.
30 The names of candidates who choose not to declare a party
31 preference shall be accompanied by the designation "No Party
32 Preference" on both the primary and general election ballots.
33 Selection of a party preference by a candidate for state or
34 congressional office shall not constitute or imply endorsement of
35 the candidate by the party designated, and no candidate for that
36 office shall be deemed the official candidate of any party by virtue
37 of his or her selection in the primary.

38 (e) *Freedom of Political Parties.* Nothing in this act shall restrict
39 the right of individuals to join or organize into political parties or
40 in any way restrict the right of private association of political

1 parties. Nothing in this measure shall restrict the parties' right to
2 contribute to, endorse, or otherwise support a candidate for state
3 elective or congressional office. Political parties may establish
4 such procedures as they see fit to endorse or support candidates
5 or otherwise participate in all elections, and they may informally
6 "nominate" candidates for election to voter-nominated offices at
7 a party convention or by whatever lawful mechanism they so
8 choose, other than at state-conducted primary elections. Political
9 parties may also adopt such rules as they see fit for the selection
10 of party officials (including central committee members,
11 presidential electors, and party officers). This may include
12 restricting participation in elections for party officials to those
13 who disclose a party preference for that party at the time of
14 registration.

15 (f) *Presidential Primaries.* This act makes no change in current
16 law as it relates to presidential primaries. This act conforms to
17 the ruling of the United States Supreme Court in *Washington State*
18 *Grange v. Washington State Republican Party* (2008) 128 S.Ct.
19 1184. Each political party retains the right either to close its
20 presidential primaries to those voters who disclose their party
21 preference for that party at the time of registration or to open its
22 presidential primary to include those voters who register without
23 disclosing a political party preference.

24 *Third—That Section 5 of Article II thereof is amended to read:*

25 SEC. 5. (a) A voter-nomination primary election shall be
26 conducted to select the candidates for congressional and state
27 elective offices in California. All voters may vote at a
28 voter-nominated primary election for any candidate for
29 congressional and state elective office without regard to the
30 political party preference disclosed by the candidate or the voter,
31 provided that the voter is otherwise qualified to vote for candidates
32 for the office in question. The candidates who are the top two
33 vote-getters at a voter-nominated primary election for a
34 congressional or state elective office shall, regardless of party
35 preference, compete in the ensuing general election.

36 (b) Except as otherwise provided by Section 6, a candidate for
37 a congressional or state elective office may have his or her political
38 party preference, or lack of political party preference, indicated
39 upon the ballot for the office in the manner provided by statute. A
40 political party or party central committee shall not nominate a

1 candidate for any congressional or state elective office at the
 2 voter-nominated primary. This subdivision shall not be interpreted
 3 to prohibit a political party or party central committee from
 4 endorsing, supporting, or opposing any candidate for a
 5 congressional or state elective office. A political party or party
 6 central committee shall not have the right to have its preferred
 7 candidate participate in the general election for a voter-nominated
 8 office other than a candidate who is one of the two highest
 9 vote-getters at the primary election, as provided in subdivision
 10 (a).

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

20 ~~(b)~~

21 (d) A political party that participated in a primary election for
 22 a partisan office pursuant to subdivision (c) has the right to
 23 participate in the general election for that office and shall not be
 24 denied the ability to place on the general election ballot the
 25 candidate who received, at the primary election, the highest vote
 26 among that party's candidates.

27 *Fourth—That Section 6 of Article II thereof is amended to read:*

28 SEC. 6. (a) All judicial, school, county, and city offices,
 29 including the Superintendent of Public Instruction, shall be
 30 nonpartisan.

31 (b) ~~No~~ A political party or party central committee ~~may endorse,~~
 32 ~~support, or oppose~~ shall not nominate a candidate for nonpartisan
 33 office, and the candidate's party preference shall not be included
 34 on the ballot for the nonpartisan office.

35 *Fifth—This measure shall become operative on January 1, 2011.*

36 ~~That Section 8 of Article II thereof is amended to read:~~

37 SEC. 8. ~~(a) The initiative is the power of the electors to~~
 38 ~~propose statutes and amendments to the Constitution and to adopt~~
 39 ~~or reject them.~~

1 ~~(b) An initiative measure may be proposed by presenting to the~~
2 ~~Secretary of State a petition that sets forth the text of the proposed~~
3 ~~statute or amendment to the Constitution and is certified to have~~
4 ~~been signed by electors equal in number to 5 percent in the case~~
5 ~~of a statute, and 8 percent in the case of an amendment to the~~
6 ~~Constitution, of the votes for all candidates for Governor at the~~
7 ~~last gubernatorial election.~~

8 ~~(c) The Secretary of State shall then submit the measure at the~~
9 ~~next general election held at least 131 days after it qualifies or at~~
10 ~~any special statewide election held prior to that general election.~~
11 ~~The Governor may call a special statewide election for the measure.~~

12 ~~(d) An initiative measure embracing more than one subject may~~
13 ~~not be submitted to the electors or have any effect.~~

14 ~~(e) An initiative measure may not include or exclude any~~
15 ~~political subdivision of the State from the application or effect of~~
16 ~~its provisions based upon approval or disapproval of the initiative~~
17 ~~measure, or based upon the casting of a specified percentage of~~
18 ~~votes in favor of the measure, by the electors of that political~~
19 ~~subdivision.~~

20 ~~(f) An initiative measure may not contain alternative or~~
21 ~~cumulative provisions wherein one or more of those provisions~~
22 ~~would become law depending upon the casting of a specified~~
23 ~~percentage of votes for or against the measure.~~

24 ~~(g) An initiative measure that would result in a net increase in~~
25 ~~state government costs, as jointly determined by the Legislative~~
26 ~~Analyst and Director of Finance, may not be submitted to the~~
27 ~~electors or have any effect unless and until the Legislative Analyst~~
28 ~~and the Director of Finance jointly determine that the initiative~~
29 ~~measure provides for additional revenues in an amount that meets~~
30 ~~or exceeds the net increase in costs.~~