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OCCUPATIONAL HAZARD: A CRITIQUE OF CALIFORNIA ELECTIONS CODE § 13107(a)(3)

*Peter Nemerovski**

INTRODUCTION

It all started innocently enough. In 1931, California amended Section 1197 of its Political Code to allow candidates to include their occupations on the ballot.¹ Specifically, the new statute stated: “Immediately under the name of each candidate and not separated therefrom by any line may appear, at the option of the candidate, one of the following designations: . . . The word designating the profession, vocation or occupation of the candidate.”²

This “ballot designation” statute has been amended several times since it was first added to California’s code.³ The current version states that a candidate for public office may, in his or her ballot designation, include “[n]o more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents.”⁴ Subsection (e) of the statute authorizes the Secretary of State and other elections officials to reject various types of ballot designations, including designations that “would mislead the voter;”⁵ designations that “suggest an evaluation of a candidate, such as outstanding, leading, expert, virtuous, or eminent;”⁶ designations that mention a political party;⁷ and designations that refer to activities prohibited by law.⁸ The statute further prohibits words or prefixes, such as “former” or “ex,” that refer to a prior status.⁹ However, that subsection explicitly permits use of the word “retired” in certain circumstances.¹⁰

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1. 1931 Cal. Stat. 1929.

2. CAL. POLITICAL CODE § 1197(5)(c) (1932); James H. Deering, Editor, *Political Code of the State of California Adopted March 12, 1872 with Amendments up to and Including those of the Forty-Ninth Session of the Legislature*, 1931 (1932).

3. *See infra* Section I, which discusses the most significant changes.

4. CAL. ELEC. CODE § 13107(a)(3) (West 2021).

5. *Id.* § 13107(e)(1).

6. *Id.* § 13107(e)(2).

7. *Id.* § 13107(e)(5).

8. *Id.* § 13107(e)(7).

9. *Id.* § 13107(e)(4).

10. *Id.*

California's ballot designation statute is unique: "A survey of election laws compiled by the National Conference of State Legislatures . . . could not find another state that allows the same kind of professional description of each candidate to appear on the ballot."¹¹ In more than a dozen states, candidates are explicitly prohibited from listing any professional information on the ballot.¹²

Contemporaneous accounts from the early 1930s indicate that the ballot designation statute originated as a way of helping voters identify candidates and distinguish between candidates with similar or identical names.¹³ Over the years, and with the expansion of the word limit from one to three in 1945, California's occupational ballot designations have become important in helping candidates win elections. As California elections lawyer Chad D. Morgan put it, "[b]allot designations are a big deal, especially in local elections and down-ballot races."¹⁴ Morgan continues: "As one can imagine, candidates have a tendency to get very creative when choosing a designation. Some candidates even poll alternative designations to see which will give them better results."¹⁵ According to Judge Kirk H. Nakamura of the Orange County Superior Court, ballot designations "are especially consequential in judicial races because those elections are nonpartisan and the candidates are often among the least known on the ballot."¹⁶

This Article argues that California's occupational designation option should be abolished, having outlived whatever usefulness it may have had in 1931. Today, it is a source of headaches for elections officials across the state. It often leads to litigation over whether a candidate's chosen designation is inaccurate or might mislead voters. It is inconsistently enforced. It is frequently used by candidates not to provide voters with helpful information but to gain an electoral advantage over their opponents. The time has come for California to join the forty-nine states that do not automatically allow candidates to include their occupations on the ballot.

Section I of this Article reviews the history and purpose of California's ballot designation statute. Section II explains how certain key terms are defined in the

11. Emily Cadei, *Why an Election Tradition in California is Banned in Other States*, SACRAMENTO BEE (Apr. 13, 2018, 12:39 PM), <https://www.sacbee.com/news/politics-government/capitol-alert/article207850079.html>; see also George Hatch, *Candidates Try to Craft Creative Job Titles*, L.A. TIMES, May 31, 1993, at A3 ("California is the only state to extend the privilege of listing occupation to all candidates . . .").

12. Cadei, *supra* note 11; see also N.C. GEN. STAT. § 163-165.5(a)(3) (2021) ("No title, appendage, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate's name."); KAN. STAT. ANN. § 25-619 (2021) ("No title, degree or other symbol of accomplishment, occupation or qualification either by way of prefix or suffix shall accompany or be added to the name of any candidate for nomination or election to any office on ballots in any primary or general election."); TEX. ELEC. CODE ANN. § 52.003 (2021) ("Except as otherwise provided by this subchapter, a title or designation of office, status, or position may not be used in conjunction with a candidate's name on the ballot.").

13. See *infra* Section I.

14. Chad D. Morgan, *Election Law: The Litigation That Quietly Shapes Your Ballot*, 58 ORANGE CNTY. LAW. (Oct. 2016), <https://www.ocbar.org/All-News/News-View/ArticleId/1884/October-2016-SPECIAL-FEATURE-Elections-and-the-Law-Election-Law-The-Litigation-that-Quietly-Shapes-Your-Ballot> (last visited Dec. 23, 2021).

15. *Id.*

16. Kirk H. Nakamura, *Judicial Elections: New Rules, New Judges, Old Challenges*, 60 ORANGE CNTY. LAW. (28 (June 2018)).

statute and accompanying regulations. Section III describes some of the many legal challenges that have been brought to various candidates' chosen designations, and how those cases and controversies were resolved. Section IV attempts to determine which designations are most advantageous electorally and why. Section V discusses the pros and cons of allowing candidates to describe their occupations on the ballot, ultimately concluding that the cons outweigh the pros. Finally, Section VI discusses various reforms that would improve the statute if it cannot be eliminated altogether.

I. HISTORY AND PURPOSE

As noted above, the ballot designation statute dates back to 1931. There is no legislative history to shed light on what the legislature intended to accomplish by allowing candidates to list their occupations on the ballot. However, a *Los Angeles Times* article published in January 1931 provides some background on the ballot designation provision. According to the article, a "Senator Rochester of Los Angeles" introduced the provision as part of a broader proposal "to revise the method of choosing candidates for partisan offices by a compromise between the convention and direct primary systems . . ."¹⁷ The article described Senator Rochester's bill as including "a means whereby an incumbent can so designate himself upon the ballot, while an opponent can state his occupation as John Doe, attorney."¹⁸ The article continued: "Abuses of the right of entering candidates upon the ballot, bringing unknown men of similar names as opponents to an incumbent, and men of one political faith running on different tickets have caused several bills to be introduced striking at these evils."¹⁹

Writing in 1977, journalist Bruce Bolinger stated that the "original purpose" of the ballot designation statute was to address situations where candidates with similar names ran against each other.²⁰ Bolinger explained that 1932 was:

[A] reapportionment year, and legislators were faced with running for re-election in altered districts or for higher office, and were sensitive to being identified on the ballot by the title of the office then held. Explanations given to the press emphasized that the bill intended to identify incumbents and protect them from similar-name campaign ploys.²¹

These news accounts are not much to go on, but they suggest that the legislature thought that occupational designations would help voters distinguish between candidates with similar or identical names. Consistent with this interpretation, the California Secretary of State's counsel told the *Riverside Press-Enterprise* in 1995

17. C.A. Jones, *Primary Law Revision Asked*, L.A. TIMES, Jan. 18, 1931, at 6.

18. *Id.*

19. *Id.*

20. Bruce C. Bolinger, 'World's Greatest Lying Contest': *Ballot Designation Misuse Grows*, DESERT SUN, Jan. 25, 1977, at B14.

21. *Id.*

that “[o]riginally, the ballot designations were meant to help frontier-era voters tell the difference between ‘John Smith, the grocer,’ and ‘John Smith, the blacksmith.’”²²

Finally, it is also possible that the legislature was trying to protect incumbents. The *Los Angeles Times* article refers to “the possibility of entering upon the ballot names almost similar to a well-known candidate, a situation which came to the fore during the last campaign.”²³

In 1945, the legislature amended the ballot designation statute to give candidates three words instead of one with which to describe their professions, vocations, or occupations. The 1945 version of the statute stated that a candidate may include “[w]ords designating the profession, vocation or occupation of the candidate which shall not exceed three in number.”²⁴ Also in 1945, the legislature added the following restriction: “No candidate shall assume a designation which would mislead the voters.”²⁵

For the next several decades, the ballot designation statute remained largely the same in substance, although some additional language was added. In 1955, the legislature added a procedure for election officials to follow in the event that a candidate’s designation in her nomination paper was different from the one in her registration affidavit.²⁶ In 1975, the legislature changed “profession, vocation or occupation” (singular) to “professions, vocations, or occupations” (plural).²⁷ The new version of the statute also included, for the first time, the requirement that the designation contain the candidate’s “principal” professions, vocations, or occupations.²⁸ Finally, the 1975 amendments added the rule that “all California geographical names shall be considered to be one word.”²⁹

In 1994, the ballot designation statute moved from Section 10211 of the Elections Code to its current home in Section 13107.³⁰

In 2002, the legislature added Section 13107.5 to the Elections Code.³¹ That Section provides that the ballot designation “community volunteer” constitutes “a valid principal vocation or occupation for purposes of subdivision (a) of Section 13107,” subject to the following conditions:

- (1) A candidate’s community volunteer activities constitute his or her principal profession, vocation, or occupation.

22. Jenny Cardenas, *Less Leeway on Ballots for Candidates; Election Officials are Not as Flexible About What Those Running for Office Say They Do for a Living*, PRESS-ENTER. (Oct. 22, 1995). Of course, if both “John Smith, the grocer” and “John Smith, the blacksmith” are completely “unknown” to California voters, then including their occupations on the ballot would not help voters identify the candidates. However, a more plausible interpretation of the phrase “unknown men of similar names” is that, without the occupational designations, voters would not know which John Smith is which, whereas with the designations, they would.

23. Jones, *supra* note 17, at 6.

24. 1945 Cal. Stat. 1498.

25. *Id.*

26. 1955 Cal. Stat. 812, 813.

27. 1975 Cal. Stat. 2861.

28. *Id.*

29. *Id.*

30. CAL. ELEC. CODE § 13107 (West 2019).

31. *Id.* § 13107.5 (West 2019).

(2) A candidate is not engaged concurrently in another principal profession, vocation, or occupation.

(3) A candidate may not use the designation of “community volunteer” in combination with any other principal profession, vocation, or occupation designation.³²

In 2017, new language was added to Section 13107 to restrict the options that candidates for judicial office have when listing their professions, vocations, or occupations. Under subsection (b)(2), a candidate for judicial office who is an active member of the State Bar and is employed by a city, county, district, state, or the United States, has only two options for his or her designation.³³ First, the candidate may include “[w]ords designating the actual job title, as defined by statute, charter, or other governing instrument.”³⁴ The second option is to include either “Attorney,” “Attorney at Law,” “Lawyer,” or “Counselor at Law.”³⁵ As Morgan explained, “[t]hese changes will have the greatest impact on deputy district attorneys who will no longer be able to use the effective ‘prosecutor’ designation in their judicial campaigns.”³⁶

Prior to the addition of the new language, judicial candidates who worked as criminal prosecutors had been quite creative in describing what they do. One judicial race in 2016 featured candidates with the designations “gang murder prosecutor,” “gang homicide prosecutor,” and “violent crimes prosecutor.”³⁷ Veteran political consultant David Gould recalled that in 2012, he conducted an informal poll of employees in his office, asking them, “[w]ho do you hate the most?”³⁸ When his staff identified “[p]eople who hurt children” as their most hated group, Gould recommended “child molestation prosecutor” for a judicial candidate he was advising.³⁹

In 2019, California State Assemblyman Bill Brough introduced Assembly Bill 3304, which would have authorized the use of “veteran” as a principal profession, vocation, or occupation designation:

FOR THE PURPOSE OF THIS SECTION, “VETERAN” IS A VALID DESIGNATION AS ONE OF A CANDIDATE’S PRINCIPAL PROFESSIONS, VOCATIONS, OR OCCUPATIONS, REGARDLESS OF THE DATE THAT THE MILITARY SERVICE TERMINATED. AS USED IN THIS SUBDIVISION, “VETERAN”

32. *Id.* § 13107.5(a).

33. *Id.* § 13107(b)(2).

34. *Id.* § 13107(b)(2)(A).

35. *Id.* § 13107(b)(2)(B).

36. Chad D. Morgan, *Playing By The Ballot Rules*, ORANGE CNTY. LAW., June 2018, at 1.

37. Marisa Gerber, *Judicial Races Keep Courts Busy*, L.A. TIMES, June 1, 2016, at A1.

38. *Id.*

39. *Id.*

MEANS A PERSON WHO WAS HONORABLY DISCHARGED FROM THE ARMED FORCES OF THE UNITED STATES.⁴⁰

However, the bill failed to advance out of committee.⁴¹

II. DEFINITIONS

Regulations promulgated by California’s Secretary of State include definitions of various terms used in subsection (a). “Profession” is defined as follows:

[A] field of employment requiring special education or skill and requiring knowledge of a particular discipline. The labor and skill involved in a profession is predominantly mental or intellectual, rather than physical or manual. Recognized professions generally include, but are not limited to, law, medicine, education, engineering, accountancy, and journalism. Examples of an acceptable designation of a “profession,” as defined in Elections Code § 13107, subdivision (a)(3), include, but are not limited to, “attorney,” “physician,” “accountant,” “architect,” and “teacher.”⁴²

“Vocation” means:

[A] trade, a religious calling, or the work upon which a person, in most but not all cases, relies for his or her livelihood and spends a major portion of his or her time. As defined, vocations may include, but are not limited to, religious ministry, child rearing, homemaking, elderly and dependent care, and engaging in trades such as carpentry, cabinetmaking, plumbing, and the like. Examples of an acceptable designation of a “vocation,” as defined in Elections Code § 13107, subdivision (a)(3), include, but are not limited to, “minister,” “priest,” “mother,” “father,” “homemaker,” “dependent care provider,” “carpenter,” “plumber,” “electrician,” and “cabinetmaker.”⁴³

“Occupation” means:

[T]he employment in which one regularly engages or follows as the means of making a livelihood. Examples of an acceptable designation of an “occupation,” as defined in Elections Code § 13107, subdivision (a)(3), include, but are not limited to, “rancher,” “restaurateur,” “retail salesperson,” “manual laborer,” “construction

40. A.B. 3304, 2019–2020 Leg., Reg. Sess. (Cal. 2019).

41. *Id.*

42. CAL. CODE REGS. tit. 2, § 20714(a)(1) (2019).

43. *Id.* § 20714(a)(2).

worker,” “computer manufacturing executive,” “military pilot,” “secretary,” and “police officer.”⁴⁴

The regulation also defines “principal”:

“Principal” . . . means a substantial involvement of time and effort such that the activity is one of the primary, main or leading professional, vocational or occupational endeavors of the candidate. The term “principal” precludes any activity which does not entail a significant involvement on the part of the candidate. Involvement which is only nominal, pro forma, or titular in character does not meet the requirements of the statute.⁴⁵

All told, the regulation provides over two dozen examples of acceptable designations, ranging from the very general—manual laborer—to the very specific—District Attorney, Los Angeles County.⁴⁶

The regulation also states that a candidate “may designate multiple principal professions, vocations or occupations.”⁴⁷ However, the three-word limit still applies.⁴⁸ When a candidate lists more than one profession, vocation, or occupation, the Secretary of State must consider each one separately, and each “must independently qualify as a ‘principal’ profession, vocation, or occupation.”⁴⁹ The regulation further states that “multiple professions, vocations or occupations . . . shall be separated by a slash,” and gives as an example “Legislator/Rancher/Physician.”⁵⁰

After the legislature added Elections Code Section 13107.5 in 2002, the Secretary of State’s office enacted the following definition of “community volunteer”:

[A] person who engages in an activity or performs a service for or on behalf of, without profiting monetarily, one or more of the following: (1) [a] charitable, educational, or religious organization as defined by the United States Internal Revenue Code section 501(c)(3); (2) [a] governmental agency; or (3) [a]n educational institution.⁵¹

44. *Id.* § 20714(a)(3).

45. *Id.* § 20714(b).

46. The regulation explains that “geographical names” are “considered to be one word.” *Id.* § 20714(f)(3). Therefore, the designation “District Attorney, Los Angeles County” does not violate the statute’s three-word limit.

47. *Id.* § 20714(e).

48. *Id.* § 20714(e)(1).

49. *Id.* § 20714(e)(2).

50. *Id.* § 20714(e)(3).

51. CAL. CODE REGS. tit. 2, § 20714.5(a) (2019).

The regulation further states that “[t]he activity or service must constitute substantial involvement of the candidate’s time and effort such that the activity or service is the sole, primary, main or leading professional, vocational or occupational endeavor of the candidate”⁵²

III. CASES AND CONTROVERSIES

As Chad Morgan, the elections lawyer mentioned in this Article’s Introduction, recently explained: “[p]rior to every election, ballots and sample ballots are settled in court as candidates and their supporters battle over ballot designations and candidate statements.”⁵³ California’s Elections Code gives lawsuits alleging an error or omission in the placing of a name on or the printing of a ballot priority over all other civil matters.⁵⁴ Unfortunately, “[t]here are few appellate cases to clarify the Elections Code requirements mostly because there simply isn’t time. A traditional appeal would be resolved long after the election.”⁵⁵ Morgan explains that litigation over ballot designations “tends to focus on whether candidates are creatively misusing the three words they are allotted to describe their principal professions, vocations, or occupations.”⁵⁶

A. “Professions, Vocations, or Occupations”

In 1994, Dean Andal brought a mandamus proceeding against the Acting Secretary of State, Tony Miller.⁵⁷ Andal was running for a seat on the California State Board of Equalization, and one of his opponents was State Senator Robert Presley.⁵⁸ Andal requested that the Court of Appeal order Miller to refuse to accept Presley’s ballot designation of “Senator/Peace Officer” under Elections Code Section 10211, a predecessor to Section 13107(a)(3).⁵⁹ Andal argued that “‘peace officer’ is a status rather than a profession, vocation, or occupation,” and as such could not be listed *by anyone*, including Sen. Presley, as a ballot designation.⁶⁰

The California Court of Appeal rejected Andal’s argument. The court noted that “[t]he central characteristic of a profession, vocation or occupation . . . is its attribute as a ‘means of livelihood or production of income.’”⁶¹ In contrast, “[t]he hallmark

52. *Id.* § 20714.5(b).

53. Morgan, *supra* note 36, at 1.

54. CAL. ELEC. CODE § 13314(a)(3) (West 2017).

55. Morgan, *supra* note 36, at 3.

56. *Id.* at 4.

57. *Andal v. Miller*, 34 Cal. Rptr. 2d 88, 89 (Ct. App. 1994).

58. *Id.*

59. *Id.* Like the current Section 13107(a)(3), the version of Elections Code Section 10211 in effect in 1994 stated that the following “may appear at the option of the candidate”: up to three words “designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents.” *Id.* at 91 (quoting CAL. ELEC. CODE § 10211(a)(3) (West 1994)).

60. *Id.* at 90.

61. *Id.* at 92.

of a status under this statutory scheme . . . is that it is not an income-producing job, even in principle.”⁶² The court cited “taxpayer,” “patriot,” “renter,” and “mountain climber” as examples of impermissible ballot designations because they reflect a candidate’s status, hobby, or avocation as opposed to a profession, vocation, or occupation.⁶³

Turning to the specific designation of “peace officer,” the court found that such a designation could refer to persons working as “deputy sheriffs, city police officers, [or] members of the California Highway Patrol.”⁶⁴ Persons in those jobs generally do them “as their livelihood and hence would qualify under the statute.”⁶⁵

The court likewise rejected Andal’s argument that “peace officer” is “too broad a category” because it could encompass “everyone from the Attorney General to the local litter control officer.”⁶⁶ To the contrary, candidates are free to choose very broad descriptions of their occupations, very narrow ones, or something in between, so long as the designation “does not mislead the voters.”⁶⁷ As an example, the court noted that the president of IBM could select the designation “businessman,” even though that designation could just as easily apply to a “door-to-door magazine salesman.”⁶⁸ Thus, the court concluded, there is nothing inherently wrong with the ballot designation “peace officer.”⁶⁹

While “peace officer” can be an acceptable ballot designation, “peace activist” cannot. In *Rubin v. City of Santa Monica*, the Ninth Circuit affirmed the Central District of California’s finding that “the term ‘peace activist’ is not a profession, occupation, or vocation” under Section 13107(a)(3) and the associated regulations.⁷⁰ The plaintiff-appellant, Jerry Rubin, was a candidate for Santa Monica City Council whose preferred ballot designation of “peace activist” was rejected by the city clerk.⁷¹ The city clerk informed Rubin that the phrase “peace activist” constituted an impermissible status designation under California’s election regulations.⁷² Rubin sued the city clerk, among other government officials and entities, in federal court, alleging statutory and constitutional violations.⁷³

The Ninth Circuit began its analysis with California’s ballot designation regulations, one of which distinguishes certain “types of activities . . . from professions, vocations, and occupations” and states that those activities “are not acceptable as ballot designations.”⁷⁴ The regulation lists “statuses” as one type of “activity” that is not a profession, vocation, or occupation, and further states:

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 93.

70. 308 F.3d 1008, 1012 (9th Cir. 2002).

71. *Id.* at 1011–12.

72. *Id.*

73. *Id.*

74. *Id.* (quoting CAL. CODE REGS. tit. 2, § 20716(b)(3) (2019)).

“[e]xamples of a status include, but are not limited to, philanthropist, *activist*, patriot, taxpayer, concerned citizen, husband, wife, and the like.”⁷⁵ Thus, the Ninth Circuit had little difficulty concluding that Rubin’s ballot designation could not include the word “activist”:

The word “activist” is specifically listed [in the regulation] as an example of an impermissible status designation. Thus, even if a person were to spend the substantial majority of his or her time promoting peace, the designation “peace activist” would still be improper because it is “generic,” and “generally fails to identify with any particular specificity the manner” in which the candidate spends his time.⁷⁶

The Ninth Circuit further noted that the word “activist” “does not designate a well-defined set of activities or how such activities relate specifically to making a livelihood.”⁷⁷ Moreover, adding the word “peace” in front of “activist” did not alleviate the court’s concerns, “although it [did] make the designation superficially somewhat more specific.”⁷⁸ To the contrary, adding the word “peace” connected Rubin’s name “to an idea which is popular but which [could] be used to describe a wide range of ideologies.”⁷⁹

Sometimes determining what does and does not count as a profession, vocation, or occupation devolves into splitting hairs. In 1994, two candidates for City Council in Oceanside, Mary Azevedo and Penny Keefer, requested the ballot designation of “housewife.”⁸⁰ They were told that they could not use that designation but could use “homemaker” instead, based on the Secretary of State’s determination that “housewife” is a status, while “homemaker” is an occupation.⁸¹

B. “Principal”

In addition to finding that “peace officer” can be a permissible designation of a candidate’s profession, vocation, or occupation, *Andal v. Miller* also addresses whether “peace officer” was in fact one of Senator Presley’s “principal” professions, vocations, or occupations.⁸² The court found that the use of the word “principal” in the statute “connotes a substantial involvement of time and effort such that the activity is one of the primary, main or leading professional, vocational or

75. CAL. CODE REGS. tit. 2, § 20716(b)(3) (2019) (emphasis added).

76. *Rubin*, 308 F.3d at 1018 (quoting CAL. CODE REGS. tit. 2, § 20716(b)(3) (2019)).

77. *Id.*

78. *Id.*

79. *Id.* Because plaintiff Rubin’s rejected ballot designation included a word explicitly prohibited by the relevant regulations, his statutory claim was essentially a non-starter. Therefore, most of the court’s opinion focuses on Rubin’s constitutional challenges to Section 13107(a)(3) and the associated regulations. *See id.* at 1013–19. These challenges, which the court ultimately rejected at *id.* 1019 are beyond the scope of this Article.

80. Lola Sherman, *In Oceanside, Three Little Words Can Become Big Issue*, SAN DIEGO UNION-TRIB., Aug. 31, 1996, at B1.

81. *Id.*

82. 34 Cal. Rptr. 2d 88, 93 (Ct. App. 1994).

occupational endeavors of the candidate.”⁸³ The “principal” requirement thus excludes “any activity which does not entail a significant involvement on the part of the candidate,” and “involvement which is only nominal, pro forma, or titular in character.”⁸⁴

Presley’s designation of himself as a “peace officer” was based on his appointment in July 1994 as a reserve deputy sheriff with the Sacramento County Sheriff’s Department.⁸⁵ However, evidence showed that at the time that Presley filed his ballot designation, he simply had not done anything in his capacity as a reserve deputy sheriff.⁸⁶ Furthermore, “the nature of his position as a reserve deputy sheriff is such that, unlike full-time or part-time deputy sheriffs, Presley will never be compensated for his service.”⁸⁷ Therefore, the court concluded, Presley could not include the words “peace officer” in his designation.⁸⁸

In March 2012, a Superior Court judge in Sacramento ruled that Jose Hernandez, a candidate for the U.S. House of Representatives, could use the designation “astronaut” in the upcoming Democratic primary.⁸⁹ Hernandez had been an astronaut at NASA’s Johnson Space Center in Houston, but he had left NASA in January 2011 to work at a technology company.⁹⁰ The court’s decision was consistent with a literal reading of the statute, which allows the candidate to list “the principal professions, vocations, or occupations of the candidate *during the calendar year immediately preceding the filing of nomination documents.*”⁹¹ Assuming that Hernandez filed his nomination documents in 2012, then he did indeed work for NASA for a very small part of 2011, the immediately preceding calendar year. Moreover, Hernandez’s complete designation, “astronaut/scientist/engineer,” prevented voters from concluding incorrectly that astronaut was Hernandez’s only recent occupation.

C. “No more than three words”

In 1998, Dave Stirling was the Republican nominee for California Attorney General.⁹² Stirling requested the ballot designation “Chief Deputy Attorney General.”⁹³ He had been appointed to that position by the Attorney General and had served as Chief Deputy Attorney General since 1991.⁹⁴ The Chief Deputy Attorney General is the second highest official in California’s Department of Justice.⁹⁵ In that

83. *Id.*

84. *Id.*

85. *Id.* at 89.

86. *Id.* at 93.

87. *Id.* at 94.

88. *Id.*

89. Joe Garofoli, *Judge: Jose Hernandez Can Be ‘Astronaut’ on Ballot*, S.F. GATE (Mar. 30, 2012, 4:00 AM), <http://www.sfgate.com/politics/joegarofoli/article/Judge-Jose-Hernandez-canbe-astronaut-on-ballot-3446118.php>.

90. *Id.*

91. CAL. ELEC. CODE § 13107(a)(3) (West 2019) (emphasis added).

92. *Stirling v. Jones*, 77 Cal. Rptr. 2d 791, 795 (Ct. App. 1998).

93. *Id.*

94. *Id.* at 796.

95. *Id.*

capacity, Stirling managed the Department, including its approximately 900 assistant and deputy attorneys general.⁹⁶

Not surprisingly, the Secretary of State rejected Stirling's proposed designation on the ground that it violated the requirement in Elections Code Section 13107(a)(3) that a ballot designation be "[n]o more than three words."⁹⁷ Stirling petitioned for a writ of mandate to direct the Secretary of State to accept his proposed ballot designation, and the Superior Court of Sacramento County denied the petition.⁹⁸ Stirling appealed,⁹⁹ arguing that the words "Attorney General" embody a single concept and therefore could be considered one word,¹⁰⁰ and that the three-word limit violates his constitutional rights to equal protection and freedom of speech.¹⁰¹ In addition, the Court of Appeal decided to consider whether a hyphenated spelling of Stirling's requested designation—Chief Deputy Attorney-General—complied with the three-word limit.¹⁰²

The majority in *Stirling* rejected Stirling's constitutional challenges to the three-word limit¹⁰³ and his argument that "Attorney General" should be considered one word because it expresses a single concept.¹⁰⁴ However, the majority went on to find that the hyphenated spelling of Stirling's requested designation, "Chief Deputy Attorney-General," complied with the three-word limit.¹⁰⁵ Thus, Stirling ended up with a ballot designation that was nearly identical to what he originally requested, with the only difference being a hyphen between "Attorney" and "General."

To arrive at the conclusion that Stirling could appear on the ballot as "Chief Deputy Attorney-General," the majority in *Stirling v. Jones* engaged in much analytical gymnastics, and not only because Stirling had never formally requested that exact designation. The court began its analysis of the hyphenated designation with Section 20714(f)(2) of the California Code of Regulations, which specifically addresses hyphens:

A hyphen may be used if, and only if, the use of a hyphen is called for in the spelling of a word as it appears in a standard reference dictionary of the English language, which was published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted.¹⁰⁶

The court then noted that the *Oxford English Dictionary* "contains a subordinate entry to the main word 'Attorney' for the word 'Attorney-general.'"¹⁰⁷ Citing the

96. *Id.*

97. *Id.* at 795.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* The Court of Appeal's opinion is not clear as to who exactly came up with the idea of hyphenating "Attorney General" in Stirling's ballot designation. The court describes the hyphenated spelling as one of two "additional questions" that "have arisen" "[i]n the course of the appeal." *Id.*

103. *Id.* at 797–802.

104. *Id.* at 795.

105. *Id.*

106. CAL. CODE REGS. tit. 2, § 20714(f)(2) (2019).

107. *Stirling v. Jones*, 77 Cal. Rptr. 2d 791, 805 (Ct. App. 1998).

Chicago Manual of Style, the court called it an “uncontroverted rule of grammar that a hyphenated combination of separate words is one word.”¹⁰⁸ The court further concluded that the *Oxford English Dictionary* qualified as “a standard reference dictionary of the English language” and that the hyphenated spelling of “attorney-general” was “called for” in that dictionary even though that dictionary also includes the unhyphenated spelling.¹⁰⁹ Finally, the court found that Stirling had substantially complied with the filing requirements even though he “failed to designate the term ‘Attorney General’ . . . in its legally proper one-word form, ‘Attorney-General.’”¹¹⁰

Associate Justice Cole Blease dissented.¹¹¹ He began by noting that “Stirling submitted but one ballot designation to the Secretary of State, ‘Chief Deputy Attorney General,’” which was rejected “for the obvious reason that four words are not three words.”¹¹² Associate Justice Blease criticized the majority for “directing the placement of a designation of its own making on the general election ballot.”¹¹³ He noted that the purpose of a ballot designation is “to give the best description possible in three words of the candidate’s occupation.”¹¹⁴ He continued: “Candidates have a myriad of other, proper opportunities to inform the electorate of their respective qualifications.”¹¹⁵

Stirling v. Jones illustrates the controversy that inevitably arises when candidates are permitted to include an occupation in their ballot designations. As the *Stirling* majority noted, “most employment may be described succinctly” and “the more words available, the greater the temptation to stretch the ballot designation beyond its intended purpose of identifying the candidate into the realm of describing comparative experience, virtue, or qualifications.”¹¹⁶ In theory, the three-word limit should be one of the more straightforward requirements in the ballot designation statute. And yet, *Stirling v. Jones* shows that even that seemingly straightforward provision can lead to highly complex litigation, with several pages of the court’s opinion devoted to a single hyphen.¹¹⁷

Stirling is a challenging case to analyze because, on the one hand, the petitioner merely wanted his actual job title to appear next to his name on the ballot. On the other hand, the dissenting justice is surely correct that the designation “Chief Deputy Attorney General” contains one more word than the statute allows, and the placement of a highly unusual hyphen between “Attorney” and “General” feels like an end run around the three-word limit—especially when the candidate did not formally request the hyphenated designation.

Moreover, it is certainly debatable whether the designation “Chief Deputy Attorney General,” with or without the hyphen, would have been better for the

108. *Id.* at 806.

109. *Id.* at 805–06.

110. *Id.* at 816.

111. *Id.* at 816 (Blease, A.J., dissenting).

112. *Id.* at 817 (Blease, A.J., dissenting).

113. *Id.* (Blease, A.J., dissenting).

114. *Id.* at 818 (Blease, A.J., dissenting).

115. *Id.*

116. *Id.* at 800.

117. *Id.* at 806–10.

candidate than simply “Deputy Attorney General.” Stirling managed to win the Republican primary with the designation “Deputy Attorney General.”¹¹⁸ With respect to the general election, part of Stirling’s argument was that Chief Deputy Attorney General is a very high office—number two in a department with nearly one thousand lawyers—whereas Deputy Attorney General and Assistant Attorney General are lower offices held by hundreds of lawyers.¹¹⁹ It is unlikely, however, that more than a small handful of California voters actually understood or currently understand the difference between a Chief Deputy Attorney General and a Deputy Attorney General.

The three-word limit can be unfair to candidates in some cases. In January 2011, the *Los Angeles Daily News* criticized city council candidate Mitch Englander’s ballot designation of “Policeman/Councilmember Deputy.”¹²⁰ The paper pointed out that Englander was a reserve officer working around sixteen hours a month, whereas he worked full-time as chief of staff to Councilmember Greig Smith, a job that paid him \$150,000 per year.¹²¹ Putting aside the question of whether it was appropriate for Englander to call himself a “policeman,” it is not clear what three-word designation Englander could have used to describe his “day job.” His title was “chief of staff,” but that designation would use up all three words while leaving voters to wonder what industry Englander worked in.¹²² If his opponent were, for example, a “fourth grade teacher,” that opponent would arguably have an advantage over Englander by having a job that can easily be described in three words. Nevertheless, the line has to be drawn somewhere, and giving candidates more than three words would just lead to more mischief, confusion, and litigation.

D. “Current”

As noted in the Introduction,¹²³ candidates are limited to listing their “current” professions, vocations, occupations, or ones that the candidate held “during the calendar year immediately preceding the filing of nomination documents.”¹²⁴ This requirement is fairly straightforward, but it still leads to occasional litigation. In 2018, Democratic Congressional candidate Gil Cisneros successfully sued fellow Democratic candidate Sam Jammal to force Jammal to change his designation from “civil rights attorney” to “clean energy businessman.”¹²⁵ Jammal had practiced

118. *Id.* at 796.

119. *Id.*

120. L.A. Daily News, *Daily News Editorial: Just because law allows artfulness on the ballot, that doesn’t mean it’s right*, L.A. DAILY NEWS (Aug. 28, 2017, 10:02 AM), <https://www.dailynews.com/2011/01/18/daily-news-editorial-just-because-the-law-allows-artfulness-on-the-ballot-that-doesnt-mean-its-right/>.

121. *Id.*

122. *Id.*

123. See *supra* discussion at notes 4–10.

124. CAL. ELEC. CODE § 13107(a)(3) (West 2019).

125. Ben Christopher, *How California Candidates Use Three Words to Sway Voters*, L.A. DAILY NEWS (May 7, 2018 5:21 PM), <https://www.dailynews.com/2018/05/07/how-california-candidates-use-three-words-to-sway-voters/>.

voting-rights law in the early 2000s, but more recently, had worked as an attorney for a solar energy company.¹²⁶

Another 2018 lawsuit involved Jessica Morse, a Congressional candidate who sought to run as a “National Security Strategist.”¹²⁷ One of Morse’s Democratic primary opponents sued because Morse’s work with the United States Agency for International Development and the State Department had ended in 2015.¹²⁸ The judge ruled that Morse could not appear on the ballot as a “National Security Strategist” and also rejected Morse’s two alternative designations.¹²⁹ Morse ultimately chose to appear on the ballot without an occupational designation.¹³⁰

If a candidate wishes to highlight a job they held more than a year ago, they may be able to do so through use of the modifier “retired.” As stated in the Introduction,¹³¹ the ballot designation statute generally prohibits words and prefixes that refer to “a prior status,” but the statute makes an exception for the word “retired.”¹³² Under the regulations associated with the ballot designation statute, “use of the word ‘retired’ in a ballot designation is generally limited for use by individuals who have permanently given up their chosen principal profession, vocation or occupation.”¹³³

The regulations direct the Secretary of State to consider five factors in determining whether a candidate’s use of the term “retired” is proper:

- (A) Prior to retiring from his or her principal profession, vocation or occupation, the candidate worked in such profession, vocation or occupation for more than 5 years;
- (B) The candidate is collecting, or eligible to collect, retirement benefits or other type of vested pension;
- (C) The candidate has reached at least the age of 55 years;
- (D) The candidate voluntarily left his or her last professional, vocational or occupational position; and,
- (E) The candidate’s retirement benefits are providing him or her with a principal source of income.¹³⁴

The regulations go on to state that if a candidate is seeking a ballot designation indicating that he or she is a retired public official, “the candidate must have previously voluntarily retired from public office, not have been involuntarily removed from office, not have been recalled by voters, and not have surrendered the office to seek another office or failed to win reelection to the office.”¹³⁵ Finally, a

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. See *supra* discussion at notes 8–10.

132. Cal. Elec. Code § 13107(b)(4) (West 2019).

133. CAL. CODE REGS. tit. 2, § 20716(h)(1) (2019).

134. *Id.* § 20716(h)(2).

135. *Id.* § 20716(h)(3).

candidate “may not use the word ‘retired’ in his or her ballot designation if that candidate possesses another more recent, intervening principal profession, vocation, or occupation.”¹³⁶

In the 2021 gubernatorial recall election, candidate Kevin Faulconer, who was Mayor of San Diego from 2014 to 2020, chose the ballot designation “retired mayor.”¹³⁷ After the California Secretary of State rejected this designation, Faulconer sued her.¹³⁸ Faulconer argued that when he became mayor in 2014, he knew that term limits would “force his early retirement” from the job.¹³⁹ The Secretary of State argued that because Faulconer left office due to term limits, he did not voluntarily retire from the position.¹⁴⁰ The Superior Court sided with the Secretary of State, and Faulconer changed his designation to “businessman/educator.”¹⁴¹

Faulconer had several things working against him in his quest to run for Governor as a “retired mayor.” First, his argument that term limits *forced* him to retire was at odds with the language of the applicable regulation, which states that a retired public official “must have previously *voluntarily* retired from public office.”¹⁴² Second, Faulconer was just fifty-three years old when he left office in December of 2020.¹⁴³ Third, Faulconer had not spent his time since leaving office relaxing on a beach. In addition to preparing his gubernatorial campaign, he worked as a consultant to Collaborate for California, which, according to its founder, provides counsel to persons and organizations interacting with government.¹⁴⁴ He also worked as a visiting professor at Pepperdine University, teaching a course on “innovative local leadership.”¹⁴⁵

Interestingly, since Faulconer left the Mayor’s Office in December 2020 and ran for governor in 2021, he could have tried the ballot designation “Mayor of San Diego.” After all, the ballot designation statute permits a candidate to list positions held during the calendar year immediately preceding the filing of nomination documents.¹⁴⁶ It does not appear that Faulconer considered that designation.

Faulconer was not the first candidate to attempt to use the modifier “retired” to highlight a previously-held position. In 2018, Rocky Chavez, an Assemblyman and

136. *Id.* § 20716(h)(4).

137. SOS ANNOUNCES OUTCOME OF CHALLENGES TO BALLOT DESIGNATIONS AND INCLUSION OF CANDIDATES ON RECALL BALLOT, DR. SHIRLEY N. WEBER: CAL. SEC’Y OF STATE (July 21, 2021), <https://www.sos.ca.gov/administration/news-releases-and-advisories/2021-news-releases-and-advisories/sw21040>.

138. *Judge Rules Against Faulconer In Ballot Designation Dispute*, TIMES OF SAN DIEGO (July 21, 2021), <https://timesofsandiego.com/politics/2021/07/21/judge-rules-against-faulconer-in-ballot-designation-dispute/>.

139. *Id.*

140. *Id.*

141. WEBER, *supra* note 137.

142. CAL. CODE REGS. tit. 2, § 20716(h)(3) (2019).

143. *Kevin Faulconer*, WIKIPEDIA, https://en.wikipedia.org/wiki/Kevin_Faulconer (last visited Dec. 23, 2021).

144. Andrew Keatts, *Here’s What the Business In Faulconer’s ‘Businessman’ Ballot Title Refers To*, VOICE OF SAN DIEGO (July 26, 2021), <https://www.voiceofsandiego.org/topics/politics/heres-what-the-business-in-faulconers-businessman-ballot-title-refers-to/>.

145. *Id.*

146. CAL. ELEC. CODE § 13107(a)(3) (West 2019).

candidate for the U.S. House of Representatives, was ordered to change his designation from “Retired Marine Colonel” to “Assemblymember” after a Marine veteran living in the district filed a complaint.¹⁴⁷ Chavez had retired from the Marine Corps in 2001.¹⁴⁸

Similarly, in *Andal v. Miller*, discussed in Section III.A, State Senator Robert Presley requested permission to amend his ballot designation to “Senator/Retired Undersheriff” in the event that his chosen designation of “Senator/Peace Officer” was rejected (which it was).¹⁴⁹ Prior to his 1974 election to the California legislature, Presley was a deputy sheriff in Riverside County for twenty-four years.¹⁵⁰ Despite the accuracy of Presley’s alternate designation, the court still rejected it. The court noted that under guidelines issued by California’s Secretary of State, “retired” as used in the statute means “having given up one’s work, business, career, etc., especially because of advanced age.”¹⁵¹ The guidelines further stated that in order to claim “retired” status, the candidate must not have had another more recent occupation.¹⁵² Presley, the court found, had a more recent occupation as a state senator.¹⁵³

The bottom line seems to be that it is very difficult to highlight a previously held position through use of the modifier “retired.” For that to work, the candidate would need to show that (1) he or she truly retired from the position, as opposed to leaving it for some other reason; and (2) since leaving the position, he or she has remained retired, as opposed to moving on to a different profession, vocation, or occupation. The result is somewhat unfair to candidates like Faulconer and Antonio Villaraigosa, who ran for governor in 2018 after serving as Mayor of Los Angeles from 2005 to 2013,¹⁵⁴ as it arguably prevents them from highlighting in their designations their most relevant experience. Such is life under the ballot designation statute, which allows candidates to list their current or recent jobs, not their most relevant experience or “claim to fame.”

E. “It would mislead the voter”

As noted in the Introduction,¹⁵⁵ subsection (e)(1) of Elections Code Section 13107 authorizes elections officials to reject a ballot designation if it “would mislead the voter.”¹⁵⁶ In *Luke v. Superior Court*, the real party in interest, Jewell Jones, sought to use the occupational designation “Judge, Los Angeles County (Acting)” in

147. Ben Christopher, *How California Candidates Use Three Words to Sway Voters*, L.A. DAILY NEWS (May 7, 2018, 5:19 PM), <https://www.dailynews.com/2018/05/07/how-california-candidates-use-three-words-to-sway-voters/>.

148. *Id.*

149. 34 Cal. Rptr.2d 88, 94 (Cal. Ct. App. 1994).

150. *Id.* at 91.

151. *Id.* at 94.

152. *Id.*

153. *Id.*

154. Antonio Villaraigosa, ENCYCLOPEDIA BRITANNICA (Jan. 19, 2021), <https://www.britannica.com/biography/Antonio-Villaraigosa>.

155. See discussion at *supra* notes 4–5.

156. CAL. ELEC. CODE § 13107(e)(1) (West 2019).

her bid for an open seat on the Los Angeles Superior Court.¹⁵⁷ At the time, Jones was employed as a Los Angeles Superior Court commissioner.¹⁵⁸ The trial court allowed Jones to use her proposed designation, and the incumbent against whom Jones was running, Sherrill D. Luke, appealed.¹⁵⁹

The Court of Appeal reversed, finding that Jones's proposed designation was misleading.¹⁶⁰ That court noted that, while as a court commissioner, Jones was authorized to act as a judge by stipulation, she was not actually an "acting judge."¹⁶¹ According to the court, Brown's use of the words "acting" and "judge" created an implication that she was the "acting" occupant of the office she was running for and that the election was a mere formality.¹⁶²

The trial court in *Luke* had reached its conclusion "after inquiring at length about the particular duties performed by Commissioner Jones."¹⁶³ The trial court noted that some commissioners primarily perform ministerial tasks, "while others serve as judges pro tempore virtually all of the time."¹⁶⁴ Because Jones devoted most of her time to judicial functions, the trial court found that it would be unfair to prohibit Jones from informing voters that she performed the work of a judge in her current position.¹⁶⁵

The Court of Appeal rejected the trial court's "subjective analysis" as "unworkable."¹⁶⁶ The appellate court favored objective standards over a subjective analysis that would require "judicial intervention to determine, on a case-by-case basis, whether the commissioner performed as a judge pro tem by stipulation enough of the time to warrant the designation 'acting judge,' or some similarly creative title."¹⁶⁷ The Court of Appeal thus adopted the objective rule that "neither a court commissioner, nor any individual who is not a 'judge,' as that term is defined in the Constitution and statutes of this state, may utilize a ballot designation containing the word 'judge' or a derivative thereof."¹⁶⁸

A few years later in *Andrews v. Valdez*, the Court of Appeal reached the opposite conclusion regarding the designation "administrative law judge."¹⁶⁹ There, an elections official ordered a judicial candidate who designated her principal occupation as "administrative law judge" to create an alternate principal occupation that did not include the word "judge."¹⁷⁰ The Court of Appeal disagreed and ruled that the candidate could use the designation "administrative law judge."¹⁷¹ The

157. 245 Cal. Rptr. 594, 595 (Cal. Ct. App. 1988).

158. *Id.*

159. *Id.* at 595–96.

160. *Id.* at 596.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* at 595.

166. *Id.* at 596.

167. *Id.*

168. *Id.*

169. 46 Cal. Rptr. 2d 744 (Cal. Ct. App. 1995).

170. *Id.* at 745.

171. *Id.* at 744.

Andrews court noted that, unlike the candidate in *Luke*, “Andrews has not invented a job description nowhere authorized by statute.”¹⁷² To the contrary, “administrative law judge” was Andrews’s title.¹⁷³ California statutes provide for the appointment of administrative law judges, and indeed, Andrews was duly appointed to that position under the authority of the California Unemployment Insurance Appeals Board.¹⁷⁴ The court further noted that, unlike in *Luke*, there was no risk of misleading voters because the designation “administrative law judge” accurately described Andrews’s current position.¹⁷⁵

In 2000, Douglas Carnahan, a South Bay Municipal Court Commissioner and part-time lecturer at El Camino Community College, sought to run for a vacant judgeship under the designation “Court Commissioner/Professor.”¹⁷⁶ Carnahan’s opponent in the race, Katherine Mader, filed a lawsuit challenging the “Professor” part of Carnahan’s designation.¹⁷⁷ Mader argued that Carnahan’s use of “Professor” was misleading because his title at the community college was “lecturer,” and the school only gave the title of “professor” to tenured faculty, which Carnahan was not.¹⁷⁸ Nevertheless, the court ruled that Carnahan’s chosen designation was not misleading.¹⁷⁹ The judge noted that because in common usage the distinction between “lecturer” and “professor” is not entirely clear, Carnahan’s chosen designation was “not likely to mislead voters or suggest some eminent status in the teaching profession.”¹⁸⁰

As noted in Section I, various designations including the word “prosecutor” have proven to be popular, especially among candidates for judgeships.¹⁸¹ Not to be outdone, attorney Michael Steven Duberchin chose the designation “prosecuting civil attorney” in his 1998 race for the Antelope Municipal Court, even though he worked as a civil attorney and not a prosecutor.¹⁸² Duberchin’s designation certainly could be misleading to the average non-attorney voter. Such voters may not be familiar with the distinction between civil and criminal law and might assume that the candidate works as a criminal prosecutor. On the other hand, Duberchin could argue that his designation is accurate in the sense that he “prosecutes,” under the dictionary definition of the word, civil cases.¹⁸³ In the end, it appears that nobody bothered to

172. *Id.*

173. *Id.* at 746.

174. *Id.* at 744.

175. *Id.* at 745.

176. Emmett Berg, *Judge Rules Judgeship Candidate Is a Professor*, CITY NEWS SERV. (Jan. 12, 2000).

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. See discussion at *supra* notes 32–31.

182. Roger M. Grace, *Klausner Wins In Court, Bach Loses—Or Is It the Other Way Around*, METRO. NEWS ENTER., Mar. 16, 1998, at 6.

183. *Prosecute*, MERRIAM WEBSTER, www.merriam-webster.com/dictionary/prosecute (last visited Dec. 23, 2021) (defining “prosecute” as “to institute legal proceedings with reference to,” among other definitions). This interpretation would make the most sense if Duberchin represented plaintiffs in civil litigation. If he represented only defendants or had a transactional practice, it would be difficult to see how he is “prosecuting” anything.

challenge Duberchin's designation. Nevertheless, his designation illustrates that "misleading" is itself a subjective standard.

The case of John Eastman, a candidate for attorney general in 2010, provides an example of a designation that is technically accurate but highly misleading.¹⁸⁴ Eastman had been dean of the Chapman University School of Law for thirty months prior to resigning to run for attorney general.¹⁸⁵ Rather than run as a "law school dean" or some similar designation, Eastman chose the designation "assistant attorney general."¹⁸⁶ The basis for this designation was Eastman's appointment as "special assistant attorney general" of South Dakota in a case challenging the state's policies on kosher meals for Jewish inmates.¹⁸⁷ The California Secretary of State rejected Eastman's designation, stating that it would lead voters to believe, incorrectly, that he held a position of authority within the California Department of Justice—the very department he was running to lead.¹⁸⁸

Similarly misleading was Bruce Thompson's chosen designation of "businessman/entrepreneur" in his 2006 race against incumbent Bill Horn for San Diego County Supervisor.¹⁸⁹ At the time, Thompson was the Western Region Administrator of the United States Small Business Administration, a position he had occupied for five years.¹⁹⁰ Horn sued Thompson, arguing that Thompson's designation was misleading.¹⁹¹ The court agreed and ordered Thompson to change his designation to "regional business administrator."¹⁹² The court was probably right to reject Thompson's designation: anyone reading it would reasonably assume that Thompson worked in the private sector. The court-ordered designation, which Thompson said he was happy with,¹⁹³ was much more accurate than Thompson's initial choice. However, it is not clear what the average voter is supposed to make of the phrase "regional business administrator." He or she might focus on the word "business" and reasonably conclude that Thompson was some kind of businessperson. In the end, Thompson is a good example of a candidate whose job is difficult to describe clearly and accurately in just three words.

IV. THE BEST JOBS

It is clear from the cases and controversies discussed in the previous section that many candidates for office in California, in their ballot designations, are not simply trying to accurately describe their occupations in three words or less. Instead, many candidates are attempting to use their ballot designations to appeal to voters. This

184. *I'm Not a Politician; I'm Really a Screenwriter*, VENTURA CNTY. STAR, (Apr. 7, 2010).

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. Leslie Wolf Branscomb, *Horn Foe To Alter Job Title On Ballot; Thompson Told To Restate Occupation*, SAN DIEGO UNION-TRIB., Mar. 31, 2006, at NI-1.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

raises several questions: Why would candidates do this? Does information about a candidate's occupation really influence voters? If so, what are the "best" occupations for a candidate for public office in California to have?

For several decades now, the polling firm Gallup has asked Americans to rate the honesty and ethical standards of people in various fields.¹⁹⁴ In the most recent survey, nurses had the highest percentage of "high" or "very high" responses, followed by medical doctors, grade school teachers, pharmacists, and police officers.¹⁹⁵ Members of Congress and car salespeople tied for the lowest rating, with just one percent of respondents characterizing their honesty and ethical standards as "very high" and another seven percent as "high."¹⁹⁶ Other jobs with low ratings for honesty and ethical standards included advertising practitioners, business executives, lawyers, journalists, and bankers.¹⁹⁷ In the middle, with between thirty-six and forty-three percent of respondents choosing "high" or "very high" were judges, clergy, nursing home operators, and bankers.¹⁹⁸

Nurses have taken the top spot in Gallup's survey in each of the past eighteen years.¹⁹⁹ Medical professionals in general rate highly in Gallup's survey, with at least sixty percent of respondents saying doctors, pharmacists, and dentists have high levels of honesty and ethical standards.²⁰⁰ The only nonmedical profession that rates as highly is engineering.²⁰¹

Not surprisingly, Americans' views of the honesty and ethics of various professions have changed over time. For example, "[f]rom 2012 to 2018, the percentage of Americans saying clergy had high levels of honesty and ethics slid from 52% to 37%."²⁰² In a survey conducted shortly after the September 11, 2001 terrorist attacks, firefighters, rescue personnel, and military service members scored very highly, with firefighters temporarily taking over the top spot from nurses.²⁰³

Gallup also breaks down the results by political party. In 2018, a majority of Democrats—fifty-four percent—rated the honesty and ethical standards of journalists as high or very high, whereas a majority of Republicans—sixty-one percent—gave journalists low ratings.²⁰⁴ In 2020, a majority of Republicans, but "fewer than four in ten Democrats rate[d] police officers and clergy highly for honesty and ethics."²⁰⁵

194. *Honesty/Ethics in Professions*, GALLUP, <https://news.gallup.com/poll/1654/honesty-ethics-professions.aspx> (last visited Dec. 23, 2021).

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. RJ Reinhart, *Nurses Continue to Rate Highest in Honesty, Ethics*, GALLUP (Jan. 6, 2020), <https://news.gallup.com/poll/274673/nurses-continue-rate-highest-honesty-ethics.aspx>.

200. *Id.*

201. *Id.*

202. *Id.*

203. David Moore, *Firefighters Top Gallup's "Honesty and Ethics" List*, GALLUP (Dec. 5, 2001), <https://news.gallup.com/poll/5095/Firefighters-Top-Gallups-Honesty-Ethics-List.aspx>.

204. Megan Brenan, *Nurses Again Outpace Other Professions for Honesty, Ethics*, GALLUP (Dec. 20, 2018), <https://news.gallup.com/poll/245597/nurses-again-outpace-professions-honesty-ethics.aspx>.

205. Lydia Saad, *U.S. Ethics Ratings Rise For Medical Workers and Teachers*, GALLUP (Dec. 22, 2020), <https://news.gallup.com/poll/328136/ethics-ratings-rise-medical-workers-teachers.aspx>.

Polls by other firms have produced results similar to Gallup's. In February 2021, the data and analytics group YouGov published an international survey designed to determine the most and least respected professions.²⁰⁶ YouGov asked respondents whether or not they would be happy if their child went into a particular job.²⁰⁷ Among respondents in the United States, the most respected professions were scientists, followed closely by medical doctors and architects.²⁰⁸ Consistent with the annual Gallup survey, YouGov found that Americans have a very favorable view of nurses.²⁰⁹ Americans also have favorable views of construction workers and truck drivers.²¹⁰ Professions with low favorability scores among Americans included miners, social media influencers, and call center workers.²¹¹

In 1994, political scientist Monika L. McDermott conducted a study of that year's elections for the following statewide, "down-ballot" California races: Lieutenant Governor, Attorney General, Controller, Treasurer, Secretary of State, and Insurance Commissioner.²¹² In McDermott's study, "half of voters were given only the candidates' names and party affiliations when asked their vote preference, while the other half were given names, party affiliations, and official occupational ballot designations for the candidates."²¹³ McDermott's hypothesis was that "when voters are faced with two candidates, one of whom has an occupational label that signals skills appropriate to the office for which the candidates are vying, voters will be more likely to support that candidate."²¹⁴

McDermott's findings supported her hypothesis. For example, in the race for Treasurer, candidate Phil Angelides—whose ballot designation was "Businessman, Financial Manager"—did significantly better against his opponent, Matt Fong—whose designation was "Appointed Member, State Board of Equalization"—when the ballot designations were provided to voters than when they were not.²¹⁵ In that race, providing a voter with Angelides's and Fong's ballot designations increased that voter's likelihood of supporting Angelides by thirteen percentage points.²¹⁶

Similarly, in the race for Controller, voters were significantly more likely to support Kathleen Connell, whose designation was "Businesswoman, Economist, Educator," over "Taxpayer Advocate" Tom McClintock when they were provided with those occupational labels than when they were not.²¹⁷ Providing the ballot

206. Matthew Smith & Jamie Ballard, *Scientists and Doctors Are the Most Respected Professions Worldwide*, YOUGOVAMERICA (Feb. 8, 2021), <https://today.yougov.com/topics/economy/articles-reports/2021/02/08/international-profession-perception-poll-data>.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. Monika L. McDermott, *Candidate Occupations and Voter Information Shortcuts*, 67 J. POLITICS 201, 201–02 (1994).

213. *Id.* at 206.

214. *Id.* at 210.

215. *Id.* at 208, 212.

216. *Id.* at 213.

217. *Id.* at 208, 212. McDermott used the California ballot pamphlet, which is sent to all registered voters prior to the election, to determine which skills are relevant to which offices. *Id.* The pamphlet describes the

designations in that race reduced a voter's probability of voting for McClintock from forty-three percent to thirty-five percent.²¹⁸

In contrast to the races for Treasurer and Controller, the races for Insurance Commissioner and Lieutenant Governor did not involve any candidates with ballot designations that were relevant to those offices. Neither candidate for Insurance Commissioner worked in the insurance industry, at least according to their ballot designations: Art Torres used the ballot designation "California State Senator," while his opponent, Chuck Quackenbush, ran as a "Small Businessman, Legislator."²¹⁹

The race for Lieutenant Governor pitted Gray Davis, with the ballot designation "California Controller," against Cathie Wright, "Businesswoman, State Senator."²²⁰ Here, one could certainly argue that both candidates' ballot designations reflected relevant experience as state government officials—in particular Davis's, which showed that he had already been elected statewide. Nevertheless, McDermott characterized the Lieutenant Governor race as one "in which none of the candidates has a subject-relevant ballot designation."²²¹

In the races for Insurance Commissioner and Lieutenant Governor, McDermott's data showed "no directional effects from ballot designations."²²² In other words, the results were roughly the same when voters were given the candidates' ballot designations as when they were not.

McDermott concludes that "it appears occupational ballot designations are acting as informational shortcuts for voters in these statewide races."²²³ "Voters infer candidate qualifications from either occupationally appropriate or incumbent ballot designations," and are more likely to support candidates with such designations.²²⁴

Consistent with McDermott's research, Ben Christopher of the *Los Angeles Daily News* found that Antonio Villaraigosa, a Democratic candidate for Governor in 2018, "dipped dramatically in public-opinion surveys" when pollsters began describing him by his approved ballot designation—"Public Policy Advisor"—rather than as the former mayor of Los Angeles.²²⁵ Villaraigosa had served as mayor of Los

Treasurer as the "chief investment officer" for the state. *Id.* Angelides' designation of "Financial Manager" suggested financial investment skills, whereas Fong's appointment to the "relatively obscure" State Board of Equalization told voters virtually nothing about his investment skills. *Id.* at 208. The ballot pamphlet describes the job of Controller as the state's "chief fiscal officer." *Id.* at 207. Connell's experience as a "Businesswoman" and "Economist" signaled to voters some skills at managing money, unlike McClintock's designation as "Taxpayer Advocate." *Id.*

218. *Id.* at 213.

219. *Id.* at 208.

220. *Id.*

221. *Id.* at 211.

222. *Id.* at 212.

223. *Id.* at 213.

224. *Id.* Two of the candidates for statewide office in 1994 used ballot designations indicating that they were incumbents. Dan Lundgren, the Republican nominee for Attorney General, used the designation "California Attorney General," while Tony Miller, the Democratic nominee for Secretary of State, used "Acting Secretary of State." *Id.* at 208. McDermott found that voters were significantly more likely to support these incumbents when provided with their ballot designations than when not given the designations. *Id.* at 212. However, the effects and appropriateness of ballot designations indicating incumbency are generally beyond the scope of this Article.

225. Christopher, *supra* note 147.

Angeles from 2005 to 2013.²²⁶ Potential voters understandably viewed Villaraigosa's service as mayor of the state's largest city as experience relevant to the job of governor. However, the ballot designation statute specifically prohibits designations like "ex-" and "former" that indicate previous jobs.²²⁷ Thus, Villaraigosa's ballot designation made no mention of his mayoralty, and he finished a distant third in the Democratic primary.²²⁸

As McDermott acknowledges,²²⁹ one of the limitations of her study is that because the candidates and elections were real, McDermott could only study the ballot designations that the candidates had chosen. It would be interesting to test how a hypothetical candidate with an admired, well-respected occupation like nurse or firefighter would fare against another hypothetical candidate with a much less popular job such as call center worker or car salesperson.

Anecdotal evidence from various water board races further supports McDermott's finding that the most effective ballot designations signal skills or experience appropriate to the office being sought. In 1996, candidates for the Board of Directors of the Water Replenishment District of Southern California chose a variety of water-related designations, including "Water Center Director," "Water Conservation Consultant," and "Water Policy Analyst."²³⁰ In 1999, a voter sued to block Newhall County Water Board candidate Lynne Plambeck from using the designation "environmental water consultant."²³¹ The court ruled that Plambeck could use the designation even though she also managed a family-owned manufacturing company.²³² As Ronald Gonzales-Lawrence, a candidate for the board of the Water Replenishment District of Southern California in 2016, explained, "candidates with 'water' on the ballot historically have done well."²³³

In May 2018, Ben Christopher studied 670 candidates running in the June 2018 primary elections.²³⁴ He found that the most popular ballot designation was "Business Owner," followed closely by "Incumbent."²³⁵ Other common designations included "Local Elected Official," "Teacher/Academic," "Activist," and

226. Antonio Villaraigosa, ENCYCLOPEDIA BRITANNICA (Jan. 19, 2021), <https://www.britannica.com/biography/Antonio-Villaraigosa>.

227. CAL. ELEC. CODE § 13107(e)(4) (West 2019).

228. *America's Choice 2018 Primaries California Governor*, CNN POLITICS <https://www.cnn.com/election/2018/primaries/california/governor> (last visited Dec. 23, 2021).

229. McDermott, *supra* note 212, at 207 ("Because the election is real, I have no control over the occupational designations the candidates selected, what types of candidates are running against each other, or any of the other factors involved in the race.").

230. Kenneth Ofgang, *Hearings Set on Challenge to Ballot Designations in Water Board Races*, METRO. NEWS ENTER., Aug. 22, 1996, at 3.

231. Angela M. Lemire, *Candidate's Job Description Upheld by Court; Judge Accepts Board Hopeful's "Environmental Consultant" Title*, L.A. DAILY NEWS, Sept. 9, 1999, at SC1.

232. *Id.*

233. Megan Barnes, *Carson Mayor in a Web of Lawsuits; Robles Disputes the Designations of His Rivals for Two Seats*, TORRANCE DAILY BREEZE, Sept. 4, 2016, at A1. Gonzales-Lawrence, then a senior aide to Assembly Speaker Anthony Rendon, was seeking to run as a "water policy advisor." *Id.*

234. Christopher, *supra* note 147.

235. *Id.*

“Lawyer.”²³⁶ One surprising result of Christopher’s study was that the sixth-most-common designation was no designation at all.²³⁷

Christopher’s article quotes Dave Gilliard, a Republican political consultant, who stated that ““Republicans tend to favor business and law enforcement, [while] Democrats tend to favor educators.””²³⁸ Not surprisingly, nurses and doctors are popular among all voters.²³⁹ Gilliard claims that there exists “a bipartisan distrust of lawyers,” leading candidates who are lawyers to add “softening qualifiers” to their ballot designations.²⁴⁰ In 2018, ballot designations included “workers’ rights attorney,” “consumer protection attorney,” and “attorney/mother.”²⁴¹ Gilliard noted that lawyers who own their own law firms sometimes opt to run for office as “small business owners.”²⁴²

While “mother” has proven to be a popular designation over the years, candidates tend to avoid the designation “homemaker.” In 2000, Orange County political consultant Eileen Padberg told the *Los Angeles Times*, “I would always recommend a homemaker seeking office find another title” such as community activist or volunteer.²⁴³ Padberg explained that “[s]ome voters look at the word [homemaker] and think the person doesn’t have any experience.”²⁴⁴ According to staff at the Orange County Elections Department, “homemakers who run . . . almost always resist the label,” choosing instead designations like “community volunteer” or simply leaving the designation blank.²⁴⁵

Some research suggests that judicial candidates frequently choose ballot designations that “emphasize and often exaggerate their purported experience in punishing criminals, so as to demonstrate that they are ‘tough on crime.’”²⁴⁶ Judge Nakamura describes one study of forty-one Deputy District Attorneys who ran for Superior Court Judge. Only one of those forty-one candidates used the designation “Deputy District Attorney.” The others used more colorful designations, including “Hardcore Gang Prosecutor,” “Sex Crimes Prosecutor,” “Gang Homicide Prosecutor,” “Criminal Gang Prosecutor,” “Gang Murder Prosecutor,” “Major Narcotics Prosecutor,” “Criminal Murder Prosecutor,” “Criminal Homicide Prosecutor,” “Child Molestation Prosecutor,” “Government Corruption Prosecutor,” “Violent Crimes Prosecutor,” or “Sexual Predator Prosecutor.”²⁴⁷ Eighty-six percent of the Deputy District Attorneys in the study won their judicial elections, including one who unseated an incumbent judge.²⁴⁸

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

243. Martin Miller, “Homemaker” Isn’t Where the Heart is When it Comes to Campaigning, *L.A. TIMES* (Aug. 24, 2000), <https://www.latimes.com/archives/la-xpm-2000-aug-24-cl-9413-story.html>.

244. *Id.*

245. *Id.*

246. Nakamura, *supra* note 16, at 32.

247. *Id.*

248. *Id.*

As noted above, “Businessman” and “Businesswoman” are also popular designations. In 2018, eighty-two candidates for office in California listed one of those, or some variation thereof, in their designations.²⁴⁹ Election officials tend to be lenient in allowing candidates to describe themselves as businesspeople. For example, in a 2014 race for a seat on the Marin County Board of Supervisors, incumbent Judy Arnold complained to the county elections office about her opponent, Toni Shroyer’s use of the designation “businesswoman.”²⁵⁰ Shroyer worked as a residential real estate agent and property manager in Novato.²⁵¹ The county rejected Arnold’s complaint and allowed Shroyer to run as a businesswoman.²⁵²

Another issue raised by the ballot designation statute is how incumbents seeking reelection should describe themselves on the ballot. The statute gives such candidates three options:

(1) Words designating the elective city, county, district, state, or federal office which the candidate holds at the time of filing the nomination documents to which he or she was elected by vote of the people; (2) The word “incumbent” if the candidate is a candidate for the same office which he or she holds at the time of filing the nomination papers, and was elected to that office by a vote of the people; [or] (3) No more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents.²⁵³

Thus, an incumbent member of the U.S. House of Representatives could choose a ballot designation like “Member, United States House of Representatives.”²⁵⁴ He or she could also go with the much shorter designation “incumbent.” Finally, he or she could choose to highlight a completely different “profession, vocation, or occupation”—however counterintuitive that may seem for a sitting member of Congress, which is generally thought to be a full-time job.²⁵⁵

249. Cadei, *supra* note 11; see also Jim Miller, *ELECTION: Ballot Designations Matter For Candidates*, THE PRESS-ENTER. (Mar. 25, 2012, 10:26 PM), <https://www.pe.com/2012/03/25/election-ballot-designations-matter-for-candidates/> (“Inland Southern California lawmakers Mike Morrell, Jeff Miller, Bob Dutton and Kevin Jeffries spend a large chunk of their week in Sacramento, voting on bills and sitting through committee hearings as state legislators making base annual salaries of \$95,291. All of them want voters this year to view them as something different: businessmen.”).

250. Dick Spotswood, *Ballot Designation Issue for Supervisor Candidate Shroyer*, MARIN INDEP. J. (Apr. 23, 2014, 12:00 AM), <https://www.marinij.com/2014/04/23/dick-spotswood-ballot-designation-issue-for-supervisor-candidate-shroyer/>.

251. *Id.*

252. *Id.*

253. CAL. ELEC. CODE § 13107(a) (West 2019).

254. Note that there is no three-word limit in CAL. ELEC. CODE § 13107(a)(1) (West 2019).

255. See CAL. ELEC. CODE § 13107(a)(1) (West 2019).

In California, incumbents are reelected more often than not.²⁵⁶ Thus, it is not surprising that incumbents seeking reelection typically mention their incumbency in their ballot designations, even if they do not use the word “incumbent.” In 2016, *Roll Call* reported that forty-eight of the forty-nine members of the U.S. House of Representatives from California who were seeking reelection mentioned their current positions in their designations.²⁵⁷ However, those incumbents did so in different ways. Twenty-three of them went with the straightforward “United States Representative” or “U.S. Representative;” six of those added their district numbers.²⁵⁸ Eighteen of the incumbents chose some variation of “Member of Congress,” “Congressman,” “Congresswoman,” or “United States Congressman.”²⁵⁹ Representative Julia Brownley highlighted her connection to her district with the designation “Ventura County Congresswoman.”²⁶⁰ Three incumbents used “Representative” without mentioning the United States, and one of those added “Farmer” to his designation.²⁶¹ Four incumbents mentioned their positions in Congress along with another occupation: “United States Representative/Teacher” Mark Takano, “Representative/Farmer” Jim Costa, “Congressman/Military Officer” Ted Lieu, and “Congressman/Emergency Physician” Raul Ruiz.²⁶² The remaining incumbents who mentioned their service in Congress used variations like “Member, United States House of Representatives” or “United States Congress Member.”²⁶³

The lone incumbent House member who did not mention his current office in his designation was Representative David Valadao.²⁶⁴ Valadao first ran for Congress in 2012 as a “Small Businessman/Farmer,” even though he was a member of the California Assembly at the time.²⁶⁵ Valadao changed his designation to “Farmer/Small Businessman” in 2014 and has used that designation ever since.²⁶⁶

It is difficult to see how in 2014, 2016, 2018, or 2020, “Farmer/Small Businessman” could have been an accurate description of Representative Valadao’s

256. For example, one study found that from 1995 to 2019, incumbents in municipal elections were reelected at a rate of seventy-nine percent. LEONR EHLING ET AL., INST. FOR SOC. RSCH. & CTR. FOR CAL. STUD., CALIFORNIA COUNTY, CITY, AND SCHOOL DISTRICT ELECTION OUTCOMES: CANDIDATES AND BALLOT MEASURES, 2019 ELECTIONS (2019), [https://perma.cc/GU5A-8CTG]. In 2016, the reelection rate for California Assembly members was ninety-two percent, while the reelection rate for members of the California Senate was 100 percent. CAL. RSCH. BUREAU, CAL. STATE LIBR., DEMOGRAPHICS IN THE CALIFORNIA LEGISLATURE: NOVEMBER 2016 ELECTION UPDATE 2 (2016), https://www.library.ca.gov/Content/pdf/crb/reports/LegDemographicsNov16.pdf [https://perma.cc/XVC8-J8ZY]. In 2020, the overall incumbent reelection rate in California was eighty-five percent. *Election results, 2020: Incumbent win rates by state*, BALLOTPEDIA, https://ballotpedia.org/Election_results,_2020:_Incumbent_win_rates_by_state [https://perma.cc/6PVP-ARDN] (last visited Dec. 23, 2021).

257. Nathan L. Gonzales, *California Ballot Lets Incumbents Define Themselves*, ROLL CALL (May 3, 2016, 5:00 AM), https://www.rollcall.com/2016/05/03/california-ballot-lets-incumbents-define-themselves/.

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

“current principal professions, vocations, or occupations” or his principal professions, vocations or occupations during the previous calendar year. At all relevant times, Valadao was a sitting United States Representative—a full-time job located primarily in Washington, D.C.

While Representative Valadao’s ballot designation may not be accurate, it may be more advantageous electorally than the designation “Member of Congress.” As noted above, Members of Congress and car salespeople tied for the lowest rating in Gallup’s 2020 survey, with just one percent of respondents characterizing their honesty and ethical standards as “very high.”²⁶⁷ In contrast, “farmer” is a well-respected profession in the United States. In the 2021 YouGov poll discussed above,²⁶⁸ fifty-one percent of respondents said they would be happy if their children became farmers, and only ten percent answered “unhappy.”²⁶⁹ (The remaining respondents chose “neither happy nor unhappy.”)²⁷⁰

V. SHOULD IT STAY OR SHOULD IT GO?

California elections lawyer Chad Morgan has used the designation “Farmer” to illustrate his frustrations with the ballot designation statute.²⁷¹ According to Morgan, “Farmer” is “a very powerful ballot designation . . . at least in the Central Valley.”²⁷² He continues:

While I think everyone would agree that a full-time, professional farmer can list “Farmer” on the ballot without question, what about part-time farmers? When does farming transition from a hobby or status into a full-blown occupation? Is my neighbor a farmer because he grows tomatoes in his backyard? What if he is obsessed with his garden? What about someone who occasionally sells produce at the farmers’ market? How much time and effort is required to be a “substantial amount of time and effort”? Without clear boundaries, the answer varies from court to court.²⁷³

Not surprisingly, there have been controversies over what qualifies a candidate to use a ballot designation that includes “farmer.” In 2018, two Republican members of Congress from California, Devin Nunes and Jeff Denham, both of whom represented “agriculture-heavy districts,” sought to include “farmer” in their

267. *Honesty/Ethics in Professions*, *supra* note 194.

268. *See supra* notes 206–11.

269. Smith & Ballard, *supra* note 206.

270. *Id.*

271. *See* discussion at *supra* note 56.

272. Morgan, *supra* note 14.

273. *Id.* Carl Fogliani, a political consultant who has worked on races in agricultural parts of California, told *The Sacramento Bee* that “[y]ou have somebody running who’s a banker and they own some agricultural land or are an investor in agricultural property [and] they put ‘farmer’ on the ballot.” Cadei, *supra* note 11.

designations.²⁷⁴ Various groups aligned with the Democratic Party filed lawsuits challenging these designations.²⁷⁵ Representative Denham’s designation was based, at least in part, on the fact that he received rental income from a farm he owns.²⁷⁶ In their lawsuit, the plaintiffs argued that this does not make Denham a farmer any more than “renting an office building to a medical practice would make him a doctor.”²⁷⁷ For his part, Nunes was a limited partner in a Napa County Winery and had earned a few thousand dollars from the venture in 2017.²⁷⁸ Ultimately, the challenges to these designations were rejected, and Denham and Nunes were both allowed to include “farmer” in their designations.²⁷⁹

Issues like who gets to call himself or herself a farmer are hopelessly subjective, and yet, the current statutory and regulatory regime requires the Secretary of State, local elections officials, and trial courts to grapple with such questions routinely, with virtually no guidance from appellate courts. As Judge Nakamura explains, before the recent amendment that limited the designations of candidates for judicial offices:

The litigating of ballot designations had become a common occurrence. In one recent judicial election, three out of five candidates were forced to change their designations after rivals claimed they misled voters. Such cases are expensive for both candidates and the court system while not necessarily providing voters any better information. A recent ruling merely required a candidate to change his designation from “Gang Murder Prosecutor” to “Gang Homicide Prosecutor.”²⁸⁰

Of course, a certain amount of litigation over how candidates appear on the ballot is inevitable. Courts are frequently asked to resolve controversies over how a candidate’s name will appear.²⁸¹ We tolerate such litigation because there is really no reasonable alternative to listing candidates’ names on ballots. But when it comes to ballot designations of a candidate’s professions, vocations, and occupations, we could simply decide—and California should decide—that such designations are more trouble than they are worth. After all, voters in the other forty-nine states manage to choose among candidates for public office without the benefit of those candidates’ occupations appearing on the ballot.

Furthermore, the various requirements in the ballot designation statute are enforced inconsistently, if they are enforced at all. In 1994, the Secretary of State’s

274. John Wildermuth, *Dems Balk At Ballot IDs For Republican Congressmen*, S.F. CHRON., Aug. 29, 2018, at D1.

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

279. John Wildermuth, *GOP Reps. Devin Nunes, Jeff Denham can call themselves farmers on ballot*, S.F. CHRON. (Aug. 30, 2018), <https://www.sfchronicle.com/politics/article/GOP-Reps-Devin-Nunes-Jeff-Denham-can-call-13194921.php?converted=1> (explaining that a superior court judge dismissed the complaints against both candidates with a simple “writ denied”).

280. Nakamura, *supra* note 16.

281. See Peter Nemerovski, *You Can Call Me Al: Regulating How Candidates’ Names Appear on Ballots*, 99 NEB. L. REV. 848, 852–71 (2020) (discussing litigation over candidates’ use of maiden names, married names, nicknames, diminutives, middle names, and “Americanized” names).

office refused to allow Zoe Lofgren, a candidate for the U.S. House of Representatives, to include the word “Mother” in her ballot designation.²⁸² A spokesperson for the Secretary of State’s office stated that it did not consider parenting to be a profession, vocation, or occupation.²⁸³ However, just three years later, San Mateo County Chief Elections Officer Warren Slocum allowed Denise de Ville, a candidate for the county Board of Supervisors, to use the word “Mother” in her designation.²⁸⁴ As the *San Francisco Chronicle* noted at the time, Slocum did this “in defiance of state elections law, legal precedent and the guidelines of the California secretary of state’s office.”²⁸⁵ The Secretary of State spokesperson told the newspaper that because the election in question was local, Slocum had jurisdiction and the state lacked any authority to intervene.²⁸⁶ Finally, in January 1998, the Secretary of State’s office issued new guidelines, which included “mother” on a list of permissible designations.²⁸⁷ Today, regulations promulgated by the Secretary of State’s office clearly state that it considers “mother” a vocation.²⁸⁸

The more recent case of Kirsten Keith, a candidate for the San Mateo County Harbor District Board of Commissioners in 2020, further illustrates the inadequacy of the various enforcement mechanisms.²⁸⁹ Keith, an attorney and member of the board of directors of the Bay Area Water Supply and Conservation Agency, chose the ballot designation “Conservation Agency Director.”²⁹⁰ Two other local politicians—Portola Valley Vice Mayor Maryann Derwin and former Menlo Park Councilman Heyward Robinson—contacted the Menlo County Elections Office to challenge Keith’s designation.²⁹¹ The challengers argued that Keith’s “principal” occupation was criminal defense attorney.²⁹² They noted that the conservation board on which Keith sat met only six times per year, had twenty-six members, and paid its members just \$100 per meeting.²⁹³ The challengers also argued that Keith’s designation was misleading insofar as it implied that she was an executive director as opposed to one of several members of a board of directors.²⁹⁴

Jim Irizarry, the Assistant Chief Elections Officer for San Mateo County, told the *Almanac* that after receiving the challenge to Keith’s designation, his office contacted Keith, who provided additional information confirming that her

282. Mark Simon, *County Says Being Mom Not Just Adventure, It’s a Job*, S.F. CHRON., Feb. 10, 1997, at A13.

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.*

287. Chris Moran, *New Ballot Rules Let Hopefuls List Selves As ‘Parents*, SAN DIEGO UNION-TRIB., Aug. 8, 1998, at B-1.

288. CAL. CODE REGS. tit. 2, § 20714(a)(2) (2019).

289. Kate Bradshaw, *Locals Challenge Authenticity of Former Councilwoman’s Ballot Designation*, ALMANAC (Sept. 4, 2020, 10:28 AM), <https://www.almanacnews.com/news/2020/09/04/locals-challenge-authenticity-of-former-councilwomans-ballot-designation>.

290. *Id.*

291. *Id.*

292. *Id.*

293. *Id.*

294. *Id.*

designation was accurate and a principal profession.²⁹⁵ Irizarry further explained that even if the County Elections Office concluded that Keith's chosen designation violated the statute, the office lacked the authority to reject the designation; instead, its only recourse was to take the candidate to court.²⁹⁶ Irizarry told the paper: "[W]e do not conduct background investigations or inquiries into candidates' lives Absent information to the contrary, we assume the truthfulness of the information provided by the candidate."²⁹⁷

We do not know how a court would rule on the question of whether the designation "Conservation Agency Director" accurately described one of Kirsten Keith's "current principal professions, vocations, or occupations." There is at least a colorable argument that it did not. As noted in Section II,²⁹⁸ a profession, vocation, or occupation is "principal" under the regulations associated with Section 13107(a)(3) only if it requires "a substantial involvement of time and effort such that the activity is one of the primary, main or leading professional, vocational or occupational endeavors of the candidate."²⁹⁹ Words like "substantial," "primary," "main," and "leading" are obviously subjective, but it is nevertheless difficult to see how an endeavor consisting of six meetings per year, with an annual compensation of 600 dollars, satisfies the regulation's definition of "principal."

The entire controversy over Kirsten Keith's ballot designation illustrates just how easy it is for a misleading or inaccurate designation to end up on the ballot in a low-profile election. The County Elections Office was not interested in conducting a detailed investigation or taking the matter to court. The two challengers apparently did not pursue the matter beyond complaining to the elections office. As a result, an arguably misleading designation made it onto the ballot.³⁰⁰

Another barrier to enforcement is that sometimes, nobody realizes what is happening—or that a candidate with a misleading designation might actually win—until it is too late. In November 1990, Nancy Scofield was elected to the Palomar-Pomerado Hospital System's district board of directors with the ballot designation "Nurse/Community Volunteer."³⁰¹ Scofield was certified by the state as a home-health aide, but she had never been licensed or registered as a nurse.³⁰² After Scofield's election, the hospital district launched an unsuccessful campaign to

295. *Id.*

296. *Id.*

297. *Id.* In 2016, Los Angeles County Registrar-Recorder Dean Logan explained that his office "makes candidates fill out worksheets justifying their titles and occasionally questions a designation." Gerber, *supra* note 37. However, county officials do not scrutinize candidates' designations closely "because of time constraints and because the agency simply isn't in the business of policing occupation titles." *Id.* Thus, enforcement is largely left to opposing campaigns and concerned citizens, who must be willing and able to bring a lawsuit challenging the designation in question. *Id.*

298. *See supra* note 45.

299. CAL. CODE REGS. tit. 2, § 20714(b) (2019).

300. Surely some voters who saw Keith's designation assumed, quite reasonably, that "Conservation Agency Director" was Keith's "day job" and how she earned her livelihood. The evidence shows that it was neither.

301. Mike Burge, *State Declines to Sue Nancy Scofield Over Nurse Claim on Ballot*, SAN DIEGO UNION-TRIB., Mar. 7, 1991, at B3.

302. *Id.*

prevent Scofield from taking office.³⁰³ The Superior Court rejected the hospital district's post-election challenge, and the district failed to persuade the attorney general's office to file its own lawsuit against Scofield.³⁰⁴ Voters in San Diego County apparently were not bothered by Scofield identifying herself as a nurse: she was reelected three times and retired from the board in 2006 after sixteen years.³⁰⁵

Not everyone agrees that allowing candidates to list an occupation is a bad idea. Professor Elizabeth Bergman of California State University, East Bay, supports Section 13107(a)(3), saying that it is "all about transparency and helping voters."³⁰⁶ Bergman acknowledges that candidates will choose designations that are likely to appeal to voters, but she notes that elections are all about influencing voters anyway.³⁰⁷

Indeed, if California eliminates its ballot designation option, the end result may be voters choosing candidates for even less substantive reasons than their occupations. "Party designation, name recognition and even the order of names on the ballot have all been shown to influence electoral outcomes."³⁰⁸ Furthermore, there is a long tradition of ethnic voting in the United States, wherein voters choose candidates whose names suggest a race or ethnicity similar to their own.³⁰⁹

The ballot designation option may have other positive effects. For example, there is some evidence that providing occupational ballot designations makes people more likely to vote in down-ballot races. McDermott's study found that "[i]n each of the six statewide down-ballot races voters are significantly less likely to abstain . . . when they are provided with the ballot designations than when they are not."³¹⁰ McDermott theorizes that "[e]ven if voters are gaining little real concrete information from occupational labels, they may feel as though they are (because of inferential shortcuts to qualifications or other considerations) and as a result feel more comfortable making a decision . . ."³¹¹

While increasing voter participation is good, doing so by providing the candidates' occupational designations has its downsides. McDermott's research suggests that a sizable portion of the California electorate is making decisions about which candidates to vote for based solely, or largely, on the ballot designations. If that is in fact happening, then candidates should have even more incentive to use electorally advantageous designations. Put differently, McDermott's research suggests that information that is often misleading or downright false is playing a significant role in determining voters' choices among candidates.

303. *Id.*

304. *Id.*

305. Andrea Moss, *Nancy Scofield To Leave PPH's Board*, MORNING CALL (Apr. 6, 2006, 3:00 AM), <https://www.mcall.com/sdut-nancy-scofield-to-leave-pphs-board-2006apr06-story.html>.

306. Cadei, *supra* note 11.

307. *Id.*

308. Christopher, *supra* note 125.

309. *E.g.*, *Jordan v. Robinson*, 39 So. 3d 416, 418 (Fla. Dist. Ct. App. 2010) ("For better or worse, for over 150 years, American candidates have used their names to appeal to ethnic voting blocks in elections.").

310. McDermott, *supra* note 212, at 214; *see also id.* at 216 ("The data show that occupational labels can decrease an individual voter's probability of abstaining from a low-information race by as much as 11 points.").

311. *Id.* at 214.

Another possibility is that the ballot designation statute made sense in 1931 when it was first added to the Political Code, but it has since outlived its usefulness. Journalist Bruce Bolinger wrote in 1977 that “[w]hen the system of occupational designations was first used in 1932, it worked fairly well. Few candidates bothered to use designations, and those who did gave fairly short, prosaic occupations.”³¹² The original version of the statute, discussed in Section I, gave candidates just a single word to describe their occupations. Based on a contemporaneous news account,³¹³ the legislature apparently believed that the ballot designation might help voters distinguish between John Doe, Attorney, and John (or Jon) Doe, Farmer. The legislature likely assumed, perhaps naively, that a candidate would simply choose the word that most accurately described his occupation; thus, voters would receive more information from the ballot, with no real downside.

However, history has proven the ballot designation statute to be quite controversial. In 1992, for example, the secretary of state’s office rejected more than one hundred ballot designations.³¹⁴ Tony Miller, who was then the Chief Deputy Secretary of State, told the *Los Angeles Times* that “[t]hese ballot designations are the single biggest headache we face as election officials Nothing complicates our lives more.”³¹⁵

As the examples in this Article illustrate, many candidates select their designations with the goal of influencing the outcome of the election instead of providing accurate information to voters. As Rose Kapolczynski, a political consultant based in Los Angeles, told *Roll Call* in 2016: candidates today “try to string together the most popular words that will pass muster.”³¹⁶ And unlike in 1931, candidates now have three words instead of one with which to describe their occupations, creating more potential for mischief. These days, in the words of California’s largest newspaper, the ballot designations are “little more than lawn signs, printed on the ballot, that voters are forced to read when they vote.”³¹⁷ Whatever their value was in the 1930s, these designations “no longer impart any real information when candidates use them as campaign materials.”³¹⁸

Furthermore, the cases and controversies discussed in this Article do not begin to capture all of the dubious ballot designation choices candidates make. In May of 2006, journalist Roger M. Grace noted that there had been no writ proceedings in the Los Angeles Superior Court challenging the ballot designations of that year’s judicial candidates.³¹⁹ While this sounds like good news, Grace was able to identify numerous designations unlikely to survive a legal challenge if anyone bothered to file

312. Bolinger, *supra* note 20.

313. Jones, *supra* note 17, at 6.

314. Hatch, *supra* note 11, at SBA3.

315. *Id.*

316. Gonzales, *supra* note 257.

317. *They’re Ballots, Not Campaign Ads*, L.A. TIMES (June 4, 2012, 12:00 AM), <https://www.latimes.com/opinion/editorials/la-xpm-2012-jun-04-la-ed-ballot-20120604-story.html>.

318. *Id.*

319. Roger M. Grace, *Perspectives 2006: The Year of the Writless Primary*, METRO. NEWS-ENTER., May 16, 2006, at 7.

one.³²⁰ Grace’s research uncovered a candidate claiming to be a “teacher” based on his occasional mentoring of young lawyers; multiple candidates with inactive law licenses claiming to be practicing attorneys; and a “professor” who could not remember the last time he taught a class.³²¹

As noted in Section III, the dissenting Associate Justice in *Stirling v. Jones* pointed out that “[c]andidates have a myriad of other, proper opportunities to inform the electorate of their respective qualifications.”³²² Compared to 1931, when California first adopted the occupational designation option, candidates for office today have many more opportunities and means to tell the voting public about their employment histories and the relevance of their professional experiences to the offices they are running for. Not every voter will know a candidate’s occupation, but that’s not really a problem. Not every voter will know a candidate’s position on tax policy either, but nobody would seriously suggest that that information should be included below a candidate’s name on the ballot.

Professor Bergman supports the ballot designation statute on the ground that it provides voters with “more information” about the candidates.³²³ Surely it does that, but so would a statute that allows a candidate to include her age, hometown, marital status, highest level of education completed, and so on. Some voters would undoubtedly find such information interesting and perhaps relevant to their choices of candidates. However, a ballot containing so much information about each candidate would be quite unwieldy. It is important to remember that the purpose of a ballot is to identify the candidates for the voters.³²⁴ Consistent with that purpose, it appears that the occupation designation statute was initially intended to help voters distinguish between “John Doe, the Attorney” and “John Doe, the Doctor.”³²⁵ When it comes to a candidate’s background, qualifications, experience, and positions on issues, campaigns offer candidates numerous opportunities to communicate such information to voters.

VI. REFORM PROPOSALS

If eliminating the occupational designation option is too radical a step for California policymakers, they could consider reforming it. In April 2010, amidst several ballot designation controversies in the race for attorney general, the *Ventura County Star* suggested the following reforms:

Give candidates a maximum of 15 characters to state their occupations, to which they could add the word “retired” if that applied.

320. *Id.*

321. *Id.*

322. *Stirling v. Jones*, 77 Cal. Rptr. 2d 791, 818 (Cal. Ct. App. 1998) (Blease, A.J., dissenting); *see also supra* notes 111–13.

323. Cadei, *supra* note 11.

324. *Stirling*, 77 Cal. Rptr. 2d at 800 (“The purpose of a ballot designation is to *identify* the candidate.” (emphasis in original)); *Weiler v. Ritchie*, 788 N.W.2d 879, 888 (Minn. 2010) (“[T]he purpose served by the candidate information allowed on the ballot is to enable the voter to identify the candidate, rather than to serve the candidate’s purposes.”).

325. *Jones*, *supra* note 17.

And make them document that their principal source of income over the previous 12 months has been derived from whatever occupation they designate.³²⁶

This approach would be an improvement on the status quo, but it has its downsides. The state would have to find employees to review financial documentation for thousands of candidates every two years. Inevitably, there would be controversy—and litigation—over the phrase “principal source of income.” And the fifteen-character limit would not solve the problem of who gets to call themselves farmers, businesspersons, prosecutors, professors, and so on.

Another partial solution would be to require candidates to choose from a limited menu of very general descriptions like “law,” “education,” “health care,” “business,” and so on. There would have to be an “other” option for candidates who do not think any of the choices applies to them. Such candidates would not be allowed to describe their occupations; their ballot designation would either be blank or say “other.”

This approach would provide voters with some (albeit very general) information about candidates’ professions, while mostly eliminating incentives to misrepresent or embellish their work. There would still be controversies and occasional litigation: Does a chef at a hospital work in “health care”? Does a part-time tutor or mentor work in “education”? But this rule would likely head off most of the controversies that arise under the current statute. In some ways, it would be a return to the original statute from 1931, under which the ballot designation allowed voters to learn a little something about the candidate’s occupation, and potentially differentiate between two candidates with similar or identical names but was not used—or at least was not intended to be used—to influence election results.

There would also inevitably be controversy surrounding the menu of general descriptions, with some candidates complaining that the system favors candidates working in large, well-known fields over candidates with less common jobs. But that is really no worse than the current statute, which favors candidates whose jobs can be described in three words or less over those whose jobs require more words to describe.

Tony Miller, a critic of the ballot designation statute who served as California’s Acting Secretary of State in 1994, theorizes that incumbent legislators like the statute because “they can list ‘incumbent’ on the ballot while challengers must come up with something that sounds good but still meets the criteria.”³²⁷ Miller has proposed removing all restrictions on ballot designations except for two: candidates would be limited to sixty characters instead of three words, and the designations could not be untruthful.³²⁸ This is a thoughtful proposal that would have resolved several of the controversies discussed in this Article. There would be no need for litigation over punctuation, and a “peace activist” would be free to describe himself as such.

326. *I’m Not a Politician*, *supra* note 179.

327. Mike Cassidy, *Ballot Law Called Absurd, but ‘Mother’ Label is Out*, SAN JOSE MERCURY NEWS, Apr. 7, 1994, at 1B.

328. Bob Rowland, *Here’s at Least 1 Vote Cast for Motherhood*, SAN DIEGO UNION-TRIB., Apr. 9, 1994, at B1.

However, there would almost certainly be much controversy over the truthfulness of candidates' chosen designations.

Another option would be to adopt Miller's proposal minus the truthfulness requirement. If you are a lawyer and you want to run for office as an astronaut, go for it. This libertarian approach has some appeal. Elections officials would be reduced to stenographers whose only role is to double-check the character limit and transfer the candidate's designation onto the ballot. Surely there would be much less litigation, if any. Eventually, word would get out to the voters that the designations cannot be trusted and should be disregarded unless the voter is willing to put time into researching their accuracy. Ultimately, the designations would be rendered largely meaningless, which is not a bad result for those of us who want to abolish them.

But a libertarian approach would not solve the problems identified in this Article. Elections officials would still face dilemmas: what if a candidate lists something—"Against Proposition 8,"³²⁹ for example—that is not an occupation at all? What if someone includes a racial slur in their designation? Furthermore, the likelihood that this reform would cause voters to finally realize the worthlessness of ballot designations is slim. For decades, candidates have tried to deceive voters with highly misleading or outright false descriptions of their work. These controversies have received extensive media coverage. And yet, everyone agrees that the ballot designations remain important in influencing voters.³³⁰ In other words, they are not disregarded or treated as meaningless by voters.

Another, more backward-looking reform would involve changing the three-word limit back to one and eliminating the various exceptions. There was apparently much less mischief associated with the ballot designations during the brief period—from 1931 to 1945—in which candidates were limited to a single word.³³¹ With only a single word to work with, candidates would likely find it more difficult to exaggerate and embellish.

Furthermore, eliminating the exceptions to the word limit is probably a good idea regardless of whether the limit is one word or three. As noted in Section I, geographical names like "City of San Francisco" have been considered one word since 1975. And under Elections Code Section 13107(a)(1), a current officeholder is

329. Proposition 8, a state ballot initiative approved by California voters in 2008, added a new section to the California Constitution. That section stated: "Only marriage between a man and a woman is valid or recognized in California." *Proposition 8 Cases: Background*, CAL. COURTS: JUD. BRANCH OF CAL., <https://www.courts.ca.gov/6465.htm> (last visited Dec. 23, 2021). In 2010, a federal court ruled that the amendment to the California Constitution added by Proposition 8 violated the United States Constitution. *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010).

330. *See, e.g.*, Joshua Stewart, *Dumanis Not 'Judge' On Ballot – Title is OK on Campaign Trail But Not on Election Papers*, SAN DIEGO UNION-TRIB., Mar. 13, 2018, at 1 ("The occupation listed alongside a candidate's name can make or break a campaign, said Dan Rottenstreich, a consultant working for . . . Democrat Nathan Fletcher."); Gerber, *supra* note 37 ("Political consultant David Gould, who is working on behalf of several attorneys running for judge this year, said the reason candidates use the tactic [of inflating their titles] is simple: It works."); Greg Lucas, Editorial, *Who Are Those Guys?*, S.F. CHRON., Apr. 7, 1990, at A16 ("[W]hether you're running for governor or the mosquito abatement district, those three words make a difference."); Jim Miller, *Candidate Ballot Designations Big Deal*, PRESS-ENTER., Mar. 26, 2012, at A1 ("Experts say the three words carry outsized importance.").

331. Bolinger, *supra* note 20.

given unlimited words to “designat[e] the elective city, county, district, state, or federal office” which he or she holds.³³² Unencumbered by the three-word limit, current officeholders often believe that “the longer a designation is, the more impressive and eye-catching it will be.”³³³ Thus, members of the California General Assembly, whose occupations can be described quite well in a single word—“assemblyman” or “assemblywoman”—have used designations as long as ten words.³³⁴ If the purpose of a ballot is simply to identify the candidates, it’s undeniable that under the current regime, ballots in California are doing far too much.

Indeed, any reform proposal should take into account the purpose of ballots and rules governing ballots. The Supreme Court of California stated in 1964 that “[a] major purport of the Elections Code is to insure the accurate designation of the candidate upon the ballot in order that an informed electorate may intelligently elect one of the candidates.”³³⁵ Ballots do not exist to educate voters about the candidates’ professional backgrounds and relevant experience.

To be clear, while several of the proposals discussed in this section would improve upon the current system, they are much less desirable than abolishing the occupational designation option altogether. However, those of us who oppose the statute must acknowledge that it is unlikely to go away anytime soon. It has endured for nearly a century, despite criticism from commentators,³³⁶ judges,³³⁷ election officials,³³⁸ and newspaper editorial boards.³³⁹

CONCLUSION

“Every two years, campaigns do battle with the California secretary of state—and one another—over whether or not the professional descriptions they pick are within the bounds of state law.”³⁴⁰ When an objection is raised to a candidate’s chosen designation, resolving that objection consumes valuable government resources. When no objection is raised, misleading designations can find their way onto voters’ ballots, undercutting the goal of a fair election decided by an informed electorate.

332. CAL. ELEC. CODE § 13107(a)(1) (West 2019).

333. Bolinger, *supra* note 20.

334. *Id.*

335. *Salinger v. Jordan*, 395 P.2d 49, 50 (Cal. 1964).

336. Morgan, *supra* note 36 (urging the legislature to “clean-up creative misuses of ballot designations”).

337. Nakamura, *supra* note 16 (arguing that the litigating of ballot designations is “expensive for both candidates and the court system while not necessarily providing voters any better information”).

338. Cassidy, *supra* note 327 (“I think the law stinks,” said acting Secretary of State Tony Miller.”); Sonia Giordani, *Titles Spark Ballot Battle*, L.A. DAILY NEWS, Aug. 22, 1998, at TO1 (“It’s probably the single biggest hassle for us,” said Bruce Bradley, assistant registrar of voters with the Ventura County Elections Office.”).

339. *They’re Ballots, Not Campaign Ads*, *supra* note 317 (“Eliminate ballot designations . . . Designations no longer impart any real information when candidates use them as campaign materials.”); *Mother? Holy Warrior? Why Not? Candidates’ Descriptions Could Tell Voters A Lot*, MERCURY NEWS, Apr. 7, 1994, at 6B (“Let’s change the law and get the secretary of state’s office out of the business of trying to answer the unanswerable question of what constitutes a real occupation.”).

340. Cadei, *supra* note 11.

It is tempting to view the ballot designation statute as a harmless quirk of California law. After all, any voter is free to ignore the three words next to a candidate's name. But in our representative democracy, we should care a great deal about the integrity of the ballot. By permitting occupational designations, California is going out of its way to allow confusing, misleading, and sometimes blatantly false information to appear on voters' ballots and potentially influence election outcomes.

When it was introduced in 1931, the ballot designation statute was well-intentioned as a way of providing voters with helpful information about candidates. But as the examples in this Article make clear, the statute has evolved into a means by which candidates seek to influence voters at the very moment of their decision. Virtually everyone agrees, and empirical research confirms, that the occupational designations are important because they can influence people's votes.

It is understandable that one might be skeptical of the actual harm caused by the statute. Perhaps the examples discussed herein represent the exceptions to the rule. Perhaps most candidates simply describe their occupations as accurately as possible in three words or less. Even a skeptic, however, must acknowledge that the benefits of the statute are not very substantial. Voters are able to consider the relevance of a candidate's current or recent occupation to the office he or she is seeking. But if voters in 2021 really want that information, they can probably find it through a simple Google search. If candidates really want voters to know their occupations, campaigns exist so that candidates can convey information about themselves to voters.

There is simply no justification for keeping the ballot designation statute around any longer. It has done enough harm in its ninety years of existence, while offering little benefit to the people of California. The California legislature should repeal the statute and end the biennial farce that the ballot designation statute has wrought.