Author's Note: This article is forthcoming in the JOURNAL OF LEGISLATION. See **Peter Nemerovski, *Occupational Hazard: A Critique of California's Ballot Designation Statute*, 48 J. LEGIS. ___ (2021).**

OCCUPATIONAL HAZARD: A CRITIQUE OF CALIFORNIA'S BALLOT DESIGNATION STATUTE

Peter Nemerovski*

ABSTRACT

In 1931, California amended its Political Code to allow candidates for office to list their occupations on the ballot. This ballot designation statute was originally intended to help voters identify candidates and distinguish between candidates with similar or identical names.

Over time, while the language of the ballot designation statute has remained more or less the same, the statute has evolved into a means by which candidates seek to appeal to voters. Candidates, often aided by political consultants, attempt to devise designations that will evoke positive reactions from voters and that suggest qualifications and experience relevant to the office they are seeking, with little regard to whether the designations accurately describe how they earn their living. Thus, incumbent members of Congress serving in Washington, D.C. run for reelection as farmers; an attorney who occasionally mentors young lawyers runs for office as a teacher; and a court commissioner who lectures part-time at a community college runs as a professor.

This article argues that the ballot designation statute should be repealed. It provides little benefit to voters and is far more likely to confuse or mislead them. It is a recurring nightmare for courts and election officials, who must analyze hundreds of proposed designations every two years and determine whether they comport with the myriad guidelines, regulations, and statutory requirements that govern the designations. The time has come for California to join the forty-nine states that do not, as a matter of course, allow candidates to list occupations on the ballot.

Part I of this article traces the history of the ballot designation statute and shows just how far it has strayed from its original purpose. Part II explains how key terms like "profession," "vocation," "occupation," and "principal" are defined in the governing regulations. Part III summarizes some of the controversies that have arisen over candidates' chosen designations. Part IV analyzes which occupations are most advantageous electorally. Part V presents a number of arguments for doing away with the ballot designation statute. Finally, Part VI discusses several reform proposals that would improve the statute if it cannot be eliminated altogether.

TABLE OF CONTENTS

* Clinical Associate Professor of Law, University of North Carolina School of Law. I benefitted from the outstanding research assistance of Imani Johnson.

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

[1] 1931 Cal. Legis. Serv. 1929 (West).

[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 2019).

[5] *Id.* § 13107(e)(1).

[6] *Id.* § 13107(e)(2).

[7] *Id.* § 13107(e)(5).

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]

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

---

[8] *Id.* § 13107(e)(7).

[9] *Id.* § 13107(e)(4).

[10] *Id.*

[11] Emily Cadei, *Why an election tradition in California is banned in other states*, THE SACRAMENTO BEE (Apr. 4, 2018 12:01 AM), 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, 1992, at A3 ("California is the only state to extend the privilege of listing occupation to all candidates . . . .").

[12] *Id.*; *see also* N.C. GEN. STAT. § 163-165.5(a)(3) (2019) ("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 (West, Westlaw through 2021 Reg. Sess. of Kan. Legis.) (effective July 1, 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. ELECTIONS CODE ANN. § 52.003 (West 2020) ("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-OCT ORANGE COUNTY LAW. 28 (2018).

[15] *Id.*

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.

Part I of this article reviews the history and purpose of California's ballot designation statute. Part II explains how certain key terms are defined in the statute and accompanying regulations. Part 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. Part IV attempts to determine which designations are most advantageous electorally and why. Part 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, Part 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 Sen. 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]

---

[16] Kirk H. Nakamura, *Judicial Elections: New Rules, New Judges, Old Challenges*, 60-JUN Orange County Law. 26 (2016).

[17] C. A. Jones, *Primary Law Revision Asked*, L.A. Times (Jan. 18, 1931).

[18] *Id.*

[19] *Id.*

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 that originally, "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 *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

---

[20] Bruce C. Bolinger, *'World's Greatest Lying Contest': Ballot Designation Misuse Grows*, DESERT SUN, Jan. 25, 1977 (available at https://cdnc.ucr.edu/?a=d&d=DS19770125.2.165&e=----------en--20--1--txt-txIN--------1).

[21] *Id.*

[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-ENTERPRISE (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 ___.

[24] An act to amend Sections 3819 and 3929 of the Elections Code, relating to elections, Chapter 804, 1945 Session Laws (approved by the Governor June 9, 1945) (on file with author).

[25] *Id.*

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.
>
> (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

---

[26] An act to amend Section 3819 of the Elections Code, relating to designation of offices held by or occupations of candidates, Chapter 357, 1955 Session Laws (approved by the Governor May 4, 1955) (on file with author).

[27] 1975 Session Laws, CAL. ELECTIONS CODE § 10211(a)(3) (on file with author).

[28] *Id.*

[29] *Id.*

[30] CAL. ELEC. CODE § 13107 (1994 California Code Archive).

[31] CAL. ELEC. CODE § 13107.5 (West 2019); 2002 Cal. Legis. Serv. Ch. 364 (A.B. 400).

[32] § 13107.5(a).

[33] § 13107(b)(2).

[34] *Id.* § 13107(b)(2)(A).

[35] *Id.* § 13107(b)(2)(B).

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, "Who do you hate the most?"[38] When his staff identified people 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" 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)(3). "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" as used in subsection (a)(3) means

---

[36] Chad D. Morgan, *Playing By The Ballot Rules*, 60-JUN ORANGE COUNTY LAW. 36 (2018).

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

[38] *Id.*

[39] *Id.*

[40] 2019 Bill Text Cal. A.B. 3304.

[41] *Id.*

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

> 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

> the 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 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, from the very general—mother, manual laborer, secretary—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

---

[43] *Id.* § 20714(a)(2).

[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).

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) An educational institution.[51]

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 election lawyer mentioned in the Introduction, recently explained, "Prior 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 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

---

[49] *Id.* § 20714(e)(2).

[50] *Id.* § 20714(e)(3).

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

[52] *Id.* § 20714.5(b).

[53] Morgan, *supra* note ___.

[54] CAL. ELEC. CODE § 13314(a)(3) (West 2019).

[55] Morgan, *supra* note ___.

[56] *Id.*

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

[58] *Id.* at 89.

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 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 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 job 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]

---

[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)).

[60] *Id.* at 89.

[61] *Id.* at 92.

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.* at 93.

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 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 *Rubin* court 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: "Examples of a status include, but are not limited to, philanthropist, *activist*, patriot, taxpayer, concerned citizen, husband, wife, and the like."[75] Thus, the court 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 court 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 does make the designation superficially somewhat more specific."[78] To the contrary, adding the word "peace" connects Rubin's name "to an idea which is popular but which can be used to describe a wide range of ideologies."[79]

---

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

[71] *Id.* at 1011.

[72] *Id.* at 1012.

[73] *Id.*

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

[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)).

[77] *Id.*

[78] *Id.*

[79] *Id*. Because 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

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 Sen. 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 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, the evidence showed that at the time 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

---

associated regulations. *See id.* at 1013-19. These challenges, which the court ultimately rejected, *id.* at 1019, are beyond the scope of this article.

[80] Lola Sherman, *In Oceanside, Three Little Words Can Become Big Issue*, San Diego Union-Tribune, Aug. 31, 1996, at B1.

[81] *Id.*

[82] Andal, 34 Cal. Rptr. 2d at 93.

[83] *Id.*

[84] *Id.*

[85] *Id.* at 89.

[86] *Id.* at 93.

[87] *Id.* at 94.

[88] *Id.*

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 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 § 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

---

[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).

[92] Stirling v. Jones, 77 Cal. Rptr. 2d 791, 795 (Ct. App. 1998). The California Court of Appeal's opinion in *Stirling* was initially designated for publication and was in fact published in both West's California Reporter, Second Edition, and California Appellate Reports, Fourth Edition. However, a footnote in the opinion states that "[i]n denying review, the Supreme Court ordered that the opinion be not officially published." *Id.* at 791 n.*.

[93] *Id.*

[94] *Id.* at 796.

[95] *Id.*

[96] *Id.*

[97] *Id.* at 795.

[98] *Id.*

[99] *Id.*

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—complies with the three-word limit.[102]

The Court of Appeal rejected Stirling's constitutional challenges to the three-word limit[103] and his argument that "Attorney General" should be considered one word because it expresses a single concept.[104] However, the court went on to find that the hyphenated spelling of Stirling's requested designation, "Chief Deputy Attorney-General," complies 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 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

---

[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, 77 Cal. Rptr. 2d at 805.

[108] *Id.* at 806.

[109] *Id.* at 808-09.

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]

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] 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 court 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 placing 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 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

---

[110] *Id.*

[111] *Id.* at 816.

[112] *Id.* at 817.

[113] *Id.*

[114] *Id.* at 818.

[115] *Id.*

[116] Stirling, 77 Cal. Rptr. 2d at 800.

[117] *Id.* at 806-810.

[118] *Id.* at 817.

are lower offices held by hundreds of lawyers.[119] It is unlikely, however, that more than a small handful of California voters actually 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's 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. 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, candidates are limited to listing their "current" professions, vocations, or occupations, or ones that the candidate held "during the calendar year immediately preceding the filing of nomination documents."[122] 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."[123] Jammal had practiced voting-rights law in the early 2000s, but more recently had worked as an attorney for a solar energy company.[124]

Another 2018 lawsuit involved Jessica Morse, a Congressional candidate who sought to run as a "National Security Strategist."[125] 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.[126] The judge ruled that Morse could not appear on the ballot as a

---

[119] *Id.* at 796.

[120] *Word Games; Just Because Law Allows Artfulness on the Ballot Doesn't Make It Right*, L.A. DAILY NEWS, Jan. 19, 2011, at A12.

[121] *Id.*

[122] CAL. ELEC. CODE § 13107(a)(3) (West 2019).

[123] Christopher, *supra* note ___.

[124] *Id.*

[125] *Id.*

[126] *Id.*

"National Security Strategist" and also rejected Morse's two alternative designations.[127] Morse ultimately chose to appear on the ballot without an occupational designation.[128]

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, 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."[129] 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."[130] 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.[131]

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."[132] Finally, a 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."[133]

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."[134] After the Secretary

---

[127] *Id.*

[128] *Id.*

[129] CAL. ELEC. CODE § 13107(e)(4) (West 2019).

[130] CAL. CODE REGS. tit. 2, § 20716(h)(1) (2019).

[131] *Id.* § 20716(h)(2).

[132] *Id.* § 20716(h)(3).

[133] *Id.* § 20716(h)(4).

[134] SOS Announces Outcome of Challenges to Ballot Designations and Inclusion of Candidates on Recall Ballot, July 21, 2021, *available at https://www.sos.ca.gov/administration/news-releases-and-advisories/2021-news-releases-and-advisories/sw21040.*

of State rejected the designation, Faulconer sued her.[135] Faulconer argued that when he became mayor in 2014, he knew that term limits would "force his early retirement" from the job.[136] The Secretary of State argued that because Faulconer left office due to term limits, he did not voluntarily retire from the position.[137] The Superior Court sided with the Secretary of State, and Faulconer changed his designation to "businessman/educator."[138]

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 is at odds with the language of the applicable regulation, which states that a retired public official "must have previously *voluntarily* retired from public office."[139] Second, Faulconer was just 53 years old when he left office in December of 2020.[140] 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.[141] He also worked as a visiting professor at Pepperdine University, teaching a course on "innovative local leadership."[142]

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.[143] 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 candidate for the U.S. House of Representatives, was ordered to change his designation from "Retired Marine Colonel"

---

[135] *Judge Rules Against Faulconer In Ballot Designation Dispute*, TIMES OF SAN DIEGO, July 21, 2021, *available at https://timesofsandiego.com/politics/2021/07/21/judge-rules-against-faulconer-in-ballot-designation-dispute/*.

[136] *Id.*

[137] *Id.*

[138] SOS Announces Outcome of Challenges to Ballot Designations and Inclusion of Candidates on Recall Ballot, *supra* note ___.

[139] CAL. CODE REGS. tit. 2, § 20716(h)(3) (2019).

[140] https://en.wikipedia.org/wiki/Kevin_Faulconer.

[141] Andrew Keatts, *Here's What the Business In Faulconer's 'Businessman' Ballot Title Refers To*, Voice of San Diego, July 26, 2021, *available at https://www.voiceofsandiego.org/topics/politics/heres-what-the-business-in-faulconers-businessman-ballot-title-refers-to/*.

[142] *Id.*

[143] CAL. ELEC. CODE § 13107(a)(3) (West 2019).

to "Assemblymember" after a Marine veteran living in the district filed a complaint.[144] Chavez had retired from the Marine Corps in 2001.[145]

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).[146] Prior to his 1974 election to the California legislature, Presley was a deputy sheriff in Riverside County for twenty-four years.[147] 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."[148] The guidelines further state that in order to claim "retired" status, the candidate must not have had another more recent occupation.[149] Presley, the court found, had a more recent occupation as a state senator.[150]

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,[151] 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, subsection (e)(1) of Elections Code § 13107 authorizes elections officials to reject a ballot designation if it "would mislead the voter."[152] In *Luke v. Superior Court*, the real party in interest, Jewell Jones, sought to use the occupational designation "Judge, Los Angeles County (Acting)" in her bid for an open seat on the Los Angeles Superior Court.[153] At the time, Jones was employed as a Los Angeles Superior Court commissioner. [154] The

---

[144] Christopher, *supra* note ___.

[145] *Id.*

[146] Andal, 34 Cal. Rptr. 2d at 93.

[147] *Id.* at 91.

[148] *Id.* at 94.

[149] *Id.*

[150] *Id.*

[151] *See* footnotes ___-___ and associated text.

[152] CAL. ELEC. CODE § 13107(e)(1) (West 2019).

[153] 34 Cal. Rptr. 594, 595 (Ct. App. 1988).

[154] *Id.*

trial court allowed Jones to use her proposed designation, and the incumbent against whom Jones was running, Sherrill D. Luke, appealed.[155]

The Court of Appeal reversed, finding that Jones's proposed designation was misleading.[156] 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."[157] 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.[158]

The trial court in *Luke* had reached its conclusion "after inquiring at length about the particular duties performed by Commissioner Jones."[159] The trial court noted that some commissioners primarily perform ministerial tasks, "while others serve as judges pro tempore virtually all of the time."[160] 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.[161]

The Court of Appeal rejected the trial court's "subjective analysis" as "unworkable."[162] 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."[163] 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."[164]

A few years later in *Andrews v. Valdez*, the Court of Appeal reached the opposite conclusion regarding the designation "administrative law judge."[165] There, an elections official had 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."[166] The Court of Appeal disagreed and ruled that the candidate could use the designation "administrative

---

[155] *Id.* at 595-96.

[156] *Id.* at 596.

[157] *Id*.

[158] *Id.*

[159] *Id.*

[160] *Id.*

[161] *Id.*

[162] *Id.*

[163] *Id.*

[164] *Id.*

[165] 46 Cal. Rptr. 2d 744 (Ct. App. 1995).

[166] *Id.* at 745.

law judge."[167] The *Andrews* court noted that unlike the candidate in *Luke*, "Andrews has not invented a job description nowhere authorized by statute.[168] To the contrary, "administrative law judge" was Andrews's title.[169] 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.[170] 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.[171]

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."[172] Carnahan's opponent in the race, Katherine Mader, filed a lawsuit challenging the "Professor" part of Carnahan's designation.[173] 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.[174] Nevertheless, the court ruled that Carnahan's chosen designation was not misleading.[175] 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."[176]

As noted in Section I, various designations including the word "prosecutor" have proven to be popular, especially among candidates for judgeships. 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.[177] 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

---

[167] *Id.* at 744.

[168] *Id.*

[169] *Id.*

[170] *Id.* at 744.

[171] *Id.* at 745.

[172] Emmett Berg, *Judge Rules Judgeship Candidate Is a Professor*, CITY NEWS SERVICE (Jan. 12, 2000).

[173] *Id.*

[174] *Id.*

[175] *Id.*

[176] *Id.*

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

word, civil cases.[178] In the end, it appears that nobody bothered to 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.[179] Eastman had been dean of the Chapman University School of Law for thirty months prior to resigning to run for attorney general.[180] Rather than run as a "law school dean" or some similar designation, Eastman chose the designation "assistant attorney general."[181] 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.[182] 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.[183]

Similarly misleading was Bruce Thompson's chosen designation of "businessman/entrepreneur" in his 2006 race against incumbent Bill Horn for San Diego County Supervisor.[184] At the time, Thompson was the Western Region Administrator of the United States Small Business Administration, a position he had occupied for five years.[185] Horn sued Thompson, arguing that Thompson's designation was misleading.[186] The court agreed and ordered Thompson to change his designation to "regional business administrator."[187] 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,[188] 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

---

[178] Definition of "prosecute," www.merriam-webster.com (last visited July 15, 2021, 3:54 PM) (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.

[179] *I'm Not a Politician; I'm Really a Screenwriter*, VENTURA COUNTY STAR, Apr. 7, 2010.

[180] *Id.*

[181] *Id.*

[182] *Id.*

[183] *Id.*

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

[185] *Id.*

[186] *Id.*

[187] *Id.*

[188] *Id.*

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 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.[189] 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.[190] 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."[191] Other jobs with low ratings for honesty and ethical standards included advertising practitioners, business executives, lawyers, journalists, and bankers.[192] In the middle, with between 36 and 43 percent of respondents choosing "high" or "very high" were judges, clergy, nursing home operators, and bankers.[193]

Nurses have taken the top spot in Gallup's survey in each of the past eighteen years.[194] Medical professionals in general rate highly in Gallup's survey, with at least 60 percent of respondents saying doctors, pharmacists, and dentists have high levels of honesty and ethical standards.[195] The only nonmedical profession that rates as highly is engineers.[196]

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%."[197] In a survey conducted shortly after the September 11, 2001 terrorist attacks, firefighters, rescue personnel, and military

---

[189] *Honesty/Ethics in Professions*, https://news.gallup.com/poll/1654/honesty-ethics-professions.aspx (last visited May 25, 2021, 1:03 PM).

[190] *Id.*

[191] *Id.*

[192] *Id.*

[193] *Id.*

[194] *Nurses Continue to Rate Highest in Honesty, Ethics*, https://news.gallup.com/poll/274673/nurses-continue-rate-highest-honesty-ethics.aspx (last visited May 25, 2021, 1:15 PM).

[195] *Id.*

[196] *Id.*

[197] *Id.*

servicemembers scored very highly, with firefighters temporarily taking over the top spot from nurses.[198]

Gallup also breaks down the results by political party. In 2018, a majority of Democrats—54 percent—rated the honesty and ethical standards of journalists as high or very high, whereas a majority of Republicans—61 percent—gave journalists low ratings.[199] In 2020, a majority of Republicans, but fewer than four in ten Democrats, rated police officers and clergy highly for honesty and ethics.[200]

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.[201] YouGov asked respondents whether or not they would be happy if their child went into a particular job.[202] Among respondents in the United States, the most respected professions were medical doctor, followed closely by scientist and architect.[203] Consistent with the annual Gallup survey, YouGov found that Americans have a very favorable view of nurses.[204] Americans also have favorable views of construction workers and truck drivers.[205] Professions with low favorability scores among Americans included miners, social media influencers, and call center workers.[206]

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.[207] 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

---

[198] *Firefighters Top Gallup's 'Honesty and Ethics' List*, https://news.gallup.com/poll/5095/Firefighters-Top-Gallups-Honesty-Ethics-List.aspx (last visited May 25, 2021, 1:32 PM).

[199] *Nurses Again Outpace Other Professions for Honesty, Ethics*, https://news.gallup.com/poll/245597/nurses-again-outpace-professions-honesty-ethics.aspx (last visited May 25, 2021, 1:29 PM).

[200] *U.S. Ethics Ratings Rise For Medical Workers and Teachers*, https://news.gallup.com/poll/328136/ethics-ratings-rise-medical-workers-teachers.aspx (last visited May 25, 2021, 1:37 PM).

[201] Matthew Smith and Jamie Ballard, *Scientists and Doctors Are the Most Respected Professions Worldwide*, https://today.yougov.com/topics/economy/articles-reports/2021/02/08/international-profession-perception-poll-data (last visited May 25, 2021).

[202] *Id.*

[203] *Id.*

[204] *Id.*

[205] *Id.*

[206] *Id.*

[207] Monika L. McDermott, *Candidate Occupations and Voter Information Shortcuts*, 67 J. POLITICS 201 (1994).

official occupational ballot designations for the candidates."[208] 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."[209]

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.[210] 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.

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.[211] Providing the ballot designations in that race reduced a voter's probability of voting for McClintock from forty-three percent to thirty-five percent.[212]

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."[213]

The race for Lieutenant Governor pitted Gray Davis, with the ballot designation "California Controller," against Cathie Wright, "Businesswoman, State Senator."[214] 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.

---

[208] *Id.* at 206.

[209] *Id.* at 210.

[210] *Id.* at 212.

[211] *Id.* 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. The pamphlet describes the Treasurer as the "chief investment officer" for the state. 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.*

[212] *Id.* at 213.

[213] *Id.* at 208.

[214] *Id.*

Nevertheless, McDermott characterized the Lieutenant Governor race as one "in which none of the candidates has a subject-relevant ballot designation."[215]

In the races for Insurance Commissioner and Lieutenant Governor, McDermott's data showed "no directional effects from ballot designations."[216] 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."[217] Voters infer candidate qualifications from occupationally appropriate ballot designations, and are more likely to support candidates with such designations.[218]

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.[219] Villaraigosa had served as mayor of Los Angeles from 2005 to 2013.[220] 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.[221] Thus, Villaraigosa's ballot designation made no mention of his mayoralty, and he finished a distant third in the Democratic primary.[222]

---

[215] *Id.* at 211.

[216] *Id.* at 212.

[217] *Id.* at 213.

[218] *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.

[219] Christopher, *supra* note ___.

[220] britannica.com entry for Antonio Villaraigosa, https://www.britannica.com/biography/Antonio-Villaraigosa (last visited June 9, 2021).

[221] CAL. ELEC. CODE § 13107(e)(4) (West 2019).

[222] https://www.cnn.com/election/2018/primaries/california/governor.

As McDermott acknowledges,[223] 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."[224] In 1999, a voter sued to block Newhall County Water Board candidate Lynne Plambeck from using the designation "environmental water consultant."[225] The court ruled that Plambeck could use the designation even though she also managed a family-owned manufacturing company.[226] 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."[227]

In May 2018, Ben Christopher studied 670 candidates running in the June 2018 primary elections.[228] He found that the most popular ballot designation was "Business Owner," followed closely by "Incumbent."[229] Other common designations included "Local Elected Official," "Teacher/Academic," "Activist," and "Lawyer."[230] One surprising result of Christopher's study was that the sixth-most-common designation was no designation at all.[231]

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

---

[223] *Id.* 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.").

[224] Kenneth Ofgang, *Hearings Set On Challenge To Ballot Designations In Water Board Races*, METROPOLITAN NEWS ENTERPRISE, Aug. 22, 1996, at 3.

[225] 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.

[226] *Id.*

[227] 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.*

[228] Ben Christopher, *How California Candidates Use Three Words to Sway Voters*, LOS ANGELES DALY NEWS (May 7, 2018 5:19 PM), https://www.dailynews.com/2018/05/07/how-california-candidates-use-three-words-to-sway-voters/.

[229] *Id.*

[230] *Id.*

[231] *Id.*

educators.'"[232] Not surprisingly, nurses and doctors are popular among all voters.[233] Gilliard claims that there exists "a bipartisan distrust of lawyers," leading candidates who are lawyers to add "softening qualifiers" to their ballot designations.[234] In 2018, ballot designations included "workers' rights attorney," "consumer protection attorney," and "attorney/mother."[235] Gilliard noted that lawyers who own their own law firms sometimes opt to run for office as "small business owners."[236]

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.[237] Padberg explained that "[s]ome voters look at the word [homemaker] and think the person doesn't have any experience."[238] 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.[239]

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.'"[240] 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."[241] Eighty-six percent of the Deputy District Attorneys in the study won their judicial elections, including one who unseated an incumbent judge.[242]

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,

---

[232] *Id.*

[233] *Id.*

[234] *Id.*

[235] *Id.*

[236] *Id.*

[237] Martin Miller, *'Homemaker' Isn't Where The Heart Is When It Comes To Campaigning*, L.A. TIMES, Aug. 24, 2000, at E1.

[238] *Id.*

[239] *Id.*

[240] Nakamura, *supra* note ___, at 32.

[241] *Id.*

[242] *Id.*

in their designations.[243] 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."[244] Shroyer worked as a residential real estate agent and property manager in Novato.[245] The county rejected Arnold's complaint and allowed Shroyer to run as a businesswoman.[246]

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.[247]

Thus, an incumbent member of the U.S. House of Representatives could choose a ballot designation like "Member, United States House of Representatives."[248] 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.

In California, incumbents are reelected more often than not.[249] Thus, it is not surprising that incumbents seeking reelection typically mention their incumbency in their ballot designations,

---

[243] Cadei, *supra* note ___; *see also* Jim Miller, *ELECTION: Ballot Designations Matter For Candidates*, THE PRESS-ENTERPRISE (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.").

[244] Dick Spotswood, *Ballot Designation Issue For Supervisor Candidate Shroyer*, MARIN INDEPENDENT J., Apr. 23, 2014.

[245] *Id.*

[246] *Id.*

[247] CAL. ELEC. CODE § 13107(a) (West 2019).

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

[249] For example, one study found that from 1995 to 2019, incumbents in municipal elections were reelected at a rate of 79%. 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 xxv (2019), https://perma.cc/GU5A-8CTG. In 2016,

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.[250] However, those incumbents did so in different ways. Twenty-three of them went with the straightforward "United States Representative" or "U.S. Representative," and six of those added their district numbers.[251] Eighteen of the incumbents chose some variation of "Member of Congress," "Congressman," "Congresswoman," or "United States Congressman."[252] Rep. Julia Brownley highlighted her connection to her district with the designation "Ventura County Congresswoman."[253] Three incumbents used "Representative" without mentioning the United States, and one of those added "Farmer" to his designation.[254] 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.[255] The remaining incumbents who mentioned their service in Congress used variations like "Member, United States House of Representatives" or "United States Congress Member."[256]

The lone incumbent House member who did not mention his current office in his designation was Rep. David Valadao.[257] 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.[258]

---

the reelection rate for California Assembly members was 92%, while the reelection rate for members of the California Senate was 100%. 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] (last updated Dec. 15, 2016, 11:00 AM). In 2020, the overall incumbent reelection rate in California was 85%. *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 updated Feb. 11, 2021).

[250] 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/.

[251] *Id.*

[252] *Id.*

[253] *Id.*

[254] *Id.*

[255] *Id.*

[256] *Id.*

[257] *Id.*

[258] *Id.*

Valadao changed his designation to "Farmer/Small Businessman" in 2014 and has used that designation ever since.[259]

It is difficult to see how, in 2014, 2016, 2018, or 2020, "Farmer/Small Businessman" could have been an accurate description of Rep. Valadao's "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 Rep. 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."[260] In contrast, "farmer" is a well-respected profession in the United States. In the 2021 YouGov poll discussed above, fifty-one percent of respondents said they would be happy if their children became farmers, and only ten percent answered "unhappy."[261] (The remaining respondents chose "neither happy nor unhappy.")[262]

V. SHOULD IT STAY OR SHOULD IT GO?

Chad Morgan, the California elections lawyer quoted in Section III, has used the designation "Farmer" to illustrate his frustrations with the ballot designation statute. According to Morgan, "Farmer" is "a very powerful ballot designation . . . at least in the Central Valley."[263] 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.[264]

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

---

[259] *Id.*

[260] *Honesty/Ethics in Professions*, *supra* note ___.

[261] Smith and Ballard, *supra* note ___.

[262] *Id.*

[263] Morgan, *supra* note ___.

[264] *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 ___.

California, Devin Nunes and Jeff Denham, both of whom represented "agriculture-heavy districts," sought to include "farmer" in their designations.[265] Various groups aligned with the Democratic Party filed lawsuits challenging these designations.[266] Rep. Denham's designation was based, at least in part, on the fact that he received rental income from a farm he owns.[267] 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."[268] 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.[269] Ultimately, the challenges to these designations were rejected, and Denham and Nunes were both allowed to include "farmer" in their designations.[270]

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,

> [t]he 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."[271]

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.[272] 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

---

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

[266] *Id.*

[267] *Id.*

[268] *Id.*

[269] *Id.*

[270] 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").

[271] Nakamura, *supra* note ___.

[272] *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).

professions, vocations, and occupations, we could simply decide—and California should decide—that such designations are more trouble than they're worth. After all, voters in the other forty-nine states manage to 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 office refused to allow Zoe Lofgren, a candidate for the U.S. House of Representatives, to include the word "Mother" in her ballot designation.[273] A spokesperson for the Secretary of State's office stated that it did not consider parenting to be an profession, vocation, or occupation.[274] 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.[275] 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."[276] 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.[277] Finally, in January 1998, the Secretary of State's office issued new guidelines, which included "mother" on a list of permissible designations.[278] Today, regulations promulgated by the Secretary of State's office clearly state that it considers "mother" a vocation.[279]

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.[280] 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."[281] 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.[282] The challengers argued that Keith's "principal" occupation was

---

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

[274] *Id.*

[275] *Id.*

[276] *Id.*

[277] *Id.*

[278] Chris Moran, *New Ballot Rules Let Hopefuls List Selves As 'Parents,'* SAN DIEGO UNION-TRIBUNE, Aug. 8, 1998, at B-1.

[279] CAL. CODE REGS. tit. 2, § 20714(a)(2) (2019).

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

[281] *Id.*

[282] *Id.*

criminal defense attorney.[283] 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.[284] 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.[285]

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 designation was accurate and a principal profession.[286] 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.[287] 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."[288]

We don't 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, 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."[289] 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, 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

---

[283] *Id.*

[284] *Id.*

[285] *Id.*

[286] *Id.*

[287] *Id.*

[288] *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 ___. 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.*

[289] CAL. CODE REGS. tit. 2, § 20714(b) (2019).

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.[290]

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's 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."[291] Scofield was certified by the state as a home-health aide, but she had never been licensed or registered as a nurse.[292] After Scofield's election, the hospital district launched an unsuccessful campaign to prevent Scofield from taking office.[293] 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.[294] 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.[295]

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), calling it "all about transparency and helping voters."[296] 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.[297]

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."[298] 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.[299]

---

[290] 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.

[291] Mike Burge, *State Declines To Sue Nancy Scofield Over Nurse Claim On Ballot*, San Diego Union-Tribune, Mar. 7, 1991, at B3.

[292] *Id.*

[293] *Id.*

[294] *Id.*

[295] Andrea Moss, *Nancy Scofield To Leave PPH's Board*, THE MORNING CALL, Apr. 6, 2006 (https://www.mcall.com/sdut-nancy-scofield-to-leave-pphs-board-2006apr06-story.html).

[296] Cadei, *supra* note ___.

[297] *Id.*

[298] Christopher, *supra* note ___.

[299] *See* 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.").

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."[300] 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 . . . ."[301]

Few would argue with the notion that increasing voter participation is good, but 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.

Another possibility is that the ballot designation statute made sense in 1931, when it was first added to the Political Code, but 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."[302] The original version of the statue, discussed in Section I, gave candidates just a single word to describe their occupations. Based on a contemporaneous news account,[303] 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; 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.[304] 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."[305]

---

[300] McDermott, *supra* note ___, 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.).

[301] *Id.* at 214.

[302] Bolinger, *supra* note ___.

[303] Jones, *supra* note ___.

[304] Hatch, *supra* note ___.

[305] *Id.*

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."[306] 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."[307] Whatever their value was in the 1930s, these designations "no longer impart any real information when candidates use them as campaign materials."[308]

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.[309] While this sounds like good news, Grace was able to identify numerous designations unlikely to survive a legal challenge if anyone bothered to file one.[310] 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.[311]

As noted in Section III, the dissenting 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."[312] 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.[313] 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

---

[306] Gonzales, *supra* note ___.

[307] *Ballots, Not Campaign Ads*, L.A. TIMES, June 4, 2012, at A13.

[308] *Id.*

[309] Roger M. Grace, *Perspectives 2006: The Year of the Writless Primary*, METRO. NEWS ENTERPRISE, May 16, 2006, at 7.

[310] *Id.*

[311] *Id.*

[312] Stirling v. Jones, 77 Cal. Rptr. 2d at 818.

[313] Cadei, *supra* note ___.

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.[314] 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."[315] When it comes to a candidate's background, qualification, 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. And make them document that their principal source of income over the previous 12 months has been derived from whatever occupation they designate.[316]

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.

---

[314] 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) ("the 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").

[315] Jones, *supra* note ___.

[316] *I'm Not a Politician*, *supra* note ___.

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."[317] 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.[318] 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. 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're 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," 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.[319] In other words, they are not disregarded or treated as meaningless by voters.

---

[317] Cassidy, *supra* note ___.

[318] Bob Rowland, *Here's At Least 1 Vote Cast For Motherhood*, SAN DIEGO UNION-TRIBUNE, Apr. 9, 1994, at B1.

[319] *See, e.g.*, Joshua Stewart, *Dumanis Not 'Judge' On Ballot*, SAN DIEGO UNION-TRIBUNE, Mar. 13, 2018 ("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 ___ ("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."); Editorial, *Who Are Those Guys?*, S.F. CHRONICLE, Apr. 7, 1990, at A16 ("whether you're running for governor or the mosquito abatement district, those three words

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.[320] 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 given unlimited words to "designat[e] the elective city, county, district, state, or federal office" which he or she holds.[321] 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."[322] 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.[323] 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."[324] 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

---

make a difference"); Jim Miller, *Candidate Ballot Designations Big Deal*, THE PRESS ENTERPRISE, Mar. 26, 2012, at A1 ("Experts say the three words carry outsized importance.").

[320] Bolinger, *supra* note ___.

[321] CAL. ELEC. CODE § 13107(a)(1) (West 2019).

[322] Bolinger, *supra* note ___.

[323] *Id.*

[324] Salinger v. Jordan, 395 P.2d 49, 50 (Cal. 1964).

to go away anytime soon. It has endured for nearly a century, despite criticism from commentators,[325] judges,[326] election officials,[327] and newspaper editorial boards.[328]

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."[329] 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.

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

---

[325] Morgan, *Playing By The Ballot Rules*, *supra* note ___ (urging the legislature to "clean up creative misuses of ballot designations").

[326] Nakamura, *supra* note ___ (arguing that the litigating of ballot designations is "expensive for both candidates and the court system while not necessarily providing voters any better information").

[327] Mike Cassidy, *Ballot Law Called Absurd, But 'Mother' Label Is Out*, SAN JOSE MERCURY NEWS, Apr. 7, 1994, at 1B ("'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.").

[328] *Ballots, Not Campaign Ads*, *supra* note ___ ("Eliminate ballot designations. . . . Designations no longer impart any real information when candidates use them as campaign materials."); *Editorial: Mother? Holy Warrior? Why Not? Candidates' Descriptions Could Tell Voters A Lot*, SAN JOSE 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.").

[329] Cadei, *supra* note ___.

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 legislature should repeal the statute and end the biennial farce that the ballot designation statute has wrought.