

# Ending of ballot favoritism and what it means

By BRUCE BOLINGER

On July 7th, the state Supreme Court, in *Gould v. Grubb*, officially recognized what political practitioners have known for many years — that the top position on the ballot in many elections is a distinct advantage. Because these positions have been reserved by California law to incumbents and to candidates whose names came first in the alphabet, the court concluded that their opponents' supporters were being discriminated against as a class in violation of the equal-protection clauses of the federal and state constitutions. Although passage of Proposition 9 last year deprived incumbents of an automatic top-of-the-list position, alphabetical order had remained intact. In its decision, the court left it up to the Legislature to find a constitutionally acceptable alternative to an alphabetical listing.

A recent study by William N. Durley, former Sacramento County clerk who joined the Secretary of State's office last month, examined the votes of 99 candidates in 1970 and 1974 statewide primary races in which there were no incumbents and the names of all the candidates were rotated by Assembly district. The results: When candidates were listed first on the ballot, their percentage of the total vote cast was, on the average, almost 5 points higher than when they appeared last. Ballot position had the least impact on voters in the highly publicized United States Senate and gubernatorial primaries, but it obviously entered into voter choices in other races. Two of the losers in 1974 would have won had they been listed first throughout the entire state instead of just in their share of the Assembly districts:

- Walter Karabian received 31.2 percent of the total vote cast when he was listed first, compared to March Fong's statewide percentage of 28.9.
- Lawrence Walsh, with 32.5 percent when he was listed first, would have defeated Mervyn Dymally, who had 29.9 percent statewide.

Over the years, the Legislature has shown its awareness of the impact of ballot order on elections. In 1911, it decided to try to reduce that effect by requiring the candidates' names to rotate by Assembly district in statewide, Board of Equalization, and congressional elections. In 1935, however, a Legislature of a different mind added the requirement that incumbents be listed first.

## ABCs of elections

The effect of alphabetical order on county central committee elections had gotten so out of hand by 1941 that state Senator Robert Kenny introduced a bill that provided for a system of drawings to determine ballot position. By then almost 50 percent of the members of the Los Angeles County Democratic Central Committee had names beginning with the letters A, B, C or D. It is ironic that a system for determining ballot order adopted

34 years ago for the most obscure elected office now, at the very least, will have to be applied to all offices lacking effective systems of name rotation.

In the San Francisco municipal elections of 1941, the positions of incumbents at the top of the ballot became both an issue and a campaign strategy. The city was then still deferring to state law on ballot position. With 19 candidates running at-large for the five supervisorial seats and with incumbents listed first, the anti-incumbent forces adopted the slogan "skip the first five". The campaign was almost entirely successful in directing the voters' attention past the top of the ballot to the opposition slate. Only one of the incumbents survived, and he received the lowest vote of any supervisor elected that year. The new Board of Supervisors, in 1942, perhaps aware of their vulnerability at the top of the ballot, presented a charter amendment to the voters in the November elections requiring rotation of all candidates' names by Assembly districts, without regard to incumbency. It was adopted overwhelmingly.

## Question of strategy

Ballot position obviously has been a part of campaign strategy in the past and will continue to be in the future — whatever reforms the Legislature decides to adopt. When candidates have been listed alphabetically, there have often been suspicions that certain ones were filed only because they would appear first and drain off someone else's votes. Even in elections in which candidates' names have been rotated, campaign managers have had to vary strategy to take into account whether their candidates' names were prominent on the ballots or buried in long lists of names. This applied in the past to statewide, Board of Equalization, congressional and certain county races, and will apply in the future to any additional offices to which the Legislature decides to apply the principle of rotation.

A new factor will be introduced if the Legislature requires rotation by clusters of precincts, such as every 10 or 20 precincts, since whoever has the authority to decide which precincts are grouped for rotation purposes has a power similar to that involved in reapportionment — various types of voters with certain voting patterns can be concentrated or dispersed among the clusters. There are other possibilities as well. One elected county clerk, only half in jest, said, "Give me the power to pick the precincts and I'll put my opponent's name first in the precincts without any voters!"

*The author is a consultant to the Assembly Elections and Reapportionment Committee.*

