

The Capitol Connection

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WHAT'S NEXT FOR THE BLANKET PRIMARY?

In June, the U.S. Supreme Court struck down California's Proposition 198 "blanket" primary system, and already plans are being formulated to breathe new life into an electoral process that would give the voter the power to elect the candidate of their choice despite party affiliation.

Prior to Prop. 198, California had a closed primary, whereby each voter received a ballot containing only those candidates running in the voter's registered party. The Republican or Democrat who received the most votes from their respective party won a position on the general election ballot. Upon enactment of Prop. 198, however, voters received a ballot with the names of all of the candidates running instead of the candidates running in the voter's registered party. Voters were allowed to vote for anyone, regardless of the candidate's party affiliation.

The U.S. Supreme Court repealed the blanket primary system because it violated the parties' right of association by allowing members of other parties, or persons without party affiliation, to choose a particular party's nominee. Consequently a candidate could win the Republican position on the general election ballot, even though he or she may not have won the most votes from Republican voters. The Court held that the open primary violated the First Amendment by "forcing political parties to associate with those who do not share their beliefs."

Although the Supreme Court decision only recently eliminated the blanket primary, proponents are scrambling to pick up the pieces and start again. The majority opinion written by Justice Scalia provided a ray of hope for the proponents of the blanket primary.

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OFFICE OF SENATOR JOHN BURTON

TRIAL COURT BUDGET DEVELOPMENT PROCESS NOW IN USE

On Friday, June 30, 2000 Governor Davis approved a \$99.4 billion state budget for fiscal year 2000-2001. This year, in the third full year of statewide funding of the trial courts, the judicial branch budget is \$2.4 billion, a 9 percent increase over last year's budget and an estimated 22 percent increase over fiscal year 1998-99. The final budget responds to many of the immediate needs of the courts and supports long-term priorities set by the branch. Of significance this year is that several long-standing budget-related challenges have begun to be addressed, including juror compensation, judicial salaries, technology, and facilities.

To maximize success in completing the transition to a state-funded system and to meet the goals of the court system, the trial courts need to follow a process that is compatible with the existing state budget process. At the direction of the Judicial Council, therefore, the AOC has developed a program-based budget system that is analogous to the system used by other state-funded entities.

Simultaneously, a budget request process was implemented for the courts which was based on the state's budget process and the strategic plans of the trial courts and the Judicial Council. The budget request process includes workload analysis and performance measures. The program-based budget system and the new budget request process will:

- enhance the credibility of the trial courts' budget request;
- provide a structure to resolve chronic funding problems in the courts, such as negotiated salary increases and court technology funding;
- provide increased funding and greater predictability for the courts regarding workload-driven increases;
- increase the level of fiscal accountability the judicial branch provides to the public, the executive, and legislative branches; and
- simplify and stabilize the trial court budget process.

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In addressing the respondent's concerns about Prop. 198, Justice Scalia suggested resorting to a nonpartisan blanket primary. Scalia wrote that "under such a system, the State determines what qualifications it requires for a candidate to have a place on the primary ballot, which may include nominations by established parties and voter-petition requirements for independent candidates. Voters may then vote for any candidate, regardless of party affiliation, and the top two vote-getters then move on to the general election." This system is called "nonpartisan" because primary voters are not electing a party's nominee, rather a State's nominee, which takes away from the candidate an association with any one political party. Twenty-one states currently have a form of the nonpartisan primary, whereby voters select which party ballot they want as they enter the booth. In essence, voters can choose on the day of the election which party to vote for, but they are still restricted to voting within that party's primary. Although different from the theme of Prop. 198, which extends all candidates to all voters, the limited open primary system retains the parties' freedom of association while allowing some degree of discretion for the voter in selecting candidates.

So what's next?

Proponents of the popular blanket primary, many of whom had supported the 1996 legislation that placed the blanket primary on the state ballot, have promised to support and sponsor another open primary ballot measure, which would create a nonpartisan primary like the one cited by Scalia and currently used by several states.

One of the chief architects of the Californian blanket primary is Congressman Tom Campbell (R-San Jose), who is pursuing an initiative that would mimic Louisiana's nonpartisan primary system, the system suggested by Justice Scalia. In Louisiana, voters can change their party affiliation just before they cast their ballots; yet, they are still restricted to voting for the candidates of the party that they choose. Ultimately the top two vote-getters move on to the general election, even if both candidates are from the same party.

Another proponent of the California blanket primary, Nick Tobey, head of Californians to Protect the Open Primary, has pledged to put an open primary measure on the 2002 ballot. Tobey estimated that it would take more than \$1 million to gather the necessary signatures to put such a measure before the voters once again. Tobey's confidence in investing in such a plan may be attributed to the support Prop. 198 received in 1996 when over 59% of the voters voted for the initiative.

In the meantime, Senator Steve Peace (D-EI Cajon) has already won bipartisan support for SB 28, a bill that, while not identical to the Louisiana nonpartisan

primary, would at least allow political parties to open their primaries to about 2 million independent and "decline to state" voters. The bill recently passed out of the Assembly Elections Committee, and is awaiting consideration by the Assembly Appropriations Committee. Governor Gray Davis has promised to work toward some form of the open primary. The Secretary of State, Bill Jones, who is a Republican, called the Peace bill, "a good starting point that will give independent voters an equal voice in the selection of officeholders in California. I have encouraged my party to give serious consideration to Peace's proposal."

Despite Jones' optimism, it does not seem that the Republican Party will take an official position any time soon, especially with three law suits pending against Bill Jones by GOP nominees who lost the March 7 primary to their opponents despite the fact that they garnered more Republican votes.

Three GOP Assembly nominees, Jim Righermer of Fountain Valley, Bruce Matthias of Anaheim Hill, and Bob DeMallie of Ontario, have filed lawsuits seeking to deny the GOP winners, Tom Harman, Lynn Daucher, and Dennis Yates, respectively, of their position on the November ballot. They contend that the Supreme Court decision made last March's blanket primary unconstitutional, thus the voting results should be changed to reflect the winner of the most votes from the Republican ballots, without counting the Democrat and independent ballots. The suit is currently pending in federal court. ❖



...*BUDGET continued from page 1*

This structure will not only facilitate the approval of budget requests with the other branches of government, but will also meet the needs of trial courts as an independent branch of government.

The program-based budget process provides for both decentralized fiscal management at the local level and statewide budget authority within the Judicial Council. The new process enables the council to develop and implement internal fiscal operating policies and external policies and procedures for audit and fiscal controls consistently throughout the state. In addition, the program-based budget process is well-established, successfully used by the executive branch, and understood by the other branches. Further, the implementation of the new budget request process, including workload analysis and performance measures, will facilitate the approval of budget requests resulting from workload-based growth.

The AOC Finance Division is already at work refining the budget process for fiscal year 2001-2002 and beyond. As noted above, this new structure will provide stability and predictability to the trial courts' budget development and management processes. The enhanced credibility gained with the executive branch and the Legislature are anticipated to result in even greater success next year. ❖

WHAT DO YOU KNOW?

Trailer Bill – A legislative measure usually enacted contemporaneously with the Budget Act that makes statutory changes that are needed in order to implement items funded in the budget.

Example: Funding to increase juror per diem from \$5 to \$15 is provided in the 2000-2001 Budget Act. AB 2866 (Migden) is the trailer bill that provides the statutory authority to pay the increased amount by amending Code of Civil Procedure Section 231.

Source: Glossary of Legislative Terms*

*Look for the Office of Governmental Affairs' Glossary of Legislative Terms due to be published later this year.

August

31

*Last Day of
Legislative Session*



September

30

*Last Day for
Governor's Action*

DAVIS ADMINISTRATION JUDICIAL APPOINTMENTS

Since taking office, Governor Gray Davis has appointed or elevated 55 judges and justices to help the judicial branch deliver the highest quality of justice to the people of California. Following are the judges and justices (in alphabetical order) who have been appointed or elevated to the bench under the Davis Administration through August 9, 2000:

Judge	Court	Previous Position
Hon. Verna Alana Adams	Marin Superior	Private Practice
Hon. Paul Lloyd Beeman	Solano Superior	Private Practice
Hon. Paul Bernal	Santa Clara Superior	Deputy District Attorney, Santa Clara
Hon. Joseph A. Brandolino	Los Angeles Superior	Assistant U.S. Attorney
Hon. Peter J. Busch	San Francisco Superior	Private Practice
Hon. Dolores A. Carr	Santa Clara Superior	Supervising Deputy District Attorney, Santa Clara
Hon. Sharon A. Chatman	Santa Clara Superior	Deputy District Attorney, Santa Clara
Hon. Linda R. Condron	Santa Clara Superior	Deputy District Attorney, Santa Clara
Hon. Candace D. Cooper	Second District Court of Appeal	Los Angeles Superior Court
Hon. Betty L. Dawson	Merced Superior	Commissioner, Merced Superior Court
Hon. Patrick Donahue	Orange Superior	Senior Assistant District Attorney, Orange
Hon. Steven L. Dylina	San Mateo Superior	Deputy County Counsel, San Mateo
Hon. Lee Smalley Edmon	Los Angeles Superior	Private Practice
Hon. Katherine A. Feinstein	San Francisco Superior	Deputy City Attorney, San Francisco
Hon. Richard Todd Fields	Riverside Superior	Commissioner, Riverside Superior Court
Hon. William H. Follett	Del Norte Superior	Private Practice
Hon. Richard David Fybel	Orange Superior	Private Practice
Hon. Arthur Gilbert	Second District Court of Appeal, Presiding Justice	Second District Court of Appeal
Hon. Deirdre H. Hill	Los Angeles Municipal	Inspector General, L.A. Police Department
Hon. Marshall York Hockette	San Diego Superior	Private Practice
Hon. Garry T. Ichikawa	Solano Superior	Private Practice
Hon. Richard B. Iglehart	Alameda Superior	Chief Assistant District Attorney, San Francisco
Hon. Derek Guy Johnson	Orange Superior	Private Practice
Hon. Jane L. Johnson	Los Angeles Superior	Commissioner, Los Angeles Superior Court
Hon. Kent M. Kellegrew	Ventura Superior	Commissioner, Ventura Superior Court
Hon. M. Marc Kelly	Orange Superior	Senior Deputy District Attorney, Orange
Hon. Wray F. Ladine	Stanislaus Superior	Private Practice
Hon. Patrick J. Mahoney	San Francisco Superior	Chief Trial Deputy, City Attorney's Office
Hon. Robert M. Mallano	Second District Court of Appeal	Los Angeles Superior Court
Hon. James Patrick Marion	Orange Superior	Assistant District Attorney, Orange County
Hon. Jon Michael Mayeda	Los Angeles Superior	Los Angeles Municipal Court
Hon. Loren E. McMaster	Sacramento Superior	Private Practice
Hon. Rita J. Miller	Los Angeles Superior	Private Practice
Hon. James M. Mize	Sacramento Superior	Private Practice
Hon. Gregory Munoz	Orange Superior	Private Practice
Hon. Nho Trong Nguyen	Orange Superior	California Attorney General's Office
Hon. Kathleen E. O'Leary	Fourth District Court of Appeal	Orange Superior Court
Hon. Gary S. Paer	Orange Superior	Commissioner, Orange Superior Court
Hon. Yvette M. Palazuelos	Los Angeles Superior	Assistant U.S. Attorney
Hon. Dennis M. Perluss	Los Angeles Superior	Private Practice
Hon. Steven Z. Perren	Second District Court of Appeal	Ventura Superior Court
Hon. Richard Edward Rico	Los Angeles Municipal	Senior Attorney, Fourth District Court of Appeal
Hon. James R. Ritchie	Marin Superior	Private Practice
Hon. John Steven Salazar	Santa Cruz Superior	Commissioner, Santa Cruz Superior Court
Hon. Patricia M. Schnegg	Los Angeles Superior	Private Practice
Hon. Alan M. Simpson	Fresno Superior	Private Practice
Hon. M. Bruce Smith	Fresno Superior	Private Practice
Hon. Mark Wood Snauffer	Fresno Superior	Private Practice
Hon. Richard A. Stone	Los Angeles Superior	Deputy District Attorney, Los Angeles
Hon. Ronald L. Styn	San Diego Superior	Private Practice
Hon. Leslie A. Swain	Los Angeles Municipal	U.S. Attorney's Office
Hon. Kathryn Doi Todd	Second District Court of Appeal	Los Angeles Superior Court
Hon. Diana Merline Wheatley	Los Angeles Superior	Commissioner, Los Angeles Superior Court
Hon. Paul E. Zellerbach	Riverside Superior	Supervising Deputy District Attorney, Riverside
Hon. Laurie Zelon	Los Angeles Superior	Private Practice

PROFILE

Mr. Anthony Williams

Office of Senator John Burton, President pro Tempore

Anthony Williams is Senate President pro tem John Burton's point person on judicial and public safety issues. Mr. Williams, a graduate of U.C. Davis and Harvard's Kennedy School of Government, joined Senator Burton's staff in March of this year following six years as a member of the Administrative Office of the Courts staff in the Budget Unit and the Office of Governmental Affairs. He recently spoke with *Capitol Connection* about his new role.

CC: What is your role in the Office of the pro-Tem?

AW: My role in the Office of the pro-Tem is really twofold. On the one hand, I am a staff person to Senator John Burton, and I staff legislation that he carries personally. That includes typical legislative staffing activities such as drafting, negotiating amendments with interested parties, and shepherding bills through the legislative process. This year, one of the major pieces of legislation that I'm working on is Senate Bill 1342, which allows convicted persons to seek post-conviction DNA testing on evidence that could prove their innocence.

The other aspect of my work is advising the pro Tem on all issues, legislative or otherwise, that go through, or have to do with, the Judiciary and Public Safety committees. A large portion of that is summarizing the bills and major issues that will come before the committees at each hearing. I'm also responsible for making sure that the Senator's concerns are communicated to committee staff and other members of the committee.

CC: What will be the most compelling issues facing the Senate Public Safety and Judiciary committees in the coming year?

AW: Starting with Senate Public Safety Committee, I think one of the issues that will continue to be extremely important, and one that is of particular concern to Senator Burton, is juvenile justice. I think that Senator Burton firmly believes that we need a more balanced approach than you find in the recently enacted Proposition 21, and that we need to have a juvenile justice system that is more prevention-oriented than punishment-oriented. I know that Senator Burton will continue to work toward ensuring that juvenile

justice issues are addressed both through the legislative process and the budget process, and other mechanisms as appropriate.

Other major crime issues include the use of DNA evidence. In addition to SB 1342, there have been proposals to expand the use of what is currently DNA data-banking; that is taking a suspect's DNA and attempting to use it to match evidence in unsolved crimes. How that gets worked out is going to be a major issue that the Legislature is addressing.

There are also a number of bills in both the Public Safety and Judiciary Committees dealing with identity theft and other privacy concerns.

As a segue into the Judiciary Committee issues, I think privacy continues to be a major issue that the committee is grappling with. The Judiciary Committee is also trying to deal with balancing the rights of consumers vis-a-vis Health Maintenance Organizations. Last year there was legislation aimed at allowing consumers more rights in terms of their ability to sue HMO's. There are proposals this year as well that would address the use of binding arbitration in HMO contracts.

CC: How has your experience working with the Judicial Council Office of Governmental Affairs prepared you for your new role in an office of the legislature?

AW: The three and a half years that I worked in the Office of Governmental Affairs significantly increased my knowledge of the legislative and budget processes. I don't have a direct role with the budget process anymore, but I do have to get involved in that process from time to time as issues of Public Safety and the Judiciary intersect with the budget. In terms of getting a more hands on, insider view of the legislative process, working as a legislative advocate helped me learn the entire process, and learn who the people were that I would be dealing with. I think it's helped me to understand how to relate to other legislative advocates who come before me, having worn those shoes in my own capacity. And I've had the benefit of working with very capable people at the Office of Governmental Affairs who showed me the ropes, including Ray LeBov, Kate Howard, and June Clark, who were instrumental in teaching me what I really needed to know.

CC: How would you compare or contrast your experience advocating for a single entity with your new responsibilities, which require weighing competing and diverse priorities?

AW: In some ways it's a lot more difficult, for obvious reasons, because you are having to consider competing interests as opposed to just your own. Although, when you're advocating, you also have to understand and be sensitive to other people's concerns in order to know what you're up against. But when you are the person being lobbied, so to speak, you do have to listen much more carefully to varying points of view, and consider those views very carefully. One of the first things I learned when I came into this job is that it is a lot like a court trial. When the prosecution or plaintiff gets up to present their case, it sounds like it's a slam dunk. But then the defense gets up there and it becomes much more ambiguous, and not as black and white. That is certainly the case being a legislative staff person, because invariably there are at least two sides to an issue. Both sides always sound compelling, and in the end you just have to go with your gut, in terms of what you think makes the most sense. And then I determine what information my boss, John Burton, will need to know to make his decision.

CC: What are the most significant issues being addressed by recent or pending court-related legislation?

AW: I think of great interest to the public are attempts to improve the jury system in California. I think there have been a number of bills this session concerning jury reform, as well as the recent increase in juror compensation that was included in the budget. I think the reforms will show jurors that the system respects the work that they do, and the contributions they make to the functioning and operation of the courts.

I also know that the legislation that Senator Burton is carrying for post-conviction DNA testing is of great interest to the public. The whole issue of DNA and how it is used in the courts has gotten a lot of publicity lately.

Another area of legislation in which the courts are becoming increasingly involved is in addressing the problem of domestic violence. A number of bills this year sought to increase funding for domestic violence courts, although the funding did not succeed. The public continues to be very concerned with domestic violence, and the role of the courts is becoming more recognized. I also think there is more that can be done, and probably should be done, to increase the role of the courts in addressing that serious problem.

CC: What still needs to be addressed?

AW: Going back to my prior life and an issue that I was very much involved in for the Judicial Council, I

would mention trial court funding. As implementation issues are sorted out, and others are identified related to trial court funding, there will probably be more legislation needed to clean-up, or refine, what was done in the Trial Court Funding Act of 1997. Legislation that makes it easier for the courts and counties to be clear on their respective roles and responsibilities in terms of trial court funding will improve how the courts deliver services to the public. And ultimately I think the public will begin to recognize the improved efficiencies that are gained through both trial court funding and unification.

CC: What are your observations regarding the relationship and interaction between the judicial branch and the other branches of government?

AW: First of all, I have to give a lot of credit to the Chief Justice and Bill Vickrey for the leadership they have shown in stewarding the branch in a way that has garnered the respect of the other two branches of government. As issues have become more complex in recent years, it has significantly helped, I think from the Legislature's perspective, to have a judiciary that speaks with one voice and is consistent in its message. I think the Office of Governmental Affairs, led by Ray LeBov, Bill Vickrey and the Chief Justice, has greatly improved our ability to interact, and certainly has helped me in terms of communicating the judiciary's position to Senator Burton. ❖

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