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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
(Western Division)
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14 ELECTION INTEGRITY PROJECT®
CALIFORNIA, INC., et al.,

15 Plaintiffs,

16 v.

17 SHIRLEY WEBER, CALIFORNIA
18 SECRETARY OF STATE; et al.,

19 Defendants.
20

No. 2:21-cv-00032-AB-MAA

**COUNTY DEFENDANTS' REQUEST
FOR JUDICIAL NOTICE IN
SUPPORT OF REPLY IN SUPPORT
OF MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED
COMPLAINT**

Date: May 12, 2023

Time: 10:00 a.m.

Crtrm: 7B

Judge: The Honorable André Birotte Jr.
21

22 **REQUEST FOR JUDICIAL NOTICE**

23 In support of the County Defendants' Reply in support of County Defendants'
24 Motion to Dismiss Plaintiffs' Second Amended Complaint (SAC) and pursuant to
25 Federal Rule of Evidence 201, the County Defendants request that the Court take
26 judicial notice of the following government documents that are referred to in the
27 County Defendants' Motion, which are matters of public record and not subject to
28 reasonable dispute. True and correct copies of these documents are attached hereto.

1 1. Attached as **Exhibit A** is a true and correct copy of the Assembly
2 Committee on Elections and Redistricting’s analysis of the June 21, 2016 version of
3 State Bill (SB) 450. The opposition of Plaintiff Election Integrity Project of
4 California (EIPCa) is noted on page 23. In this action, Plaintiffs seek a court order
5 declaring this statute unconstitutional. (SAC at 40 ¶¶ 5(e), 7.)

6 2. Attached as **Exhibit B** is a true and correct copy of the Assembly
7 Committee on Elections and Redistricting’s analysis of the June 4, 2020 version of
8 Assembly Bill (AB) 860. Plaintiff EIPCa’s opposition is noted on page 10. In this
9 action, Plaintiffs seek a court order declaring this statute unconstitutional. (SAC at
10 39-40 ¶¶ 5(a), 7.)

11 3. Attached as **Exhibit C** is a true and correct copy of the Senate
12 Committee on Elections and Constitutional Amendments’ analysis of the March 9,
13 2021 version of SB 503. Plaintiff EIPCa’s opposition is noted on page 8. In this
14 action, Plaintiffs seek a court order declaring this statute unconstitutional. (SAC at 40
15 ¶¶ 5(c), 7.)

16 4. Attached as **Exhibit D** is a true and correct copy of the Assembly
17 Committee on Elections’ analysis of the April 7, 2021 version of AB 37. Plaintiff
18 EIPCa’s opposition is noted on page 6. In this action, Plaintiffs seek a court order
19 declaring this statute unconstitutional. (SAC at 39-40 ¶¶ 5(b), 7.)

20 * * *

21 The Court may take judicial notice of facts that are not subject to reasonable
22 dispute and either generally known or capable of accurate and ready determination by
23 resort to sources whose accuracy cannot reasonably be questioned. See Fed. R. Evid.
24 201(b). The Court “may take judicial notice of ‘matters of public record.’” *Lee v. City*
25 *of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) (quoting *Mack v. S. Bay Beer*
26 *Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986)). Accordingly, government documents
27 that are public records are judicially noticeable. *See Cachil Dehe Band of Wintun*

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1 *Indians of the Colusa Indian Cmty. v. California*, 547 F.3d 962, 968 n.4 (9th Cir.
2 2008) (taking judicial notice of government documents on a government website).

3 The Court may take judicial notice of Exhibits A through D, which are state
4 government documents and matters of public record. *See Lee*, 250 F.3d at 688-89.

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6 Dated: April 26, 2023

Respectfully submitted,
JAMES R. WILLIAMS
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10 Dated: April 26, 2023

By: /s/ Mary E. Hanna-Weir
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MATTHEW A. SMITH
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ATTESTATION

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I, Mary E. Hanna-Weir, am the ECF user whose ID and password are being
used to file the above Request for Judicial Notice. In compliance with Civil Local
Rule 5-4.3.4(2)(i), I hereby attest that each listed counsel above has concurred in this
filing.

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2818897 /s/ Mary E. Hanna-Weir

EXHIBIT A

Date of Hearing: June 29, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Shirley Weber, Chair
SB 450 (Allen and Hertzberg) – As Amended June 21, 2016

SENATE VOTE: (vote not relevant)

SUBJECT: Elections: vote by mail voting and mail ballot elections.

SUMMARY: Permits specified counties beginning in 2018, and all other counties beginning in 2020, to conduct elections in which every voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions. Permits Los Angeles County, beginning in 2020 and for a period of not more than four years, to conduct elections in which vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions. Specifically, **this bill:**

- 1) Permits the counties of Calaveras, Inyo, Madera, Napa, Nevada, Orange, Sacramento, San Luis Obispo, San Mateo, Santa Clara, Shasta, Sierra, Sutter, and Tuolumne, on or after January 1, 2018, and permits all other counties, on or after January 1, 2020, to choose to conduct elections where all voters are mailed a ballot and where vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to the following conditions:
 - a) **Vote Centers.** Requires vote centers to be open, in lieu of polling places, on election day, and for the 10 days prior to election day, in accordance with the following:
 - i) **Number of Vote Centers and Dates and Hours of Operation.** Requires the number of vote centers, and the dates and times that those vote centers are available, to comply with the following:
 - (1) **Regular Elections.** At a regularly scheduled election, requires vote centers to be open in accordance with the following:
 - (a) From the 10th day through the fourth day prior to the election, requires at least one vote center for every 50,000 registered voters, with no fewer than two vote centers, each open for at least eight hours per day.
 - (b) From the third day prior to the election through election day, requires at least one vote center for every 10,000 registered voters, with no fewer than two vote centers. Requires each vote center to be open for at least eight hours per day on the days prior to election day, and from 7 a.m. to 8 p.m. on election day. Requires at least 90 percent of the number of required vote centers to be open for all four days; provides that up to 10 percent of the locations need not be open for all four days as long as the *total* number of vote centers open on each day does not fall below the required number of locations.

- (c) Requires vote centers to be located in the jurisdiction where the election is being held.
- (2) **Special Elections.** At a special election, requires vote centers to be open in accordance with the following:
 - (a) From the 10th day through the day prior to the election, requires at least one vote center for every 60,000 registered voters, each open for at least eight hours per day, provided, however, that in jurisdictions with fewer than 30,000 registered voters, the elections official is only required to make a reasonable effort to establish a vote center.
 - (b) On election day, requires at least one vote center for every 30,000 registered voters, each open from 7 a.m. to 8 p.m., provided, however, that in jurisdictions with fewer than 30,000 registered voters, the elections official is only required to make a reasonable effort to establish a vote center.
 - (c) Requires vote centers to be located in the jurisdiction where the election is being held unless the jurisdiction is not wholly contained within the county, in which case the elections official is required to make a reasonable effort to locate at least one vote center in the jurisdiction.
- ii) **Location of Vote Centers.** Requires vote centers to be located in accordance with the following requirements:
 - (1) Equitably distributed around the county so as to afford maximally convenient options for voters.
 - (2) At accessible locations as near as possible to established public transportation routes.
- iii) **Voter Experience at a Vote Center.** Requires that a voter be able to do any of the following at a vote center:
 - (1) Return, or vote and return, a vote by mail (VBM) ballot;
 - (2) Register to vote, or update his or her registration, and vote, as specified;
 - (3) Receive and vote a provisional ballot, as specified;
 - (4) Receive a replacement ballot upon verification that a ballot for the same election has not been received from the voter by the elections official; and,
 - (5) Vote a regular, provisional, or replacement ballot using accessible voting equipment that provides for a private and independent voting experience.
- iv) **Assistance Available at, and Accessibility of, Vote Centers.**
 - (1) **Language Assistance.** Requires vote centers to comply with the following language assistance requirements:

- (a) Assistance is provided in all languages required in the jurisdiction pursuant to state and federal law, in a manner that enables voters of applicable language minority groups to participate effectively in the electoral process.
 - (b) Information is posted at each vote center regarding the availability of language assistance in English and any other languages required in the jurisdiction under state and federal law.
 - (c) If a vote center is in or adjacent to a precinct, census tract, or other defined geographical subsection identified in establishing language requirements under state or federal law, or identified as needing language assistance through the public input process established by this bill, the vote center is staffed by election board members who speak the required language. If the elections official is unable to recruit board members who speak the required language, alternative methods of effective language assistance are provided.
 - (d) Translated election materials are provided in all languages required in that jurisdiction under state or federal law.
- (2) **Accessibility.** Requires vote centers to comply with the following disability accessibility requirements:
- (a) Reasonable modifications and auxiliary aids and services are provided as required by federal law, as specified.
 - (b) Vote centers comply with state and federal accessibility requirements, as specified.
 - (c) Each vote center is equipped with no fewer than three accessible voting units that provide individuals with disabilities the same opportunity for access and participation as is provided to voters who are not disabled, including the ability to vote privately and independently, as specified.
- v) **Additional Requirements.**
- (1) Requires every vote center to have an electronic mechanism that allows elections officials to immediately access voter registration data, including whether each voter has been issued a VBM ballot and whether a ballot has been received by the elections official.
 - (2) Provides that the requirements for eligibility and composition of precinct boards at polling places generally apply for election boards at vote centers, except as otherwise specified.
- b) **Vote by Mail Ballots and Ballot Return.** Requires registered voters to be mailed ballots and requires drop-off locations to be established as follows:
- i) **Materials and Information Mailed to Voters.** Requires the elections official to mail all of the following to each registered voter:

- (1) A VBM ballot, along with instructions and a ballot return envelope, beginning the 29th day before the election.
 - (2) A notice, translated in all languages required for the jurisdiction under state and federal law, that informs voters of all of the following:
 - (a) An all-mailed ballot election is being conducted and each eligible voter will be issued a ballot by mail;
 - (b) The voter may cast a ballot in person at a vote center during specified days and times;
 - (c) The voter may request the elections official to send a ballot or a copy of a ballot in a language other than English, if such materials are required by state or federal law, no later than seven days before the election; and,
 - (d) The voter may request the elections official to deliver a ballot that voters with disabilities can mark privately and independently, as specified, no later than seven days before the election.
 - (3) A list of the ballot drop-off locations and vote centers established pursuant to this bill, including the dates and hours they are open. Additionally requires this list to be posted in an accessible format, as specified, on the Internet Web site of the county elections official.
 - (4) A postage-paid postcard that the voter may return to the county elections official for the purpose of requesting a ballot in a language other than English.
- ii) **Ballot Drop-Off Locations.** Provides that a "ballot drop-off location" consists of a secure, accessible, locked ballot box located as near as possible to established public transportation routes to receive voted ballots. Requires drop-off locations to comply with specified regulations adopted by the Secretary of State (SOS). Requires the elections official to provide ballot drop-off locations that comply with the following:
- (1) **Number of Drop-Off Locations and Dates and Hours of Operation.** Requires drop-off locations to be open during regular business hours beginning not less than 28 days before the election, and on the date of the election, and requires the number of drop-off locations to comply with the following:
 - (a) **Regular Elections.** For regularly scheduled elections:
 - (i) At least one drop-off location is provided for every 15,000 registered voters, with no fewer than two drop-off locations; and,
 - (ii) At least one drop-off location includes an accessible, secured, exterior drop box that is available for a minimum of 12 hours a day including regular business hours.

- (b) **Special Elections.** For special elections, at least one drop-off location is provided for every 15,000 registered voters, with at least one drop-off location located within the jurisdiction where the special election is held.

iii) **Accessibility of VBM Ballots and Written Election Materials.**

- (1) Requires that a method be available for a voter with a disability to request a blank VBM ballot and, if a replacement ballot is necessary, a blank replacement ballot, that voters with disabilities can read and mark privately and independently, as specified.
- (2) Requires the elections official, upon request, to provide written voting materials in an accessible format to voters with disabilities, as specified.
- c) **Election Administration Plan.** Requires the elections official to develop a plan for the administration of elections (administration plan) pursuant to this bill.

i) **Operational Details.**

- (1) Requires the elections official, when developing the administration plan, to consider the following:
- (a) The proximity of vote centers and drop-off locations to all of the following:
- (i) Public transportation;
 - (ii) Communities with historically low VBM usage;
 - (iii) Population centers;
 - (iv) Language minority communities; and,
 - (v) Voters with disabilities.
- (b) Access to accessible and free parking at vote centers and drop-off locations.
- (c) Distance and time a voter must travel by car or public transportation to a vote center and drop-off location.
- (d) Need for alternate methods for voters with disabilities for whom VBM ballots are not accessible to cast a ballot.
- (e) Traffic patterns near vote centers and drop-off locations.
- (f) Need for mobile vote centers.
- (2) Requires the administration plan to include information on the following, to the extent available at the time of publication:

- (a) The numbers, locations, and operating hours of vote centers and drop-off locations to be established, and an indication of whether drop-off locations are inside or outside.
 - (b) A map with the location of each vote center and drop-off location.
 - (c) Security and contingency plans to be implemented by the county to do both of the following:
 - (i) Prevent a disruption of the vote center process; and,
 - (ii) Ensure that the election is properly conducted if a disruption occurs.
 - (d) The number of election board staff including bilingual board members and languages spoken.
 - (e) The services provided for individuals with disabilities including, but not limited to, the type and number of accessible voting machines and reasonable modifications at each vote center.
 - (f) The design, layout, and placement of equipment inside each vote center that protects each voter's right to cast a private and independent ballot.
- ii) **Voter Education and Outreach Plan.** Requires the administration plan to include a voter education and outreach plan (outreach plan) that is subject to all of the following requirements:
- (1) Requires the outreach plan to include descriptions of the following:
 - (a) How the elections official will use the media, including social media, newspapers, radio, and television, that serve language minority communities for purposes of informing voters of the upcoming election and promoting the toll-free voter assistance hotline.
 - (b) How the elections official will have a community presence to educate voters.
 - (c) The accessible information that will be publicly available on the elections official's website.
 - (d) The method used by the elections official to identify language minority voters.
 - (e) How the elections official will educate and communicate the provisions of this bill to the public, including but not limited to:
 - (i) Communities for which the county is required to provide voting materials and assistance in a language other than English under state and federal law, including a plan for a bilingual voter education workshop for each such language; and,

- (ii) The disability community including organizations and individuals that advocate on behalf of, or provide services to, individuals with disabilities, including a plan for a voter education workshop to increase accessibility for participation of voters with disabilities.
 - (f) How the county will spend the necessary resources on voter education and outreach to ensure that voters are fully informed about the election, including information about how the education and outreach budget compares to recent similar elections.
 - (g) A plan for at least one public service announcement in the media, including newspapers, radio, and television, that serve English-speaking citizens for purposes of informing voters of the upcoming election and promoting the toll-free voter assistance hotline. Requires this outreach to include access for voters who are deaf, hard of hearing, blind, or visually impaired.
 - (h) A plan for at least one public service announcement in the media, including newspapers, radio, and television, that serve non-English-speaking citizens for each language in which the county is required to provide voting materials and assistance, for purposes of informing voters of the upcoming election and promoting the toll-free voter assistance hotline.
 - (i) At least two direct contacts with voters, in addition to the mailing of the VBM ballot and of the sample ballot, for the purposes of informing voters of the upcoming election, and promoting the toll-free voter assistance hotline.
- (2) Requires the county elections official, after the adoption of the final administration plan, to submit the outreach plan to the SOS for approval.
 - (3) Requires the SOS to approve, approve with modifications, or reject a voter education and outreach plan within 14 days after the plan is submitted by an elections official.
- iii) **Miscellaneous Elements of the Administration Plan.** Requires the administration plan to include descriptions of all of the following:
- (1) How a voter with disabilities may request and receive a blank VBM ballot and, if a replacement ballot is necessary, a blank replacement ballot that voters with disabilities can mark privately and independently.
 - (2) How the elections official will address significant disparities in voter accessibility and participation identified in reports required by this bill.
 - (3) The methods and standards that the county elections official will use to ensure the security of voting conducted at vote centers.
 - (4) Estimated short- and long-term costs and savings from conducting elections pursuant to this bill as compared to recent similar elections.

iv) Process for Adoption of Administration Plan.

- (1) Requires a draft plan for the administration of vote centers to be developed in consultation with the public, which includes, but is not limited to, both of the following:
 - (a) One meeting, publicly noticed 10 days prior to the meeting, that includes representatives, advocates, and other stakeholders representing each community for which the county is required to provide voting materials and assistance in a language other than English under state and federal law; and,
 - (b) One meeting, publicly noticed 10 days prior to the meeting, that includes representatives from the disability community and community organizations and individuals that advocate on behalf of, or provide services to, individuals with disabilities.
- (2) Requires the county elections official to provide public notice of the draft plan and to accept public comments on the draft plan for a period of 14 days. Requires the elections official, following the public comment period, to hold a public meeting, noticed 10 days in advance, as specified, to consider the draft plan and public comments.
- (3) Requires the elections official to consider any public comments and permits the official to amend the draft plan after the consideration of the public comments. Requires the elections official to publicly notice the amended draft plan and accept public comments for a period of 14 days. Permits the elections official to adopt a final plan following this 14 day public comment period.
- (4) Requires auxiliary aids and services to be provided upon request at any public meeting held for the development of the administration plan in order to ensure effective communication with people with disabilities.
- (5) Requires the draft plan, amended plan, and adopted plan to be posted on the county's website in each language in which the county is required to provide voting materials and assistance, and on the county's and the SOS's website in an accessible format, as specified.

v) Updates and Amendments to the Administration Plan.

- (1) Requires the elections official to hold additional public meetings to consider revising the plan, subject to the requirements outlined above, not more than two years after the adoption of the first plan, and every four years thereafter.
- (2) Permits an elections official to amend a plan for the administration of elections under this bill as follows:
 - (a) In the last 120 days before an election held pursuant to this bill, the plan may be amended with reasonable public notification; and,

(b) If it is more than 120 days before an election held pursuant to this bill, the plan may be amended with reasonable public notification after a 30 day period during which public comments are accepted on the amended plan.

d) Additional Requirements.

- i) Requires a toll-free voter assistance hotline, which is accessible to voters who are deaf and hard of hearing, maintained by the county elections official that is operational no later than 29 days before the day of the election until 5 p.m. on the day after the election. Requires the hotline to provide assistance to voters in all languages in which the county is required to provide voting materials and assistance, as specified.
- ii) Requires the county elections official to establish a Language Access Advisory Committee (LAAC), comprised of representatives of language minority communities, and a Voting Accessibility Advisory Committee (VAAC), comprised of voters with disabilities. Requires the LAAC and the VAAC to be established no later than October 1 of the year prior to the first election conducted pursuant to this bill, and requires the LAAC and the VAAC to hold their first meetings no later than April 1 of the year in which the first election is conducted pursuant to this bill. Permits a county with fewer than 50,000 registered voters to establish a joint advisory committee for language minority communities and voters with disabilities.
- iii) Requires the elections official to solicit public input about which vote centers should be staffed by election board members who are fluent in a language in addition to English.
- iv) Requires the county elections official to provide notice in the sample ballot, in VBM materials, and on the elections official's Internet Web site of the specific language services available at each vote center.
- v) Requires election day procedures to be conducted as provided in existing law, except where otherwise specified.
- vi) Permits the county elections official to provide additional ballot drop-off locations and vote centers beyond the number required by this bill.
- vii) Provides that the return of voted VBM ballots is subject to provisions of existing law that apply to VBM ballots.
- viii) Requires election results from an election that is conducted pursuant to this bill to be reported by precinct.
- ix) Requires an elections official who conducts an election in accordance with the provisions of this bill to maintain an electronic index of voters who have done any of the following at a vote center:
 - (1) Registered to vote or updated his or her voter registration;

- (2) Received and voted a provisional ballot or replacement ballot; or,
 - (3) Voted a ballot using the equipment at a vote center.
 - x) Permits a county to conduct a special election as an all-mailed ballot election under this bill only if the county has done one of the following:
 - (1) Previously conducted an election in accordance with the provisions of this bill; or,
 - (2) Adopted a final election administration plan, as specified, and completed all activities provided for in the county's outreach plan prior to the special election.
 - xi) Requires a county elections official that conducts an election pursuant to this bill to make a reasonable effort to inform a voter whose VBM ballot is missing a signature of that fact, and to notify those voters on how to correct the missing signature.
- 2) **Los Angeles County Alternative.** Permits Los Angeles County, beginning January 1, 2020, to conduct elections subject to the same conditions that are generally applicable above, with the following exceptions:
- a) The county is not required to mail a ballot to every registered voter, but is required to mail ballots to all of the following voters:
 - i) Permanent VBM voters;
 - ii) Precincts with fewer than 500 registered voters;
 - iii) Voters who reside in jurisdictions adjacent to counties that are conducting elections pursuant to this bill; and,
 - iv) Voters in precincts that are either more than a 30 minute travel time from a vote center, or where the precinct's traditional polling place from the last statewide election is more than 15 miles from the nearest vote center.
 - b) At a regularly scheduled election, the county establishes vote centers in accordance with the following:
 - i) Beginning 10 days before the election and continuing daily through and including the fourth day before the election, requires vote centers to be open for at least eight hours per day, and requires at least one vote center for every 30,000 registered voters.
 - ii) Beginning on the third day before the election and continuing daily through and including election day, requires at least one vote center for every 7,500 registered voters. Requires each vote center to be open for at least eight hours per day on the days prior to election day, and from 7 a.m. to 8 p.m. on election day. Requires at least 90 percent of the number of required vote centers to be open for all four days; provides that up to 10 percent of the locations need not be open for all four days as long as the *total* number of vote centers open on each day does not fall below the

- required number of locations.
- c) For regularly scheduled elections, the county establishes at least one drop-off location for every 15,000 permanent VBM voters, with no fewer than two drop-off locations, as specified.
 - d) Requires vote centers to be located within a reasonable travel time of registered voters.
 - e) Requires the county to conduct a service area analysis of its vote center plans to identify service gaps, and requires the county to report its findings.
 - f) Provides that the county may conduct elections under this alternative for no more than four years, and allows the county to conduct elections as otherwise provided in this bill after that time.
- 3) **Reporting Requirements.** Establishes reporting requirements for an election that is conducted pursuant to this bill.
- a) Requires the SOS to submit a report to the Legislature, and to post that report in an accessible format on the SOS's website, within six months after the date of any election conducted pursuant to this bill, that includes the following information by categories of race, ethnicity, language preference, age, gender, disability, permanent VBM status, historical polling place voters, political party preference, and language minorities, as specified, to the extent possible:
 - i) Voter turnout;
 - ii) Voter registration;
 - iii) Ballot rejection rates, and the reasons for ballot rejection;
 - iv) Provisional ballot use;
 - v) The number of votes cast at each vote center;
 - vi) The number of ballots returned at drop-off locations;
 - vii) The number of ballots returned by mail;
 - viii) The number of persons who registered to vote at a vote center;
 - ix) Instances of voter fraud; and,
 - x) Any other problems that became known to counties or the SOS during the election or the canvass of the election.
 - b) Requires a county that conducts an election pursuant to this bill to do both of the following:

- i) To the extent possible, submit information to the SOS that the SOS needs to prepare the report detailed above.
 - ii) Post a report on its official website in an accessible format, as specified, that compares the costs of elections conducted pursuant to this bill to the costs of previous similar elections.
- 4) **Task Force.** Requires the SOS to establish a task force, in existence until January 1, 2022, to review elections conducted pursuant to this bill, and to provide comments and recommendations to the Legislature no later than six months after each election. Requires the task force to include, but not be limited to, the following:
- a) County elections officials;
 - b) Individuals with demonstrated language accessibility experience for languages covered under federal law;
 - c) Representatives from the disability community and community organizations and individuals that advocate on behalf of, or provide services to, individuals with disabilities; and,
 - d) Other experts with demonstrated experience in the field of elections.
- 5) Requires the SOS to enforce the provisions of this bill, as specified.
- 6) Repeals limits on the individuals who a voter may designate to return his or her VBM ballot, and instead permits a voter to designate *any* person to return his or her VBM ballot.
- 7) Allows a VBM ballot to be returned to any polling place within the state, instead of being limited to polling places within the jurisdiction of the elections official who issued the ballot.
- a) Permits a voted VBM ballot to be returned in person to any member of a precinct board at any polling place or vote center within the state, instead of being limited to polling places within the jurisdiction of the elections official who issued the ballot.
 - b) Provides that if a VBM ballot is returned to a precinct board of a polling place, vote center, or ballot drop-off location that is located in a county other than the county from which the ballot was issued, the elections official for the county in which the VBM ballot was returned shall forward the ballot to the elections official who issued it no later than eight days after receipt.
- 8) Makes technical and corresponding changes.

EXISTING LAW:

- 1) Allows any voter to receive a VBM ballot for an election. Allows a voter who wishes to receive a VBM ballot for every election in which that voter is eligible to vote to become a permanent VBM voter.

- 2) Permits, but does not require, elections officials to allow voters to cast ballots prior to an election at their offices or satellite locations on weekends or times beyond regular office hours.
- 3) Permits a voter who is otherwise qualified to register to vote to complete a conditional voter registration, as defined, and to cast a provisional ballot during the 14 days immediately preceding an election or on election day at the office of the elections official. Permits the county elections official to offer conditional voter registration at satellite offices of the county elections official. Provides that these provisions do not become operative until January 1 of the year following the year in which the SOS certifies that the state has a statewide voter registration database that complies with the requirements of the federal Help America Vote Act (HAVA).
- 4) Allows local elections held on no more than three different dates in Monterey, Sacramento, San Mateo, and Yolo counties to be conducted wholly by mail, as part of a pilot project lasting through January 1, 2018, subject to certain conditions.
- 5) Permits San Diego County, as part of a pilot program lasting through January 1, 2021, to conduct a special election to fill a vacancy in the Legislature or in Congress as an all-mailed ballot election, subject to certain conditions and reporting requirements.
- 6) Requires precinct boundaries to be fixed in a manner so that the number of voters in the precinct does not exceed 1,000 on the 88th day prior to the day of election, except as specified. Requires an elections official, at least 29 days prior to an election, to designate a polling place for each precinct, except as specified.
- 7) Requires a state or a political subdivision of a state to provide voting materials in the language of a minority group when that group within the jurisdiction has an illiteracy rate that is higher than the national illiteracy rate, and the number of United States citizens of voting age in that single language group within the jurisdiction meets at least one of the following tests:
 - a) Numbers more than 10,000;
 - b) Makes up more than five percent of all voting age citizens; or,
 - c) On an Indian reservation, exceeds five percent of all reservation residents.
- 8) Requires the elections official to make reasonable efforts to recruit elections officials who are fluent in a language if three percent or more of the voting-age residents in the precinct are fluent in that language and lack sufficient skill in English to vote without assistance.
- 9) Requires, in counties where the SOS has determined it is appropriate, each precinct board to post at least one copy of the ballot with ballot measures and ballot instructions printed in Spanish. Provides that the ballot shall also be posted in other languages if a significant and substantial need is found by the SOS.
- 10) Provides that in determining whether it is appropriate to require a county to post a copy of the ballot at a precinct in a language other than English, the SOS shall find a need to post such translated copies of the ballot if the number of residents of voting age in the precinct

who are members of a single language minority and who lack sufficient skills in English to vote without assistance equals three percent or more of the voting-age residents.

- 11) Requires the elections official to undertake necessary measures when locating polling places to ensure that polling places meet the guidelines promulgated by the SOS for accessibility by the physically handicapped.
- 12) Requires, pursuant to HAVA, that voting systems used in an election for federal office be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

California saw historically low voter turnout in 2014. Only 25 percent of all registered California voters cast a ballot in the June primary and only 42 percent participated in the November general election. Los Angeles County – the largest voting jurisdiction in the country – had the lowest turnout among all of California's 58 counties. Fewer than 17 percent of L.A. County voters cast a ballot in the June primary and only 31 percent voted in November. While voter turnout was poor across the entire country in 2014, California ranked an inexcusable 43rd in turnout among the 50 states and District of Columbia.

Since 1960 turnout of registered voters in California off-year general elections has steadily decreased from a high of 79 percent in 1966 to a previous low of 50.5 percent in 2002. Turnout for off-year primary elections since 1960 has also steadily decreased from a high of almost 69 percent in 1978 – when Proposition 13 appeared on the ballot – to a previous low of 33 percent in 2010.

SB 450 is modeled on the very successful way Colorado conducts its elections wherein every voter automatically receives a vote by mail ballot who may then return that ballot by mail or in person at numerous drop-off locations and innovative vote centers. In lieu of traditional neighborhood polling places, these vote centers are placed in convenient locations all over town and open several days prior to each election. Furthermore, voters can use any vote center or drop-off location in their home county – they are not limited to using the one closest to their residence.

At the vote centers, voters can register to vote, cast a vote, or get a new ballot if they lost or damaged their mail ballot. They are also equipped with accessible voting machines for disabled voters and electronic poll books that interact with the official voter database.

Fully implemented for the 2014 elections, this hybrid system resulted in Colorado achieving one of the highest voter turnouts in the nation. SB 450 will replicate this system in California on a county by county, opt-in basis beginning in 2018.

The language of SB 450 was painstakingly developed with the input of the Secretary of State, county elections officials, and numerous advocates representing all facets of California's very diverse electorate. This effort is evident in the unprecedented lengths to which the bill goes toward accommodating non-English proficient voters and voters with accessibility needs as well as requiring extensive community involvement and voter education.

A majority of our voters are already casting ballots by mail. During the November, 2014 General Election over 60 percent of all voters statewide used a vote by mail ballot. Use of mail ballots in local and special elections is even higher. Furthermore, a recent poll conducted by the Public Policy Institute of California found that 70 percent of California adults favor sending every registered voter a vote by mail ballot.

SB 450 offers the best opportunity to significantly increase voter participation while also saving participating counties money over the current system.

- 2) **Colorado Model of Elections:** As noted in the author's statement above, the provisions of this bill are modeled after the way that Colorado conducts its elections. The essence of Colorado's elections system is that voters may choose to vote at home using a ballot that is mailed to them, or may visit any of the several vote centers within their home county on election day, or on the days leading up to election day, including weekends. The key elements of Colorado's system are as follows:
 - a) Every registered voter is mailed a ballot.
 - b) Voters may mail the voted ballot back to elections officials, or may return it in person to the elections official's office, a vote center, or a designated drop-off location.
 - c) Instead of traditional neighborhood polling places, Colorado provides vote centers which are open 8 to 14 days prior to election day, depending on the type of election. Vote centers provide all of the following services:
 - i) Voter registration through election day;
 - ii) Voting;
 - iii) Provisional voting for anyone who lost their ballot, or who otherwise needs a replacement ballot; and,
 - iv) Accessible voting machines for disabled voters.
 - d) In counties with at least 10,000 voters, one vote center is provided for every 30,000 voters during early voting, with a minimum of one vote center, and one vote center is provided for every 15,000 voters on election day, with a minimum of three vote centers. In counties with fewer than 10,000 voters, at least one vote center is provided during early voting, and at least one vote center is provided on election day.

- e) In counties with at least 25,000 voters, at least one stand-alone drop-off location is provided for every 30,000 voters.

Colorado's election system came about through a series of changes over time. Larimer County in Colorado piloted the first use of vote centers in 2003, and in 2004, Colorado's SB 153 established the legal framework permitting the use of vote centers for conducting an election. By the 2006 statewide election, 19 Colorado counties were using election day vote centers.

In 2002, Colorado adopted a no-excuse, permanent absentee voting system under which any voter could sign-up to receive an absentee ballot (referred to as VBM ballots in California) at any election. By 2008, 50 percent of Colorado voters were signed-up as permanent absentee voters, and in 2009, the Colorado Legislature passed a bill allowing counties to conduct primary elections as all-mail ballot elections. As a result, in 2010, more than two-thirds of Colorado counties conducted the statewide primary election as an all-mail ballot election.

In 2013, the Colorado Legislature adopted and the Governor signed HB 1303, which established the framework under which Colorado's elections are now conducted. HB 1303, among other provisions, authorized voter registration to continue through election day, required that every registered voter be mailed a ballot no later than 22 days before each election, and required county clerks to establish vote centers, as outlined above. Although the changes made by HB 1303 were significant, many Colorado counties and many Colorado voters already had experienced elections conducted using vote centers, and had experienced elections in which every voter was mailed a ballot, as detailed above.

While the provisions of this bill are modeled after Colorado law, California's unique challenges will necessitate policies that differ from the Colorado model in some respects. For example, under the federal Voting Rights Act (VRA), certain jurisdictions in Colorado are required to provide elections materials and assistance in Spanish, but Colorado counties generally are not required to provide assistance in other languages. By contrast, Los Angeles County is required to provide language assistance in nine languages other than English. (Los Angeles also offers bilingual poll worker assistance in another seven languages.) Many other California counties also are required to provide assistance in languages other than English and Spanish. When elections are conducted using polling places, bilingual poll workers can be directed to those areas that have higher residential concentrations of voters who require assistance in a particular language. But in an election system where voters have the option of voting at any vote center countywide, and aren't tied to a specific voting location, it can be more challenging to determine where best to place bilingual election workers.

Other challenges that California likely will face in moving to an election system similar to Colorado's include the state's size (both in terms of population and geography), and the fact that fewer voters and elections officials have familiarity with vote centers and elections in which all voters are mailed a ballot. Overcoming these challenges may require more robust voter education and outreach, and may require other adjustments to the Colorado model. This bill contains many adjustments to the Colorado model in an attempt to address this state's unique challenges.

- 3) **Vote Centers vs. Polling Places:** Vote centers are polling locations at which any registered voter in a county can cast a regular (i.e., non-provisional) ballot, regardless of the voter's

precinct. Voters do not need to vote at polling places near their homes, but can vote at any of the vote centers throughout the county.

Vote centers provide greater flexibility to voters in deciding where and when to cast their ballots. The trade-off is that there are considerably fewer physical voting locations in elections using vote centers than in elections using neighborhood polling places. For example, Orange County had 1,135 polling places for the November 2014 general election. By contrast, if Orange County chose to conduct a statewide election pursuant to SB 450, it would be required to have 140 vote centers open on election day and each of the three days prior to the election (Saturday, Sunday, and Monday), and 28 vote centers open each day between the 10th day (Saturday) and the 4th day (the following Friday) before the election. (The county would also be required to have 94 ballot drop-off locations for the 28 days before the election.) This reduction in the number of physical voting locations could increase the distance that some voters have to travel in order to cast a ballot in person.

On the other hand, because vote centers would be open for the 10 days prior to election day (including two full weekends), the number of days and hours during which in-person voting is available would increase significantly. Additionally, with vote centers, a voter could have the flexibility to vote near his or her work, or near his or her child's school, if that was a more convenient option. Because of the reduced number of physical voting locations, elections officials would also have greater flexibility to locate vote centers near established public transportation routes and in areas with sufficient parking. (In fact, this bill would require elections officials to take those factors into consideration when deciding where to locate vote centers.)

- 4) **Technical Requirements for Vote Centers:** Because voters have the option of casting a ballot at any vote center in the county, vote centers need to have a system that can provide any eligible voter in the county with the appropriate ballot. While smaller counties that have fewer ballot styles may be able to accommodate that need using pre-printed paper ballots, vote centers in larger jurisdictions likely will feature electronic voting systems that are pre-loaded with all the ballot types in the county, or ballot-on-demand printers that can produce the appropriate paper ballots as needed.

Additionally, in order to verify the registration of voters, determine the correct ballot type for each voter, and ensure that a voter has not already cast a ballot, vote centers must have a mechanism to verify voter registration information. In most jurisdictions, this requirement is likely to be met through the use of electronic poll books that can communicate with the voter registration database in real-time.

- 5) **VoteCal:** On October 29, 2002, President George W. Bush signed HAVA. Enacted partially in response to the 2000 Presidential election, HAVA was designed to improve the administration of federal elections. Among other provisions, HAVA requires every state to implement a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level. This statewide voter registration list will serve as the official list of eligible voters for any federal election held within the state.

At the time HAVA was approved, California was already using a statewide voter registration system, known as Calvoter, which achieved some of the goals of the voter registration list

required by HAVA. However, Calvoter did not satisfy many of the requirements in that law, including requirements that the database be fully interactive and have the capability of storing a complete voter registration history for every voter. Discussions between the United States Department of Justice and the SOS led to the adoption of a memorandum of agreement (MOA) between the two parties. In that MOA, the SOS committed to further upgrades to the Calvoter system to achieve short-term interim compliance with the requirements of HAVA, and to complete development and implementation of a longer-term solution for replacing the Calvoter system with a new permanent statewide voter registration system. That new permanent system is commonly known as VoteCal.

After a number of delays, the VoteCal system has been developed and rolled out to all 58 counties. Although every California county now has access to the VoteCal system, it will not become the official system of record for voter registration information in California until the system is certified by the SOS. That certification is expected to happen later this summer.

- 6) **Conditional Voter Registration (a.k.a. "Election Day" Registration):** AB 1436 (Feuer), Chapter 497, Statutes of 2012, permits "conditional voter registration," under which a person is allowed to register to vote and vote at the office of the county elections official at any time, including on election day, if certain requirements are met. AB 1436 does not, however, require conditional voter registration to be available at polling places. Conditional voter registration will go into effect on January 1 of the year following the date that the SOS certifies the operation of VoteCal. Under conditional voter registration, voters will cast provisional ballots which will be counted only if the elections official is able to determine the person's eligibility to vote, as specified.

One of the conditions of this bill would require that conditional voter registration be available at every vote center. Because counties would not be allowed to operate vote centers pursuant to this bill until 2018, and because VoteCal is scheduled to be fully implemented this summer, the state law providing for conditional voter registration is expected to be in effect before any elections are conducted under the provisions of this bill.

- 7) **San Mateo Pilot Project:** As noted above, existing law allows four counties to conduct certain local elections as mailed ballot elections, subject to certain conditions, as part of a pilot project lasting through January 1, 2018. San Mateo County conducted its first election under that pilot project last November, and submitted its required report on that election to the Legislature last month.

While the pilot project in which San Mateo is participating is described as an all-mailed ballot pilot project, the actual election that was conducted in San Mateo last November shares some similarities with the manner in which elections would be conducted under this bill. While all registered voters were mailed a ballot, the county also opened 32 "universal polling places," which functioned similar to vote centers, on election day, and had two vote centers and 20 ballot drop-off locations available for 28 days prior to the election. (By contrast, had the election been a regularly scheduled election conducted pursuant to the terms of this bill, San Mateo County would have been required to have 36 vote centers open on election day and for the three days prior to election day, eight vote centers open from the 10th day before the election through the fourth day before the election, and 24 ballot drop-off locations available for 28 days prior to the election.) San Mateo County also conducted an extensive voter education and outreach campaign, similar to that which would be required by

this bill, and sent between three and six pieces of mail to every registered voter to educate voters about the election, similar to this bill's requirement that elections officials make at least two direct contacts with voters, in addition to the mailing of the VBM ballot and of the sample ballot, for the purposes of informing voters of the election. On the other hand, San Mateo County also prepaid the return postage on VBM ballots—something that is not required by this bill.

The report to the Legislature regarding San Mateo County's election found that turnout in the pilot election was slightly higher than in the two most recent similar elections in the county (elections held in November 2011 and November 2013). In addition, turnout was higher than in the two most recent similar elections among all age groups and political party preferences, for both men and women, for voters who were *not* signed up as permanent VBM voters, and among whites, Asian Americans, and Latinos. Among African American voters and permanent VBM voters, turnout was higher than in the 2013 election, but lower than the 2011 election. While the report noted that previous research suggested that increased convenience and mobilization by the office of the elections official could have contributed to the observed changes in turnout, it also cautioned that "the degree to which these increases in turnout can be attributed to each of these factors is uncertain, however, as the pilot did not include an experimental component."

- 8) **Early Adopters:** Of the 14 counties that would have the option of adopting the provisions of this bill beginning in 2018, three of the counties have more than 500,000 registered voters based on the SOS's most recent report of registration (Orange, Santa Clara, and Sacramento); two of the counties have more than 100,000, but fewer than 500,000 registered voters (San Mateo and San Luis Obispo); four of the counties have more than 50,000, but fewer than 100,000 registered voters (Shasta, Napa, Nevada, and Madera); and five of the counties have fewer than 50,000 registered voters (Sutter, Tuolumne, Calaveras, Inyo, and Sierra).

The following table details the 14 counties that would have the option of adopting the provisions of this bill beginning in 2018, and the number of vote centers and drop-off locations that each county would be required to operate, based on current registration figures.

County	Registered Voters*	Polling Places at 11/2014 Election**	Vote Centers, E-10 to E-4	Vote Centers, E-3 through Election Day	Drop-off Locations
Orange	1,395,380	1135	28	140	94
Santa Clara	788,063	697	16	79	53
Sacramento	715,975	528	15	72	48
San Mateo	367,155	211	8	37	25
San Luis Obispo	155,801	145	4	16	11

Shasta	96,310	79	2	10	7
Napa	72,461	13	2	8	5
Nevada	66,149	39	2	7	5
Madera	54,017	39	2	6	4
Sutter	42,351	22	2	5	3
Tuolumne	29,472	27	2	3	2
Calaveras	27,532	15	2	3	2
Inyo	9,697	5	2	2	2
Sierra	2,217	0***	2	2	2

*As of 5/23/2016, per Secretary of State's Report of Registration.

**According to information provided by the counties to the United States Election Assistance Commission as part of the 2014 Election Administration and Voting Survey.

***Due to the fact that none of Sierra County's precincts have more than 250 registered voters, all of its precincts were designated as mailed-ballot precincts for the November 2014 election. As a result, it did not have polling places for that election.

- 9) **Los Angeles Option:** This bill includes an option for conducting elections that is only available to Los Angeles County. While that option is similar to the election model offered to other counties under the bill, the "Los Angeles option" generally requires a larger number of vote centers than are otherwise required, but does not require the county to mail a ballot to every registered voter. This option is designed, in part, in recognition of the fact that voters in Los Angeles County use VBM ballots at much lower rates than in other counties in the state. Furthermore, the county's large population would create significant logistical challenges if the county were required to begin mailing VBM ballots to millions of additional registered voters in a short period of time. This bill, however, would require Los Angeles County to transition to the election model that is applicable to all other counties after four years of conducting elections under the "Los Angeles option."

The following table details the number of vote centers and drop-off locations that Los Angeles County would be required to operate under each of these two systems, based on current registration numbers.

Voting Model	Registered Voters*	Polling Places at 11/2014 Election**	Vote Centers, E-10 to E-4	Vote Centers, E-3 through Election Day	Drop-off Locations
"Los Angeles Option"	4,909,904	2,849	164	655	102***

General SB 450 Option	4,909,904	2,849	99	491	328
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*As of 5/23/2016, per Secretary of State's Report of Registration.

**According to information provided by Los Angeles County to the United States Election Assistance Commission as part of the 2014 Election Administration and Voting Survey.

***Based on 1,525,569 permanent VBM voters as of 5/1/2016, according to information from the website of the Los Angeles County Registrar-Recorder/County Clerk.

10) **Arguments in Support:** The sponsor of this bill, Secretary of State Alex Padilla, writes in support:

California's current election system feeds the lack of confidence that keeps many eligible voters away from our democracy. In a September 2015 Public Policy Institute of California survey the #3 reason registered voters cited for not voting was a lack of confidence in elections. The top reason unregistered voters do not register and vote was lack of confidence in elections and politics.

SB 450 would allow counties to adopt tested and proven policies that increase voter participation. Specifically, the bill would, beginning January 1, 2018, allow specified counties to send every registered voter a ballot 28 days before Election Day, provide in-person early voting 10 days before Election Day, widely deploy Same Day Voter Registration and establish vote centers across the county which can be used by every voter.

The State of Colorado adopted these policies statewide in 2014 and California's San Mateo County piloted these policies for their 2015 local elections. Both Colorado and San Mateo saw an increase in voter participation and a reduction in the use of provisional ballots. In 2014, Colorado had the 3rd highest turnout in the nation; while California was 43rd. San Mateo had the highest turnout, among all demographics in 20 years.

The Colorado and San Mateo experiences demonstrate research conducted by the California Institute of Technology, New York University and the Brennan Center for Justice on the effects these policies have on turnout and voter experience. California Institute of Technology and New York University concluded that widely available Same Day Voter Registration would increase turnout in California by an average of 4.8% with bigger gains among young people, Latinos and new citizens. The Brennan Center found that early voting can result in shorter lines on Election Day, improved poll worker performance, early correction of registration or voting errors, and increased voter satisfaction.

Also in support of this bill, Consumer Watchdog writes:

SB 450 would enact several key reforms that have proven to increase participation, improve election administration, and save money.

The bill would allow California counties, beginning in 2018, to begin conducting

elections in a new way. A similar system used in Colorado has already proven to increase turnout while reducing administrative costs. It would reduce barriers for voters, including:

Extended period to vote: Every registered voter will receive a ballot a month before Election Day and can start voting a month before. Voters may mail their ballot back, drop it at a voter drop-box or at any vote center in their county;

Weekend voting: Every voter can vote in-person at least 10 days before Election Day, which includes 2 weekends;

More convenient voting locations: Voters can use any vote center in their county to cast a ballot. Many of these vote centers will be in more convenient locations, for example near a voter's workplace or school;

Greater language access: Every vote center will provide translated materials and assistance in the languages protected by the federal Voting Rights Act;

Greater disabled access: Every vote center will have accessible voting machines to assist voters with physical impairments to vote on their own, and any voter can request an accessible ballot, including ballots necessary for the visually impaired;

Same Day Voter Registration: Every vote center will have to provide same-day voter registration which allows citizens to register to vote or update their registration information until the close of the polls on Election Day;

Direct public participation: The public will have an unprecedented voice in how elections are run, including formal consultation on the location and number of vote centers and ballot drop boxes.

- 11) **Concerns Raised:** While not taking an official position on the bill, the American Civil Liberties Union of California, Advancement Project, Asian Americans Advancing Justice – California, California Calls, California Foundation for Independent Living Centers, California Voter Foundation, Disability Rights California, and PICO California sent a joint letter of concerns. The letter suggests the following amendments to address the concerns those organizations have identified:

Participating counties must provide return envelopes with prepaid postage.

When approving vote-by-mail pilot programs that authorize a county to mail all voters ballots in lieu of providing accessible neighborhood polling sites, the Legislature has consistently recognized that all-mail ballot programs must be conditioned on the provision of prepaid postage on ballot return envelopes...

The Legislature has acknowledged that lack of postage can be a barrier to participation for low income persons, the elderly, and people with disabilities. The San Mateo County vote-by-mail pilot, tested for the first time in November 2015, confirmed the importance of prepaid postage to ensuring voter participation....

Expansion of the S.B. 450 vote-by-mail model to other counties should occur in 2022, not in 2020...

[B]efore opening up to the entire state, the S.B. 450 vote-by-mail model should be implemented and tested for a presidential primary and election by the limited number of counties initially authorized to participate. This will give the initial counties the opportunity to develop and test best practices, will give the S.B. 450 task force the opportunity to meaningfully evaluate and compare the impact of both the vote-by-mail model and the Los Angeles County vote center model in a presidential election year, and will afford the Legislature the time needed to enact any legislative changes necessary to ensure the best model and practices are in place to serve California voters' and election officials' beyond 2020.

In the absence of ballots mailed to all voters, the proposed Los Angeles County vote center model should provide 1) one vote center for every 5,000 voters from E-3 to Election Day, and 2) a lower threshold for when a ballot must be mailed to a voter who does not have ready access to a vote center.

1) In the absence of mailed ballots, Los Angeles County must provide more vote centers than the 1 per 7,500 vote center ratio that S.B. 450 currently proposes....

Los Angeles County has pointed to Travis County as a jurisdiction for comparison since vote centers are used in a manner similar to what Los Angeles County proposes. However, while Travis County does not mail all voters a ballot, it provides far more vote centers per person than what S.B. 450 proposes for Los Angeles County. For example, in 2012, Travis County had 207 vote centers for 635,300 registered voters, a ratio of one vote center per 3,069 registered voters. Two years later, in 2014, Travis County had 186 vote centers for 652,463 registered voters, a ratio of one vote center per 3,585 registered voters. Thus, under the most recent version of S.B. 450, Los Angeles County would have one vote center for more than twice as many voters, presenting challenges both in terms of the distance and means of getting to a vote center and in terms of predicting the sheer volume of voters and wait times to be managed at vote centers when voters have not been mailed a ballot to offset in-person turnout....

2) Ballots should be mailed to all voters who are more than 10 minutes from a vote center, as determined by travel time from their home to a vote center via public transportation, and to any voter who lives more than five miles from a vote center.

12) Arguments in Opposition: In opposition to this bill, the Election Integrity Project writes:

By allowing “convenience” and indiscriminant use of the vote by mail ballot, California law already significantly increases the threat to election integrity by opening the door to many forms of ballot harvesting. Currently, roughly 50% of California voters either choose to or have been forced into voting with a mail ballot. However, the other half of Californians are exercising their right of choice to vote in person, and do so wisely because of the increased risk to the integrity of

a vote by mail ballot, regardless of how it is submitted. SB 450 would remove all choice from the citizens of California without their consent by allowing the county bureaucracy to choose an all-mail ballot format for elections. **Citizens should not be subjected to such a choice without their consent.**

- 13) **Related Legislation:** AB 1921 (Gonzalez), which is pending on the Senate Floor, permits a VBM voter to who is unable to return his or her ballot to designate any person to return the ballot, as specified. AB 1921 was approved by this committee on a 5-2 vote, and was approved by the Assembly on a 46-29 vote.
- 14) **Previous Legislation:** SB 439 (Allen), Chapter 734, Statutes of 2015, allows elections officials to offer conditional voter registration at satellite offices on days other than election day, and requires the SOS to adopt and publish standards for electronic poll books and ballot on demand printers, as specified.

AB 3024 (Wolk) of 2006, would have authorized Solano County to conduct a pilot project whereby the county elections official would establish vote centers in lieu of polling places in each precinct. AB 3024 was vetoed by Governor Schwarzenegger. In his veto message, the Governor stated that "[w]hile the vote center system may offer some advantages over the current precinct-based voting system, the proposed pilot project would reduce the number of voting locations by 80 percent, and thereby significantly increase the distance that voters would have to travel in order to vote. This burden would fall disproportionately on those who are less mobile, frequently the poor, disabled, and elderly."

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Alex Padilla (sponsor)
American Federation of State, County and Municipal Employees, AFL-CIO (prior version)
California Association of Clerks and Election Officials
California Association of Nonprofits (prior version)
California Common Cause
California Foundation for Independent Living Centers (if amended) (prior version)
California League of Conservation Voters
California Nurses Association (prior version)
California State Association of Counties (prior version)
California Transit Association (prior version)
CALPIRG
City Clerks Association of California (prior version)
Consumer Watchdog
Courage Campaign (prior version)
Equality California (prior version)
League of California Cities (in concept) (prior version)
Los Angeles County Board of Supervisors
NARAL Pro-Choice California (prior version)
San Mateo County Board of Supervisors (prior version)
Sierra Club California
Urban Counties of California

Opposition

Election Integrity Project
One Individual (prior version)

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094

EXHIBIT B

Date of Hearing: June 16, 2020

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 860 (Berman) – As Amended June 4, 2020

CONCURRENCE IN SENATE AMENDMENTS

SUBJECT: Elections: vote by mail ballots.

SUMMARY: Requires county elections officials to mail a ballot to every registered active voter for the November 3, 2020 statewide general election.

The Senate amendments delete the Assembly-approved version of the bill, and instead:

- 1) Require county elections officials to mail a ballot to every registered active voter for the November 3, 2020 statewide general election, as specified, and provide that the distribution of vote by mail (VBM) ballots to registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location.
- 2) Require county elections officials to permit any voter to cast a ballot using a certified remote accessible vote by mail (RAVBM) system for the November 3, 2020 statewide general election.
- 3) Require county elections officials to use the VBM ballot tracking system developed by the Secretary of State (SOS), or a system that meets or exceeds the level of service provided by the SOS's system, for the November 3, 2020 statewide general election.
- 4) Extend, for the November 3, 2020 statewide general election, the deadline by which a VBM ballot that is voted on or before election day must be received by the county elections official in order to be counted from the 3rd day after election day to the 17th day after election day. Allow county elections officials, for the November 3, 2020 statewide general election, to consider information from the United States Postal Service (USPS) or bona fide private mail delivery companies other than postmarks—such as Intelligent Mail Barcodes and tracking information—to determine if a ballot was mailed on or before election day.
- 5) Authorize jurisdictions that have the necessary computer capability, for the November 3, 2020 statewide general election, to begin processing VBM ballots on the 29th day before the election.
- 6) Add the following findings and declarations:
 - a) To maintain a healthy democracy in California, it is important to encourage eligible voters to vote and to ensure that residents of the state have the tools needed to participate in every election.
 - b) Vote by mail voting has become the means by which most Californians exercise their right to vote. In the most recent general election, held in November 2018, 65.31 percent of voters used a vote by mail ballot. Just 10 years ago, in the November 2010 statewide general election, only 48.44 percent of voters used a vote by mail ballot.

- c) Preliminary data indicates that for the March 2020 primary election, approximately 78 percent of registered voters received a ballot in the mail.
 - d) Shortly after the March 2020 primary election, the Governor and local governments declared states of emergency and took steps to reduce the spread of COVID-19. One of the early steps taken by the Governor was to order that three pending special elections be conducted as all-mailed ballot elections. This order was issued based on concerns that widespread in-person voting would conflict with public health officials' guidance on COVID-19.
 - e) Since California held its primary election in March 2020, at least 16 states have either postponed their scheduled primary elections, or switched them to vote by mail elections, due to concerns that conducting in-person voting during the spread of COVID-19 would threaten the health and safety of voters, election workers, and the general public.
 - f) In Wisconsin's statewide primary election conducted on April 7, 2020, during which millions of voters had no choice but to vote in person, elections officials were forced to significantly reduce the number of polling locations because of COVID-19. In Milwaukee, the number of polling locations open on election day was reduced by more than 97 percent.
 - g) A statewide general election will be held in California on November 3, 2020, and it is uncertain whether by that date the COVID-19 pandemic will have subsided and what social distancing guidelines will remain in place. Even if the pandemic has subsided by the time of the election, many voters may nonetheless be uncomfortable with in-person voting because of health concerns.
 - h) Broadening the ability of California residents to engage in the democratic process will yield more representative election results and will ensure that the voices of more California residents are heard.
 - i) Mailing every voter a ballot for the November 2020 statewide general election is an important step in promoting resilience in the state's elections and ensuring that every California voter will have the opportunity to fill out their ballot in a safe manner.
 - j) Consistent with paragraph (2) of subdivision (a) of Section 2226 of the Elections Code and with the longstanding interpretation by state and county elections officials of Sections 4000 - 4108 of the Elections Code governing the conduct of all-mailed ballot elections and of Section 3005 governing mailed ballot precincts, nothing in this bill is intended, and shall not be construed, to mean that voters in an inactive voter registration status shall receive vote by mail ballots in connection with the November 3, 2020 statewide general election.
- 7) Add an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Provides that a registered voter may vote by mail by requesting a VBM ballot for a specific election or by becoming a permanent VBM voter.
- 2) Requires county elections officials to begin mailing ballots and other required materials to voters no later than 29 days before the day of the election.
- 3) Authorizes any county, pursuant to the California Voter's Choice Act (CVCA), to conduct elections in which every registered voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions.
- 4) Permits an elections official, whenever there are 250 or fewer persons registered to vote in any precinct, to furnish each voter with a VBM ballot along with a statement that there will be no polling place for the election.
- 5) Provides that certain local elections may be conducted as all-mail ballot elections, as specified.
- 6) Defines "remote accessible vote by mail system" as a mechanical, electromechanical, or electronic system and its software that is used for the sole purpose of marking an electronic VBM ballot for a voter with disabilities or a military or overseas voter who shall print the paper cast vote record to be submitted to the elections official. Prohibits a RAVBM system from being connected to a voting system at any time.
- 7) Requires county elections officials to permit any voter with a disability, and any military or overseas voter, to cast a ballot using a certified RAVBM system, as specified.
- 8) Requires the SOS to establish, by January 1, 2020, a system that a county elections official may use to allow a voter to track the voter's VBM ballot through the mail system and as the ballot is processed by the county elections official.
- 9) Provides that a VBM ballot is timely cast if it is voted on or before election day and, if returned by mail, received by the voter's elections official via the USPS, or a bona fide private mail delivery company, no later than 3 days after election day, as specified.
- 10) Permits any jurisdiction having the necessary computer capability to start processing VBM ballots on the 10th business day before the election. This processing includes opening VBM ballot return envelopes, removing ballots, duplicating any damaged ballots, and preparing the ballots to be machine read, or machine reading them, including processing write-in votes so that they can be tallied by the machine, but under no circumstances may a vote count be accessed or released until 8 p.m. on the day of the election.
- 11) Requires an elections official, if specified data from the USPS indicates that a voter has moved and left no forwarding address, or if a voter has moved out of the state, to update the status of the voter's registration to inactive. Requires the elections official to mail a forwardable notice to the address at which a voter is registered when that voter's registration is made inactive. Provides that voters with an inactive voter registration status do not receive

election materials and are not included in calculations to determine the number of signatures required for qualification of candidates and measures, precinct size, or other election administration-related processes.

- 12) Provides, pursuant to Executive Order N-64-20, issued by Governor Newsom on May 8, 2020, that in light of the State of Emergency existing in California as a result of the threat of COVID-19, each county elections officials shall transmit VBM ballots for the November 3, 2020 statewide general election to all voters who are registered to vote in that election. The Executive Order does not limit the extent to which in-person voting opportunities should be available in connection with the election.

- 13) Provides, pursuant to Executive Order N-67-20, issued by Governor Newsom on June 3, 2020, that in light of the State of Emergency existing in California as a result of the threat of COVID-19, that all of the following shall apply to the November 3, 2020 statewide general election:
 - a) Requires all county elections officials to use the SOS's VBM ballot tracking system, as specified, and to use Intelligent Mail Barcodes on all VBM ballot envelopes.

 - b) Provides, in the case of a county that conducts the election pursuant to the CVCA, that the following provisions are applicable for the November 3, 2020 statewide general election:
 - i) The county is not required to have its vote centers open before the third day prior to the election.

 - ii) The county elections official is not required to conduct in-person public meetings or workshops in connection with the preparation of plans for the administration of the election as long as a draft of the plan is posted on the elections official's website, as specified, and the official accepts public comment on the draft plan for at least 10 days.

 - c) Permits a county that does not conduct elections pursuant to the CVCA, and that is unable to comply with the in-person voting requirements in existing law, to comply instead with the following requirements:
 - i) At least one polling place per 10,000 registered voters is made available for voting during the following hours:
 - (1) From Saturday, October 31, 2020, through Monday, November 2, 2020, for at least eight hours (during regular hours convenient for members of the public) each day; and

 - (2) On Tuesday, November 3, 2020, from 7 a.m. until 8 p.m.

 - ii) At least the following number of VBM ballot drop-off locations are made available for ballot drop-off beginning no later than 9 a.m. on Tuesday, October 6, 2020, and continuing during regular business hours each day through the close of voting on

Tuesday, November 3, 2020:

- (1) At least one VBM ballot drop-off location per 15,000 registered voters; and
- (2) Not less than two VBM ballot drop-off locations regardless of the number of registered voters; and
- iii) At least one VBM ballot drop-off location is required to be fully accessible to the public for at least twelve hours each day (during regular hours convenient for members of the public) between Tuesday, October 6, 2020 and Tuesday, November 3, 2020, inclusive.

FISCAL EFFECT: According to the Senate Appropriations Committee, the SOS indicates that it would cost \$72 million to move the November 2020 General Election to an all-mail event. The state portion of the cost would be \$13 million, for an outreach campaign. Much of these costs would be paid for using federal funds.

COMMENTS:

- 1) **Prior Assembly Consideration of This Bill:** As approved by the Assembly last year, this bill would have clarified that a licensed retailer is not obligated to buy or sell the alcoholic beverage products of a distilled spirits wholesaler when selling marketing data to that wholesaler. Subsequent to the Assembly's approval of this measure, it was amended in the Senate to delete the Assembly-approved provisions of the bill, and to add the current provisions, which were approved by the Senate by a vote of 31-7 on June 11, 2020. As a result, this bill has been re-referred to this committee for further consideration pursuant to Assembly Rule 77.2.
- 2) **Purpose of the Bill:** According to the author:

Since California held its statewide primary election on March 3, at least 16 states have either postponed their scheduled primary elections or switched them to vote by mail elections due to concerns that conducting in-person voting during the spread of COVID-19 threatens the health and safety of voters, election workers, and the public generally.

In Wisconsin, which held its statewide primary election as scheduled on April 7, 2020, requests for absentee ballots more than doubled compared to the 2018 general election. Due in part to this large increase, elections officials were unable to send absentee ballots to thousands of voters who had requested them. COVID-19 related concerns forced officials to significantly reduce the number of polling locations available; in Milwaukee, the number of polling locations was reduced by more than 97 percent.

Fortunately, California is better prepared to handle an increase in mail balloting in time for the presidential general election this fall. California voters already choose to vote using mailed ballots in large numbers; in fact, more than 72 percent of voters who participated in California's March primary election cast a vote by mail ballot—the highest percentage ever for a statewide election in California.

While it is uncertain what social distancing guidelines will be in place this November, voters are likely to be less comfortable with in-person voting due to health concerns even if the COVID-19 pandemic has subsided in advance of the November election. Mailing every voter a ballot for the general election is an important step in promoting resilience in the state's elections and ensuring that every California voter will have the opportunity to fill out their ballot in a safe manner.

Californians should not have to risk their health – and possibly their lives – in order to exercise their constitutional right to vote in this November's election. Guaranteeing that every California voter has the opportunity to fill out their ballot in the safety of their own home is essential to ensuring that we can conduct an open, accessible, and safe election this November.

Since the introduction of this bill, Governor Newsom has issued two executive orders that require each county's elections official to send VBM ballots to all registered voters for the November 3, 2020 statewide general election. Two federal lawsuits have been filed challenging the validity of taking such an action through an executive order. In light of those lawsuits, it remains essential to enact AB 860, and ensure that there is no confusion that all California voters will receive a ballot in the mail this fall.

- 3) **Secretary of State Working Group:** The Secretary of State's office established a working group to discuss the conduct of elections during the COVID-19 pandemic, and to develop recommendations for how to conduct the November election in light of the challenges posed by COVID-19. The working group included SOS, legislative and gubernatorial staff, local elections officials, and representatives from numerous good government and voting rights groups, among others. According to the author, the provisions of this bill were informed by those discussions.
- 4) **Governor's Executive Orders:** On May 8, 2020, Governor Newsom issued Executive Order N-64-20, which requires each county's elections official to send VBM ballots for the November 3, 2020 general election to all registered voters. The Executive Order noted that "it is unknown to what degree COVID-19 will pose a threat to public health in November, and California and its counties must begin taking action now—to procure supplies, secure polling places, enlist volunteers, and draw up plans, among other steps—to ensure that the November 3, 2020 General Election is held in a manner that is accessible, secure, and safe."

On June 3, 2020, Governor Newsom issued Executive Order N-67-20, which established minimum levels of in-person voting opportunities that must be available in counties that are unable to comply with the in-person voting requirements in existing law, among other provisions. Executive Order N-67-20 also specified that consistent with specified provisions of existing law, Executive Order N-64-20 is not intended and shall not be construed to mean that voters in an inactive voter registration status shall receive VBM ballots in connection with the November 3, 2020 statewide general election.

- 5) **Current Vote by Mail Ballot Use in California:** In 2001, the Legislature approved and Governor Davis signed AB 1520 (Shelley), Chapter 922, Statutes of 2001, which, among

other provisions, authorized any voter to become a permanent VBM voter. As a result, California voters have increasingly used VBM ballots to vote in elections. Since 2012, a majority of ballots cast in all California statewide elections were VBM ballots.

Nearly 60 percent of all California voters are now permanent VBM voters. In three counties (Alpine, Plumas, and Sierra), 100 percent of their precincts are small enough that they are deemed all-mail ballot precincts. Fifteen counties conduct elections pursuant to the CVCA (Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne) wherein every registered voter receives a ballot in the mail. The net result is that for the November 3, 2020 statewide general election, more than 87 percent of California's registered voters will already be receiving a ballot in the mail even without this bill or the Governor's recent executive orders.

- 6) **Pending Lawsuits Challenging Executive Order N-64-20:** Two separate lawsuits were recently filed in the United States (US) District Court, Eastern District of California challenging the validity of Executive Order N-64-20. The first suit, *Darrell Issa et al. v. Gavin Newsom et al.* (Case No. 2:20-CV-01044-MCE-CKD), contends, among other things, that the Executive Order conflicts with various sections of the US Constitution which provide that the times, places and manner of holding elections for members of Congress and presidential electors shall be prescribed by state legislatures. The suit also contends that the Governor exceeded his authority under the Government Code to issue the Executive Order.

The second suit, *Republican National Committee et al. v. Gavin Newsom et al.* (Case No. 2:20-CV-01055-MCE-CKD), also contends, among other things, that the Executive Order similarly conflicts with the US Constitution.

- 7) **Pending Lawsuit Challenging Executive Order N-67-20:** On June 12, 2020, Sutter County Superior Court Judge Perry Parker issued an order in the case of *James Gallagher et al. v. Gavin Newsom* (Case No. CVCS20-0000912) granting interim declaratory relief and a temporary restraining order suspending Executive Order N-67-20 "as an impermissible use of legislative powers in violation of the California Constitution and the laws of the State of California." The next hearing in that case is scheduled for June 26, 2020.
- 8) **Other States:** According to the National Conference of State Legislatures, five states currently conduct all elections in which ballots are mailed to all registered voters: Colorado, Hawaii, Oregon, Washington, and Utah. At least 21 other states have laws that allow certain smaller elections, such as school board contests, to be conducted by mail.

Numerous other states have enacted or are in the process of considering action to mitigate the effects of the COVID-19 pandemic on the conduct of elections including, but not limited to, delaying the dates of primary and local elections, conducting elections by mail, expanding the criteria under which voters may request a VBM ballot, and expanding early voting opportunities.

- 9) **Deadline for Receipt of Vote by Mail Ballots:** As detailed above, existing law permits VBM ballots that are cast by election day to be counted as long as they are received by the elections official by mail no later than three days after the election. That policy was enacted through the passage of SB 29 (Correa), Chapter 618, Statutes of 2014. Prior to the enactment

of SB 29, VBM ballots in California could be counted only if the elections official received them by election day.

SB 29 was introduced in response to the fact that an increasing number of VBM ballots that were returned to elections officials were arriving too late to be counted. Furthermore, given USPS facility closures and changes to USPS service standards, there was a fear that the number of ballots arriving too late to be counted would continue to rise.

For the purposes of SB 29, a ballot was deemed to have been cast by election day as long as it was postmarked by election day. However, in response to information provided by the California Association of Clerks and Election Officials that a significant portion of ballots that are received by mail do not have a legible postmark (especially for ballots received from military and overseas voters), SB 29 also allowed a VBM ballot to be counted if the return envelope had no postmark, a postmark with no date, or an illegible postmark, if the ballot was (1) received by the elections official no later than three days after the election, (2) received from the USPS or a bona fide private mail delivery company, (3) date stamped by the elections official upon receipt from the USPS or bona fide private mail delivery company, and (4) the VBM ballot envelope was signed and dated by the voter on or before election day.

Since the Legislature enacted SB 29, additional tools have become more widely available that allow a person to determine when an envelope was mailed. In particular, Intelligent Mail Barcodes and processing marks that are printed on items that are mailed through the USPS can be used to determine when an envelope was mailed. This bill allows the use of this processing data to determine whether a ballot was mailed by election day.

Additionally, due to concerns that COVID-19 and financial challenges facing the USPS may result in additional mail delays this fall, this bill allows a ballot that is cast by election day to be counted if it is received by the elections official from the USPS or a bona fide private mail delivery company by the 17th day after the election.

10) **Ballot Tracking:** Last session, the Legislature approved and Governor Brown signed AB 2218 (Berman), Chapter 432, Statutes of 2018, which required the SOS to establish a system that a county elections official may use to allow a VBM voter to track and receive information about the voter's VBM ballot as it moves through the mail system and as the VBM ballot is processed by the county elections official. The SOS officially launched that system in February of this year. Twenty-five counties (Amador, El Dorado, Fresno, Glenn, Kern, Los Angeles, Marin, Mariposa, Merced, Monterey, Orange, Placer, Riverside, Sacramento, San Benito, San Joaquin, San Luis Obispo, Santa Clara, Shasta, Sutter, Tehama, Tuolumne, Ventura, Yolo, and Yuba) made that tool available to their voters for the March 3, 2020 statewide primary election. Since that time, according to information from the SOS, four additional counties (Kings, San Mateo, Santa Cruz, and Sonoma) have adopted the SOS's ballot tracking system. This bill requires all California counties to use that system for the purposes of the November 2020 statewide general election. Any county that has its own ballot tracking system would be able to use that system instead as long as it meets or exceeds the level of service provided by the system developed by the SOS.

11) **Vote by Mail Ballot Processing:** Elections Code section 15101 permits elections officials to begin processing VBM ballot return envelopes 29 days before the election, and authorizes

any jurisdiction having the necessary computer capability to start processing VBM ballots 10 business days before the election.

This bill allows an elections official to begin processing VBM ballots 29 days before the election, instead of 10 business days before the election for the November 2020 statewide general election only. With the expected increase in VBM balloting, elections officials believe that allowing them to begin processing VBM ballots earlier will help minimize overtime that otherwise would be needed for staff to process VBM ballots, and will allow them to process a larger number of VBM ballots before election day, thereby reducing the number of VBM ballots that need to be processed after the election.

- 12) **Remote Accessible Vote by Mail Voting:** In 2018, the Legislature approved and Governor Brown signed AB 1013 (Low), Chapter 906, Statutes of 2018, which requires a county elections official to permit a voter with a disability, or a military or overseas voter, to cast their ballot using a certified RAVBM system. While AB 1013 did not apply to counties conducting elections pursuant to the CVCA, the CVCA separately requires counties to have a process to send or deliver a VBM ballot that voters with disabilities can read and mark privately and independently—a requirement that counties generally have met through the use of RAVBM systems.

Generally, RAVBM systems that are approved for use in California use electronic delivery to provide a voter with a ballot that the voter can mark using their own computer, including any assistive device that the voter uses with that computer. After marking the ballot, the voter must print and return the ballot by mail (existing law also permits military and overseas voters to return their ballot by facsimile transmission under certain circumstances); RAVBM systems that are approved for use in California are *not* permitted to transmit completed ballots electronically to the elections official.

Because RAVBM systems involve the electronic delivery of a blank VBM ballot from the elections official to the voter, these systems can significantly cut down on the time needed to get a ballot to a voter after that voter requests such a ballot.

- 13) **Inactive Voters:** California law provides a procedure under which a registration may become “inactive.” When a county elections official receives specified information from the USPS that indicates that a voter has moved and left no forwarding address, or if a voter has moved out of the state, an elections official is required to mail a forwardable notice to that voter and update the voter’s registration to inactive. (Existing California law does *not* permit a voter’s registration to be made inactive simply because the voter has not voted for a period of time—the only information that can trigger a registration being made inactive is specified information from the USPS.) The “inactive” voter registration status is a safeguard designed to protect voters from being disenfranchised inadvertently if elections officials receive inaccurate information about the residence address of a voter.

As detailed above, the Elections Code specifically provides that voters whose registrations are inactive do not receive election materials that otherwise are sent to registered voters and are not included in voter registration numbers for the purposes of certain election administration related processes. Consistent with those provisions, when a county conducts an election pursuant to the CVCA, conducts an election as a mailed-ballot election, or designates a precinct as a mailed-ballot precinct, the county does not mail ballots to inactive

voters. Consistent with that longstanding practice, this bill provides that it shall not be construed to mean that voters in an inactive voter registration status shall receive VBM ballots in connection with the November 3, 2020 statewide general election.

- 14) **Arguments in Support:** In support of this bill, American Civil Liberties Union of California writes:

The COVID-19 pandemic poses unique challenges to administering the November 2020 election. California must act proactively to ensure the November 2020 election is safe, secure, and accessible for all voters. The first and most commonsense step is to send all registered California voters a [VBM] ballot. A majority of Californians already securely use VBM, and no one should have to choose between their health and their right to vote. AB 860 will help provide more uniform access to VBM across the state and, hopefully, will be accompanied by additional funding to counties to help them expand the distribution and processing of VBM ballots this November.

- 15) **Arguments in Opposition:** In opposition to this bill, Election Integrity Project, California writes:

Election Integrity Project California...joins with Governor Newsom and the spirit of AB 860 to ensure that all eligible voters can cast a ballot in a safe and secure environment of their own choosing in November, 2020. No one should be faced with the choice between their health and their franchise. California's current laws already thoroughly and completely accomplish that goal.

Approximately 75% of the state's voters are already slated to receive a [VBM] ballot...automatically for every election. Any other voter who deems it a personal risk to vote in person for this election need only make a phone call any time between now and 7 days prior to Election Day to receive a VBM. There is no need for this law; it is governmental over-reach and it increases the potential for election corruption and ballot fraud.

- 16) **Related Legislation:** SB 423 (Umberg and Berman), which is pending in this committee, authorizes changes to in-person voting requirements for the November 3, 2020 statewide general election, and requires the state and counties to conduct voter education and outreach campaigns to notify voters about voting in that election.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Silicon Valley
American Civil Liberties Union of California
Asian Americans Advancing Justice - California
Black Women for Wellness
California Calls
California Common Cause
California Donor Table
California Environmental Justice Alliance
California Federation of Teachers
California Labor Federation
California League of Conservation Voters
California School Employees Association
California Teachers Association
Center for Community Action and Environmental Justice
Coalition for Humane Immigrant Rights (CHIRLA)
Congregations Organized for Prophetic Engagement (COPE)
Courage California
Disability Rights California
Inland Empire United
League of Women Voters of California
Mi Familia Vota
Million Voters Project
NARAL Pro-Choice California
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund
NextGen California
Power California
Secretary of State Alex Padilla
SEIU California
UDW/AFSCME Local 3930
Union of Concerned Scientists
Approximately 4,500 individuals indicating support via various petitions and letters

Opposition

Election Integrity Project California
Inyo County Registrar of Voters (unless amended)
1 individual

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094

EXHIBIT C

**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2021 - 2022 Regular

Bill No:	SB 503	Hearing Date:	3/15/21
Author:	Becker		
Version:	3/9/21		
Urgency:	No	Fiscal:	Yes
Consultant:	Scott Matsumoto		

Subject: Voting: ballots and signature verification

DIGEST

This bill adds additional parameters for county elections officials when comparing a voter's signature on materials related to vote by mail (VBM) ballots with the signature in the voter's registration record, as specified.

ANALYSIS

Existing law:

- 1) Provides that VBM voting shall be liberally construed in favor of the VBM voter.
- 2) Requires that a county elections official compare the signature on the VBM ballot return envelope upon receiving a VBM ballot with a signature in the voter's file, as specified.
- 3) Provides, if the elections official determines that the signatures compare, the elections official deposits the ballot, still in the return envelope, in a ballot container in the elections official's office.
- 4) Requires an elections official who determines that the signatures do not compare when comparing the signature on a VBM ballot envelope to the signature on that voter's registration records to write the cause of the rejection of the VBM ballot on the face of the identification envelope only after an elections official has provided the voter with the opportunity to verify their signature, as specified.
- 5) Requires an elections official to provide notice to all voters with a missing signature or a signature that does not compare with the voter's signature on file of the opportunity to verify or submit a signature no later than 5 p.m. two days prior to the certification of the election, as specified.
- 6) Requires that the processing of VBM ballot return envelopes as well as the processing and counting of VBM ballots be open to the public, both prior to and after the election. Provides, notwithstanding existing law, that VBM voter observers be allowed sufficiently close access to enable them to observe the VBM ballot return envelopes and the signatures thereon and challenge whether those individuals

handling VBM ballots are following established procedures, including all of the following:

- a) Verifying signatures and addresses on the VBM ballot return envelopes by comparing them to voter registration information.
 - b) Duplicating accurately damaged or defective ballots.
 - c) Securing VBM ballots to prevent tampering with them before they are counted on Election Day.
- 7) Provides that a VBM voter observer shall not interfere with the orderly processing of VBM ballot return envelopes or the processing and counting of VBM ballots, including the touching or handling of the ballots.
- 8) Requires the election official make available a list of VBM voters for public inspection, from which challenges may be presented prior to processing and opening the identification envelopes of VBM voters. Provides that challenges may be made for the same reasons as those made against a voter voting at a polling place and provides a challenge may be entered on the grounds that the ballot was not received within the time provided by existing law or that a person is imprisoned for a conviction of a felony. Requires all challenges be made prior to the opening of the identification envelope of the challenged VBM voter.
- 9) Provides that the challenger of a voter has the burden of establishing extraordinary proof of the validity of the challenge at the time the challenge is made because the voter is not present.
- 10) Requires an elections official to send the Secretary of State (SOS) within 31 days of the election, in an electronic format in the manner requested, one complete copy of all results as to all of the following:
- a) All candidates voted for statewide office.
 - b) All candidates voted for the following offices:
 - i) Member of the Assembly.
 - ii) Member of the Senate.
 - iii) Member of the United States House of Representatives.
 - iv) Member of the State Board of Equalization.
 - v) Justice of the Court of Appeal.
 - vi) Judge of the superior court.
 - c) All persons voted for at the presidential primary, as specified.

- d) The vote given for persons for electors of President and Vice President of the United States, as specified.
 - e) All statewide measures.
 - f) The total number of ballots cast.
- 11) Requires the SOS to immediately compile and make public the election results of specific offices, as specified. Requires the SOS to make those results available to any person or organization upon request, as specified.

This bill:

- 1) Adds that the following additional parameters apply when comparing a voter's signature with the signature in the voter's registration record for signatures on the VBM identification envelope, signature verification statement, unsigned ballot statement, or provisional ballot envelope:
 - a) A presumption exists that the signature on the identification envelope, signature verification statement, unsigned ballot statement, or provisional ballot envelope is the voter's signature.
 - b) An exact match is not required for an elections official to determine that a voter's signature is valid. The fact that signatures share similar characteristics is sufficient to determine that a signature is valid.
 - c) When comparing signatures, an elections official shall not review or consider a voter's party preference, race, or ethnicity.
- 2) Provides that, when comparing signatures, an elections official needs to determine beyond a reasonable doubt that the signatures do not compare in order for a ballot to not be counted.
- 3) Provides that the notice to all voters with a missing signature or a signature that does not compare of the opportunity to verify or submit a signature be sent by first-class mail, as specified. Makes changes to the language of the notice, as specified. Requires these notices to include a return envelope, with postage paid, for the voter to return a signature verification statement.
- 4) Permits county elections officials to send additional written notices and also notify the voter in person, by telephone or email, or by other means of the opportunity to verify the voter's signature, as specified.
- 5) Permits county elections officials to use any information in a county's election management system, or otherwise in the elections official's possession, for the purpose of notifying the voter of the opportunity to verify the voter's signature.
- 6) Defines, for purposes of the signature verification process, "certification of the election" to mean the date the particular elections official sends all results to the

SOS pursuant to existing law, even if that occurs before the end of the 31-day certification period set forth in existing law.

- 7) Requires an elections official to adhere to all applicable regulations promulgated by the SOS when comparing signatures, as specified.
- 8) Deletes verifying addresses on the VBM ballot return envelopes from the procedures that the observers may observe and challenge.
- 9) Requires data related to the number of ballots rejected, categorized according to the reason for the rejection, to be included in the election results submitted by county elections officials to the SOS.
- 10) Requires the SOS to provide uniform reason codes for each category of rejection to be used by elections officials for reporting under this subdivision and publish a report containing the information provided by elections officials on the SOS's internet website, as soon as practicable after all information is received, as specified.
- 11) Makes technical and conforming changes.

BACKGROUND

SOS Emergency Regulations. In late-September 2020, the SOS adopted emergency regulations pertaining to signature verification, ballots processing, and ballot counting. The regulations are effective from September 28, 2020, through July 28, 2021, or unless extended. According to County Clerk/Registrar of Voters (CC/ROV) Memorandum #20226, these regulations are designed to provide clear and uniform guidance to counties relating to verifying signatures on elections-related petitions, VBM identification envelopes, provisional ballot envelopes, ballot processing, and ballot counting.

The emergency regulations include a basic presumption that the signature on the petition or ballot envelope is the voter's signature, that exact matches are not required for an elections official to confirm a valid signature, and that elections officials may not review or consider a voter's party preference, race, or ethnicity. The emergency regulations also provide that a signature that the initial reviewer identifies as possessing multiple, significant, and obvious distinctive differing characteristics from the signature(s) in the voter's registration record shall be rejected only if two different elections officials unanimously find beyond a reasonable doubt that the signature differs in multiple, significant, and obvious respects from all signatures in the voter's registration record. The regulations also provide additional characteristics for an elections official to consider when verifying a signature.

Voting by Mail. California voters have increasingly utilized VBM ballots when voting in elections. In the 2020 general election, of 17,785,151 ballots cast, 15,423,301 were VBM ballots. This represents 86.72% of the votes cast in November 2020 and is the highest VBM participation percentage for a general election in the state's history. When comparing the past two presidential general elections (2016 and 2020), there were nearly seven million more VBM ballots in November 2020 than in November 2016.

According to data from the SOS, below are statistics of VBM voters and how that compares to the total number of voters.

<u>Vote by Mail Statistics in Statewide General Elections</u>			
Election Date	VBM Voters*	Total Voters**	Percentage of VBM Voters
November 2, 2010	4,989,852	10,300,392	48.44
November 6, 2012	6,753,688	13,202,158	51.16
November 4, 2014	4,547,705	7,513,972	60.52
November 8, 2016	8,443,594	14,610,509	57.79
November 6, 2018	8,302,488	12,712,542	65.31
November 3, 2020	15,423,301	17,785,151	86.72

*VBM voters only consists of voted and counted VBM ballots.

**Total voters only consists of voters who cast a ballot in the election.

VBM Rejection Rates. Even though over 99% of returned ballots are accepted and counted, there are a number of VBM ballots that are rejected for a variety of reasons. For example, the ballot is missing from the envelope, multiple ballots are returned in one envelope, the ballot arrives after the deadline, there’s a missing or an incorrect address on the VBM envelope, the voter’s signature is missing, the voter’s signature does not compare with the signature on file, etc... According to data from the SOS that was derived from VoteCal, California’s statewide voter registration database, the November 2020 general election had 86,401 VBM ballots that were challenged. Of the 86,401 challenged VBM ballots, 14,666 ballots (16.97%) were rejected for a missing voter signature and 49,816 ballots (57.66%) were rejected for a signature that did not compare with the one on file. When combined, missing and non-comparing signatures amounted to 64,482 ballots or 74.63% of the total number of rejected ballots.

Stanford Law School, Election Law Project Case Study. In May 2020, the Election Law Project at the Stanford Law School published a study examining the signature verification process among California’s counties. The study sought to understand the signature verification process for VBM ballot envelopes as well as the notification and remedy process for voters whose signatures were being challenged. The team reviewed the practices in 33 of 58 counties and found that counties use a variety of approaches for signature verification, notice, and signature remedy. The study provided a number of recommendations for the Legislature. Some of the recommendations include requiring the SOS to develop and publish more specific signature verification guidelines for use by county elections officials. Additionally, the study recommended requiring that counties send voters with mismatched signatures a second follow up letter if the first letter is not timely returned and requiring that counties include a postage-paid return envelope with the remedy letters. A number of this study’s recommendations are included in the provisions of this bill.

Ballot Rejection Study – Sacramento, Santa Clara, and San Mateo Counties. In September 2020, the California Voter Foundation in collaboration with Dr. Mindy S. Romeo of the USC Center for Inclusive Democracy examined demographic and voting methods of voters in Sacramento, Santa Clara, and San Mateo counties whose November 2018 VBM ballots were rejected and the reasons for the rejection. The study found that the top three reasons a VBM ballot was rejected was due to the ballot

arriving after the acceptance deadline, a missing signature from the voter's VBM ballot envelope, and a signature that did not sufficiently match their voter registration signature on file. A number of reforms were recommended for California to reduce the number of rejected ballots, including that California implement statewide regulations and periodically update those regulations to create more uniformity for the signature verification process. Additionally, among other recommendations, California should implement a more uniform coding process used by counties to designate the reasons that a ballot is rejected and require the SOS to report the number of ballots rejected as well as the reasons for the rejection.

Previous Legislation. While studies provide a snapshot of a particular election, legislation and policy changes have also been implemented to reduce the number of rejected ballots at an election. For example, prior to SB 29 (Correa), Chapter 618, Statutes of 2014, a VBM ballot had to be received by 8 p.m. on Election Day. SB 29 required that VBM ballots be counted if they are postmarked by Election Day and received by the elections official by mail no later than three days after the election. For the November 2020 general election, AB 860 (Berman), Chapter 4, Statutes of 2020, extended the deadline by which VBM ballots must be received by a county elections official to 17 days after Election Day.

The signature verification process is another example of a policy that has evolved over time. In 2013, the Legislature passed and Governor Brown signed AB 1135 (Mullin), Chapter 271, Statutes of 2013. AB 1135, among other provisions, provided counties with additional tools to verify a signature by allowing the use of signatures on documents on file in addition to the signature on a voter's registration.

In 2014, AB 2530 (Rodriguez), Chapter 906, Statutes of 2014, prohibited counties that use signature verification technology from rejecting a voter's VBM ballot envelope signature unless the elections official visually examines it and verifies the signatures do not sufficiently compare.

In 2015, AB 477 (Mullin), Chapter 726, Statutes of 2015, allowed, among other provisions, a voter who did not sign their VBM identification envelope to complete and sign an unsigned ballot statement up to eight days after the election in order to have their ballot counted.

In 2016, AB 1970 (Low), Chapter 821, Statutes of 2016, required the SOS to promulgate regulations establishing guidelines for county elections officials relating to the processing of VBM and provisional ballots.

Additionally, in 2016, SB 450 (Allen), Chapter 832, Statutes of 2016, enacted the Voter's Choice Act and permitted counties to adopt a new voting model that, among additional provisions, replaced neighborhood polling places with county-wide vote centers, mailed every registered voter a VBM ballot, and provided ballot drop off locations. Among the provisions of SB 450, the bill required counties using this vote center model to make a reasonable effort to contact voters with missing signatures on their VBM envelopes and provided them with an opportunity to correct the issue.

In 2017, AB 840 (Quirk), Chapter 820, Statutes of 2017, among other provisions, permitted a voter who did not sign their VBM identification envelope to return a completed unsigned ballot statement by email.

In 2018, SB 759 (McGuire), Chapter 446, Statutes of 2018, permitted a voter whose signature on their VBM ballot identification envelope does not match the signature on file in the voter's record to return a completed signature verification statement in order to have their ballot counted.

Finally, in 2019, SB 523 (McGuire), Chapter 568, Statutes of 2019, required counties to notify a voter whose signature is missing on a VBM identification envelope and aligned the timeline for notices and the submission of an unsigned VBM ballot envelope with the deadlines established for mismatching signatures.

Election Observers. Under current law, observers are allowed sufficiently close access to enable them to watch the processing of VBM ballot return envelopes as well as the processing and counting of VBM ballots. This includes being close enough to view the signature verification process. Observers are not allowed to interfere with the process, but they are able to challenge whether the individual(s) handling VBM ballots are following established procedures. It should be noted that counties handle challenges in different manners. Generally, counties will have an elections official do a secondary review of the challenge and make a determination, which resolves the challenge.

COMMENTS

- 1) According to the author: SB 503 codifies and builds upon emergency regulations put in place by the Secretary of State in advance of the November 2020 election to reduce the total number of rejected mail-in ballots from the March 2020 California primary. SB 503 sets standards for comparing signatures for all 58 counties so that every valid vote counts no matter where you reside. Doing so will ensure we honor the votes of those with ability challenges, voters of color, and LEP (limited English proficiency) voters, who are more likely to face challenged and rejected mail-in ballots.
- 2) Establishing Uniform Standards. As previously mentioned, studies have found that more needs to be done to establish statewide uniformity in the signature verification process. In 2020, the SOS established emergency regulations to establish a more uniform process for signature verification. However, these emergency regulations are only effective through July 28, 2021, unless extended.

This bill provides an expanded and uniform statewide standard for signature verification for VBM ballot envelopes and codifies some of the SOS emergency regulations in state statute, including those providing: the signature on the petition or ballot envelope is presumed to be the voter's signature, exact matches are not required for an elections official to confirm a valid signature, and elections officials may not review or consider a voter's party preference, race, or ethnicity. It should be noted that this is not an urgency measure and the bill, if chaptered, will take effect on January 1, 2022. As a result, there would be an approximate five-month gap between the emergency regulations expiring and this bill taking effect.

- 3) “Reasonable Doubt.” One provision in this bill requires an elections official to determine beyond a reasonable doubt that a voter’s signature does not compare with a signature on file in order for the ballot to not be counted. The author should provide additional clarification to the phrase, “beyond a reasonable doubt,” and determine what the phrase means in the context of the verification of a voter’s signature on a VBM ballot envelope. Clarification will provide additional uniformity for VBM signature verification throughout California.
- 4) Argument in Support. In a letter supporting SB 503, the California Labor Federation states, in part, the following:

In the 2020 General Election, 86.72% of California voters chose to vote by mail. With the Governor having recently signed into law SB 29 (Umberg), which requires county elections officials to mail a ballot to every registered voter in all elections conducted prior to January 1, 2022, county elections offices will most likely see a higher rate of voters participate in VBM in elections this year. These reforms will help ensure transparency and allow voters to participate in a fair election process accessible for all voters.

- 5) Argument in Opposition. In a letter opposing SB 503, the Election Integrity Project California, Inc. states, in part, the following:

SB 503 would eviscerate any legitimate effort to determine a ballot’s legitimacy before counting, and would put indiscriminate and unrestricted power into the hands of a single elected official, the Secretary of State.

[...]

That kind of power should never be abdicated by the legislature, the people’s representatives, and handed over to any single individual.

The mandates of SB 503 are antithetical to and destructive of election integrity. The voters of California deserve much better.

RELATED/PRIOR LEGISLATION

AB 1135 (Mullin), Chapter 271, Statutes of 2013, among other provisions, provided counties with additional tools to verify a signature by allowing the use of signatures on documents on file in addition to the signature on a voter’s registration.

AB 2530 (Rodriguez), Chapter 906, Statutes of 2014, prohibited counties that use signature verification technology from rejecting a voter’s VBM ballot envelope signature unless the elections official visually examines it and verifies the signatures do not sufficiently compare.

AB 477 (Mullin), Chapter 726, Statutes of 2015, allowed, among other provisions, a voter who did not sign their VBM identification envelope to complete and sign an unsigned ballot statement up to eight days after the election in order to have their ballot counted.

AB 1970 (Low), Chapter 821, Statutes of 2016, required the SOS to promulgate regulations establishing guidelines for county elections officials relating to the processing of VBM and provisional ballots.

SB 450 (Allen), Chapter 832, Statutes of 2016, enacted the Voter's Choice Act and permitted counties to adopt a new voting model that, among additional provisions, replaced neighborhood polling places with county-wide vote centers, mailed every registered voter a VBM ballot, and provided ballot drop off locations. Among the provisions of SB 450, the bill required counties using this vote center model to make a reasonable effort to contact voters with missing signatures on their VBM envelopes and provided them with an opportunity to correct the issue.

AB 840 (Quirk), Chapter 820, Statutes of 2017, among other provisions, permitted a voter who did not sign their VBM identification envelope to return a completed unsigned ballot statement by email.

SB 759 (McGuire), Chapter 446, Statutes of 2018, permitted a voter whose signature on their VBM ballot identification envelope does not match the signature on file in the voter's record to return a completed signature verification statement in order to have their ballot counted, as specified.

SB 523 (McGuire), Chapter 568, Statutes of 2019, required counties to notify a voter whose signature is missing on a VBM identification envelope and aligned the timeline for notices and the submission of an unsigned VBM ballot envelope with the deadlines established for mismatching signatures, as specified.

POSITIONS

Sponsor: Stanford Law School, Election Law Project

Support: California Labor Federation
Disability Rights California

Oppose: Election Integrity Project California, Inc.

-- END --

EXHIBIT D

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON ELECTIONS

Marc Berman, Chair

AB 37 (Berman) – As Amended April 7, 2021

SUBJECT: Elections: vote by mail ballots.

SUMMARY: Requires county elections officials to mail a ballot to every active registered voter, and to allow voters to use a vote by mail (VBM) ballot tracking system, for all elections. Specifically, **this bill:**

- 1) Requires county elections officials to mail a ballot to every active registered voter for any election, and provides that the distribution of VBM ballots to registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location.
- 2) Requires county elections officials to use the VBM ballot tracking system developed by the Secretary of State (SOS), or a system that meets or exceeds the level of service provided by the SOS's system, for any election and specifies that the system must be accessible to voters with disabilities.
- 3) Requires county elections officials to permit any voter to cast a ballot using a certified remote accessible vote by mail (RAVBM) system for an election.
- 4) Extends the deadline by which a VBM ballot that is voted on or before election day must be received by the county elections official in order to be counted from the 3rd day after election day to the 7th day after election day. Allow county elections officials to consider information from the United States Postal Service (USPS) or bona fide private mail delivery companies other than postmarks—such as Intelligent Mail Barcodes and tracking information—to determine if a ballot was mailed on or before election day.
- 5) Authorizes jurisdictions that have the necessary computer capability to begin processing VBM ballots on the 29th day before the election.
- 6) Makes conforming changes.

EXISTING LAW:

- 1) Provides that a registered voter may vote by mail by requesting a VBM ballot for a specific election or by becoming a permanent VBM voter.
- 2) Requires county elections officials to mail a ballot to every active registered voter for any election proclaimed or conducted prior to January 1, 2022, as specified, and provides that the distribution of VBM ballots to registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location.
- 3) Requires county elections officials to use the VBM ballot tracking system developed by the SOS, or a system that meets or exceeds the level of service provided by the SOS's system,

for any election proclaimed or conducted prior to January 1, 2022.

- 4) Requires county elections officials to begin mailing ballots and other required materials to voters no later than 29 days before the day of the election.
- 5) Authorizes any county, pursuant to the California Voter's Choice Act (CVCA), to conduct elections in which every registered voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions.
- 6) Permits an elections official, whenever there are 250 or fewer persons registered to vote in any precinct, to furnish each voter with a VBM ballot along with a statement that there will be no polling place for the election.
- 7) Provides that certain local elections may be conducted as all-mailed ballot elections, as specified.
- 8) Requires an elections official, if specified data from the USPS indicates that a voter has moved and left no forwarding address, or if a voter has moved out of the state, to update the status of the voter's registration to inactive. Requires the elections official to mail a forwardable notice to the address at which a voter is registered when that voter's registration is made inactive. Provides that voters with an inactive voter registration status do not receive election materials and are not included in calculations to determine the number of signatures required for qualification of candidates and measures, precinct size, or other election administration-related processes.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Notwithstanding the extraordinary circumstances surrounding the 2020 November general election, California voters are increasingly using VBM ballots to vote in elections. Since 2001, when state law was changed to allow any California voter to become a permanent vote by mail (PVBM) voter, California voters have increasingly used VBM ballots to vote in elections.

According to data from the Secretary of State's office, over 69% of voters (14.4 million) were registered as PVBM voters for the March 2020 primary election, and over 75% of voters (over 16.5 million) were registered as PVBM voters for the November 2020 general election. Additionally, 15 counties have chosen to conduct elections pursuant to the California Voter's Choice Act, which requires an elections official to mail every active registered voter a ballot, and three counties conduct elections entirely by mail. As a result, nearly 90% of California's registered voters already receive a ballot in the mail for each election in which they are eligible to vote.

Moreover, California made investments in improving voting by mail in advance of the November 2020 general election, including for equipment to help counties process a larger number of VBM ballots, ballot tracking systems, and convenient ballot drop off locations.

The November 2020 election in which elections officials mailed a ballot to all active registered voters was success. According to the SOS, over 17.5 million Californians voted in the November 2020 general election and over 86.5% (15 million) voted on the ballot that was mailed to them. Additionally, more than five million Californians signed-up to track their VBM ballots using California's ballot tracking system. It is important that California build on the success of the November 2020 election by continuing these policies that voters have come to expect.

- 2) **Previous Legislation:** Due to concerns that conducting in-person voting during the spread of COVID-19 could threaten the health and safety of voters, election workers, and the public generally, last year the Legislature approved and Governor Newsom signed bills that made significant changes to the way that the state conducted the November 2020 presidential general election. Those changes largely were enacted through two bills—AB 860 (Berman), Chapter 4, Statutes of 2020 and SB 423 (Umberg), Chapter 31, Statutes of 2020. Notably, those bills required that a mail ballot be sent to every active registered voter, provided voters in all counties with the ability to track their ballot, authorized changes to in-person voting requirements, and made other changes to facilitate the expected surge in voting by mail at the November election. The provisions of this bill are based off many of the provisions of AB 860.
- 3) **Current Vote by Mail Ballot Use in California:** In 2001, the Legislature approved and Governor Davis signed AB 1520 (Shelley), Chapter 922, Statutes of 2001, which, among other provisions, authorized any voter to become a permanent VBM voter. As a result, California voters have increasingly used VBM ballots to vote in elections. According to data from the Secretary of State's office, over 69% of voters (14.4 million) were registered as PVBM voters for the March 2020 primary election, and over 75% of voters (over 16.5 million) were registered as PVBM voters for the November 2020 general election.

Additionally, there are three counties (Alpine, Plumas, and Sierra), in which 100 percent of their precincts are small enough that they are deemed all-mail ballot precincts. Moreover, fifteen counties have chosen to conduct elections pursuant to the California Voters Choice Act, (Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne) which requires an elections official to mail every active registered voter a ballot. As a result, nearly 90% of California's registered voters receive a ballot in the mail for each election in which they are eligible to vote.

- 4) **November 2020 Election Participation:** According to official election results compiled by the SOS, 17,785,151 Californians voted in the November 3, 2020 statewide general election—15,423,301 (86.7%) using a VBM ballot, and 2,361,850 (13.3%) voting in-person at a polling place or vote center. That represents a turnout of 80.67% of California's registered voters, and 70.88% of the estimated number of eligible California voters. As a percentage of eligible voters, California's turnout in the November 2020 election was the

highest turnout in a statewide election since the presidential general election in November 1952.

- 5) **All-Mailed Ballot Elections:** As detailed above, existing law permits certain local elections to be conducted as all-mailed ballot elections, where every active registered voter is furnished with a VBM ballot, and the elections official is not required to establish polling places or vote centers for in-person voting. Similarly, existing law allows elections officials to designate a precinct that has 250 or fewer registered voters as an all-mailed ballot precinct, where every active registered voter is furnished with a VBM ballot, but no polling place is established for the precinct. Although state law does not require elections officials to establish polling places on Election Day in these situations, voters in these situations are able to vote in-person at the office of the elections official.
- 6) **Ballot Tracking:** Three years ago, the Legislature approved and Governor Brown signed AB 2218 (Berman), Chapter 432, Statutes of 2018, which required the SOS to establish a system that a county elections official may use to allow a VBM voter to track and receive information about the voter's VBM ballot as it moves through the mail system and as the VBM ballot is processed by the county elections official. The SOS officially launched that system in February 2020. Twenty-five counties made that tool available to their voters for the March 3, 2020 statewide primary election and in accordance with AB 860 of 2020, the system was available for voters in all 58 California counties for the November 2020 presidential general election. According to information from the SOS, more than five million Californians signed-up to track their VBM ballots using the SOS system. This bill specifies that the system must be accessible. It is the position of the SOS that the current system is accessible, and therefore, the bill's requirement that the system be accessible is a codification of current practice that also ensures any future versions of the system will remain accessible.
- 7) **Other States:** According to the National Conference of State Legislatures, five states currently conduct all elections in which ballots are mailed to all registered voters: Colorado, Hawaii, Oregon, Washington, and Utah. At least 21 other states have laws that allow certain smaller elections, such as school board contests, to be conducted by mail.
- 8) **Vote by Mail Ballot Processing:** Elections Code section 15101 permits elections officials to begin processing VBM ballot return envelopes 29 days before the election, and authorizes any jurisdiction having the necessary computer capability to start processing VBM ballots 15 business days before the election.

This bill allows an elections official to begin processing VBM ballots 29 days before the election, instead of 15 business days before the election. With the expected increase in VBM balloting, elections officials believe that allowing them to begin processing VBM ballots earlier will help minimize overtime that otherwise would be needed for staff to process VBM ballots, and will allow them to process a larger number of VBM ballots before election day, thereby reducing the number of VBM ballots that need to be processed after the election.

- 9) **Remote Accessible Vote by Mail Voting:** In 2018, the Legislature approved and Governor Brown signed AB 1013 (Low), Chapter 906, Statutes of 2018, which requires a county elections official to permit a voter with a disability, or a military or overseas voter, to cast their ballot using a certified RAVBM system. While AB 1013 did not apply to counties conducting elections pursuant to the CVCA, the CVCA separately requires counties to have a

process to send or deliver a VBM ballot that voters with disabilities can read and mark privately and independently—a requirement that counties generally have met through the use of RAVBM systems.

Generally, RAVBM systems that are approved for use in California use electronic delivery to provide a voter with a ballot that the voter can mark using their own computer, including any assistive device that the voter uses with that computer. After marking the ballot, the voter must print and return the ballot by mail (existing law also permits military and overseas voters to return their ballot by facsimile transmission under certain circumstances); RAVBM systems that are approved for use in California are *not* permitted to transmit completed ballots electronically to the elections official.

Because RAVBM systems involve the electronic delivery of a blank VBM ballot from the elections official to the voter, these systems can significantly cut down on the time needed to get a ballot to a voter after that voter requests such a ballot.

10) **Arguments in Support:** In support of a prior version of this bill, the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO wrote:

The efficacy of our state's government depends on the objectivity and accessibility of our elections. Schedule-related barriers are continually cited as one of the biggest obstacles to voter participation, even after recent reforms that made voting more accessible. Young voters, people of color and those for whom English is a secondary language are the groups most often disenfranchised by missing signatures or other technical errors that cause ballots to be rejected. AB 37 will require that every registered voter is mailed a trackable and postage-paid ballot, removing schedule-related barriers and increasing access to the ballot box. Additionally, AB 37 builds on a streamlined ballot tracking system that gives voters the opportunity to remedy errors and decrease the rate of rejected ballots.

Our democratic systems must evolve with technology and circumstance in order to best deliver on the promise of our constitution; AB 37 responds appropriately to the stress-tests that COVID-19 and political polarization have exacted on California institutions. The November 3, 2020 general election demonstrated the feasibility and efficacy of a universal vote-by-mail system, registering 70.88% turnout amidst a pandemic and threats of political violence. Vote-by-mail ballots played no small part in this remarkable turnout, and the tracking system allowed many voters to correct administrative errors and honest mistakes.

AFSCME believes that AB 37 will play a pivotal role in protecting the electorate and strengthening our democracy.

11) **Amendments Requested:** A coalition of organizations including the California League of Conservation Voters, the League of Women Voters of California, NextGen California, Asian Americans Advancing Justice California, Disability Rights California, California Calls, and ACLU California Action, sent a support if amended letter requesting the following requirements be added to the bill: 1) a voter education and outreach process that includes statewide and countywide messaging, community-based organization funding, and postage-paid postcard a voter may return to request a translated VBM ballot or a VBM in an

accessible format; 2) dropbox requirements; 3) provide the SOS with the authority to mandate VBM ballot envelope design; and, 4) require ballot tracking systems to include a notification to voters when a corrected or resubmitted signature was accepted.

12) **Arguments in Opposition:** In opposition to this bill, the Election Integrity Project California, Inc. (EIPCa) writes:

The most recent amendment to AB 37 mandates acceptance of mail-in ballots up to seven (7) days after the Election Day deadline. While a 3-day extension, legislated a few years ago, was reasonable in light of the fact that the “postmark = paid-on date” policy is standard with regard to the financial realm, and people are used to that standard being applied universally, an extension to seven days post-election is NOT...Vote by mail voters have at least three (3) weeks to fill out and mail a ballot, and post their ballot as early as necessary for timely arrival. Introducing an additional 4 days for “timely arrival” is a gift to would-be bad actors and a threat to election integrity.

EIPCa’s main objection to AB 37 lies in the continued disarray of VoteCal, the statewide voter database. This issue should be of prime importance to every legislator, and until it is resolved, no further laws that rely on VoteCal integrity should be passed...

As EIPCa argued in the hearings regarding AB 860, Californians already have the unrestricted right at any time to simply pick up the phone and request a vote by mail ballot for any or all elections. There is no need to send ballots to those who have not requested them, and certainly not to registrants no longer in a position to vote legitimately. All voters deserve protection from the potential cancellation of their legal ballots by those who are facilitated to double vote, vote from the grave, vote from another state, etc.

13) **Related Legislation:** SB 29 (Umberg), Chapter 3, Statutes of 2021, requires county elections officials to mail a ballot to every active registered voter, and to allow voters to use a VBM ballot tracking system, for all elections proclaimed or conducted prior to January 1, 2022.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (if amended)
AFSCME, AFL-CIO (prior version)
Asian Americans Advancing Justice California (if amended)
Berkeley City Council (prior version)
CaliforniaHealth+ Advocates
California Calls (if amended)
California League of Conservation Voters (if amended)
California State PTA (prior version)
California Teachers Association (prior version)

CALPIRG Students
Disability Rights California (if amended)
League of Women Voters of California (if amended)
Los Angeles County Board of Supervisors (prior version)
NextGen California (if amended)
Orange County Employees Association
Five Individuals

Opposition

Election Integrity Project California, Inc.
Four Individuals

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