



Little Hoover Commission's Public Hearing on Voter Participation: Evaluating California's Readiness for Election Reforms: Opportunities & Potential Pitfalls

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**California Public Utilities Commission Hearing Room, Junipero Serra State Office Building
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It is my pleasure and honor to speak with you about the opportunities and potential pitfalls California may encounter in implementing changes to our voting process in the near future.

As president of the California Voter Foundation, I have been deeply involved in all three key areas of our state's voting process:

- 1) how we prepare Californians to vote;
- 2) how Californians vote; and
- 3) how we verify California's election results.

The mission of the California Voter Foundation (CVF) is to improve the voting process to better serve voters. The main issues CVF has focused on over the course of its existence, which has spanned five Secretaries of State administrations, are: advancing voters' access to nonpartisan, reliable election information, especially online; ensuring voters can follow the money and know who's funding campaigns, particularly campaigns for and against ballot propositions, so that they can make informed choices; identifying and addressing problems in the state's vote-by-mail process that result in voter disenfranchisement; and ensuring California requires the use of voting systems that produce results which can be, and are publicly verified. More information about CVF is online at www.calvoter.org.

One of the biggest changes coming to our voting process, starting next year, is implementation by some counties of the Voters Choice Act.

The California Voter's Choice Act

In 2016, the California Legislature passed and Governor Jerry Brown signed into law Senate Bill 450, the "California Voter's Choice Act", a state statute that permits counties to establish a new model for voting, if they wish to do so. The voluntary adoption by counties of this new model was designed, in part, to avoid imposing on the 58 California counties a new statewide mandate for the conduct of elections, the costs of which the state would have had to finance.

The California Voters Choice Act, or VCA, allows counties to eliminate neighborhood polling places and to replace them with a new voting system whereby every registered voter in the county is sent a vote-by-mail ballot in the mail and is provided with drop boxes where ballots can be returned prior to and on Election Day, as well as access to county-wide vote centers open over multiple days where they can also return their ballots, obtain replacement ballots or receive other, needed assistance so that they can cast

their ballots successfully. SB 450 sets numerous requirements counties must meet if they want to adopt the VCA model, including a requirement to conduct extensive public outreach to explain to voters why traditional precinct polling places are being replaced with mail-in ballots, vote centers, and drop boxes.

The changes SB 450 will bring to California's voting process, where it is implemented, are significant, and informed by a process first developed in Colorado that has been viewed by election officials as a success. But California is not Colorado, and our population of voters is much larger and more diverse and complex by comparison.

The California Voter Foundation's Position on SB 450

While the California Voter Foundation (CVF) views the new voting model for California enacted into law by SB 450 as a potential improvement over existing processes and options, three key concerns kept CVF from supporting the bill while it was being considered by the California Legislature.

First, the opt-in character of the VCA means that some, but not all, counties will adopt this new voting model. CVF sees this as a serious source of voter confusion. Voters will rightly ask why, if the VCA is adopted and implemented in one county but not in neighboring or adjacent counties to their own why voters in different California counties are experiencing different voting options and opportunities. Additionally, the rules for the largest county in the state, Los Angeles, set up yet a third way for voting in the initial years of implementation, where polling places are no longer available but all voters **do not** automatically receive a mail ballot. Instead, only voters who sign up to vote by mail will receive ballots, but a larger proportion of vote centers will be available.

A second concern is that while voting by mail ballot has grown very substantially in popularity in California in recent years, a significant number of vote-by-mail ballots completed and submitted by voters under the prevailing rules are rejected for various reasons, primarily because of missing or nonmatching signatures on vote-by-mail return envelopes.

Recent reforms, some of which CVF championed (following the publication of its landmark 2014 report, "Improving California's Vote-by-Mail Process: A Three-County Study"ⁱ), helped reduce the mail ballot rejection rate in the 2016 elections. But tens of thousands of California voters' vote-by-mail ballots were still rejected last Fall, a result that represents substantial voter disenfranchisement.

CVF is concerned that the vote-by-mail ballot rejection rate will increase in California in future elections as more and more voters, as SB 450 envisions, are supplied with vote-by-mail ballots and are encouraged to use them. Research conducted in 2014 by the California Civic Engagement Project at UC Davis found that while younger and non-English speaking Californians were the least likely to vote by mail, their ballots were the most likely to be rejected due to late arrival or signature problems.ⁱⁱ

More recent research by Asian Americans Advancing Justice California found that while Asian American Californians are more likely to vote by mail, they were also 15 percent more likely to have their ballots rejected in the counties studied, especially if they were foreign- and not native-born. Signature mismatch was the leading reason for ballot rejection and disenfranchisement, and occurred at a higher rate in the counties studied - 51 percent - than voters generally, at 44 percent.ⁱⁱⁱ

CVF sought amendments to SB 450 to require counties implementing the VCA to contact voters whose signatures are missing or are determined not to match and give them an opportunity to provide a valid

signature. CVF was successful in getting a legal provision requiring outreach to voters whose signatures are missing, but not to those voters whose signatures are found to not match.^{iv} Meanwhile, in Colorado, as well as Oregon and Washington where vote-by-mail is nearly universally used by voters, elections officials are required under state law to notify voters of all signature problems and provide them with an opportunity to correct their ballots so that they can be counted.

More reforms should be implemented before vote-by-mail is expanded in California, such as: more robust and uniform statewide signature verification requirements; consistent, statewide oversight to govern the use of signature verification software by counties; and a requirement that counties notify voters when ballots are going to be rejected, and give them a chance to correct their mistakes so that their ballots can be counted and they are not disenfranchised.

Current law permits, but does not require counties to conduct outreach to voters with signature problems and allows them to submit a signature separately from the ballot return envelope. CVF helped draft the bill creating this law, AB 477 of 2015. We would have preferred requiring counties to contact voters, but were fully aware that such a requirement would likely result creating a new state-mandated local program and the bill being vetoed by Governor Jerry Brown.

California election mandates unfunded since 2011

Indeed, in September 2016, Governor Brown vetoed AB 2089/Quirk which would have required counties to notify voters when their ballots are rejected and tell them why. The governor said in his veto message that the bill was unnecessary because voters already have the right to find out if their ballot is rejected, thus placing the burden on voters, rather than on election officials, to discover if their ballot was counted.

This was not the only election mandate the Governor has rejected. Since his first budget proposal in 2011, Governor Brown has stripped funding in the budget every year to pay for state-mandated election programs. And every year the Legislature has agreed to go along with this, depriving counties of needed funding but, even worse, creating an environment where lawmakers know that bills requiring counties to treat voters equally that have a price tag attached to them will almost certainly be vetoed. What we have seen ever since has been bills that permit, but do not require, counties to provide certain services and conveniences for voters. And that results in unequal treatment of voters which violates voters' constitutional right to equal protection.

This is why I submitted a declaration in support of the ACLU's recent lawsuit against the Secretary of State challenging California's vote-by-mail laws for failing to notify voters whose ballots are at risk of being rejected and giving them a chance to provide a valid signature so their ballot can be "cured", corrected, and counted.^v In my declaration, I noted that several counties do notify voters and seek a missing signature, and reported the following statistics from the 2016 election in the four counties I surveyed:

Orange County:

Primary 2016	Number of voters contacted with missing signatures: 1,887 Number of signatures collected and ballots cured: 837 Cure rate: 44%
General 2016	Number of voters contacted with missing signatures: 2,549 Number of signatures collected and ballots cured: 1,632 Cure rate: 64%

Sacramento County:

Primary 2016 Number of voters contacted with missing signatures: 912
 Number of signatures collected and ballots cured: 479
 Cure rate: 53%

General 2016 Number of voters contacted with missing signatures: 1,285
 Number of signatures collected and ballots cured: 794
 Cure rate: 62%

Santa Cruz County:

Primary 2016 Number of voters contacted with missing signatures: 67
 Number of signatures collected and ballots cured: 17
 Cure rate: 25%

General 2016 Number of voters contacted with missing signatures: 93
 Number of signatures collected and ballots cured: 23
 Cure rate: 25%

Shasta County:

Primary 1016 Number of vote-by-mail ballots with missing signatures: 57
 Number of voters contacted for all ballot challenges: 161 (of which 57
 were missing signatures)
 Number of challenged ballots that were corrected: 92
 Cure rate: 57%

General 2016 Number of vote-by-mail ballots with missing signatures: 103
 Number of voters contacted for all ballot challenges: 338 (of which
 103 were missing signatures)
 Number of challenged ballots that were corrected: 192
 Cure rate: 57%

The voters living in these four counties stood a better chance of not being disenfranchised because their registrars chose to, and had the resources to contact them and give them the opportunity to correct their signature problems, and in fact, 4,066 were not disenfranchised in 2016 because their county reached out to them. But voters living in counties where registrars do not conduct this kind of outreach are not given a second chance if they make a mistake when they vote by mail and are thus more likely to be disenfranchised.

A few other examples of how counties are allowed to treat voters differently under California law include: whether voters can request a vote-by-mail ballot over the phone; whether voters can vote early in person the weekend before the election; and whether or not vote-by-mail ballot return envelopes are postage-paid.

This last issue, whether ballot return envelopes are postage-paid, is the third, salient concern that CVF, and many other voter advocacy groups, raised during legislative consideration of SB 450. We urged the inclusion of a provision to require counties to cover return ballot postage costs, but the authors declined to include this requirement.^{vi}

This might seem to be a trivial issue. But it is my view that if the state eliminates local polling places and sends voters a vote-by-mail ballot to use, without return postage, this will be negatively perceived by voters and even viewed by some as a poll tax. That is why, as a supplement to the implementation of SB 450, CVF is supporting AB 216 in the 2017-18 legislative session, a bill to require all California counties to provide postage-paid vote-by-mail envelopes to all vote-by-mail voters for all elections.^{vii} However, without a source of funding to pay for this cost, it's doubtful Governor Brown would sign this bill into law if it reaches his desk.

Sacramento County's implementation of the Voter's Choice Act

CVF is prepared to support the effective implementation of the Voter's Choice Act in counties that choose to do so. I have been closely following and engaged in Sacramento's implementation, as it is not only my home county but also the most populous and diverse county implementing this new law in 2018. We have urged Sacramento to treat the requirements of SB 450 as a floor, not a ceiling, and to go a few steps further than the law requires, specifically:

- 1) Provide voters with postage-paid vote-by-mail ballot return envelopes;
- 2) Conduct outreach to voters whose signatures are determined not to match and provide them with an opportunity to correct and "cure" their ballots so they can be counted; and
- 3) Ensure there is at least one vote center per community so that voters can feel a sense of ownership of their voting location.

In addition, several questions have arisen about the specific details in how Sacramento will implement the Voters Choice Act that are being decided in an ad hoc way, since there are currently no regulations yet in place to guide its implementation.

One example: at the first VCA meeting I attended in Sacramento, I asked if voters will be able to cast regular ballots at vote centers or if they would have to cast their ballots inside vote-by-mail envelopes bearing their signatures. I was informed the county was undecided on this matter. This is a significant issue, since SB 450 was not advertised as an "all vote-by-mail" system and during the legislative process advocates were assured that the polling place experience would be retained and enhanced at vote centers. Fortunately, the Secretary of State intervened and issued a directive to counties clarifying that they need to let voters cast regular ballots at vote centers.^{viii}

Another question has arisen: will voters who show up at vote centers and don't have their vote-by-mail ballots on hand to turn in be able to cast a regular ballot, or be required to cast a provisional ballot? Sacramento County is currently undecided on this matter. I fully expect that most voters will show up at vote centers without their issued ballots. As it is, many voters who have opted in to the vote-by-mail system forget that they did so, or say they lost their ballot or that their ballot was never delivered, then show up at polling places to vote, and are forced to cast provisional ballots. In fact, vote-by-mail voters who appear in person at polling places to vote is one of the top reasons why so many Californians end up casting provisional ballots.^{ix}

The whole idea behind county-wide vote centers is that election officials, with real-time access to their voter registration database and voters' ballot status, will be able to quickly and easily determine whether a voter who shows up at a vote center has already voted. But since this process is still being developed and has never been tried before in Sacramento County, I can understand why my county election officials are wanting to err on the side of caution. But if voters are forced to cast provisional or vote-by-mail ballots at vote centers when they are seeking to simply fill out a ballot and drop it in a ballot box, they're likely to have a less-than-satisfying voting experience.

Yet another issue that my county has not decided: whether voters at vote centers will be able to avoid casting over-votes. After the 2000 Presidential "hanging chad" election, Congress passed the Help America Vote Act which gives voters the right to "second chance voting" and requires all election officials in the nation to enable voters to verify that they have not over-voted on a contest before turning in their ballot.^x Voters in California who choose to vote by mail are forfeiting that right, but that

is their choice. Voters in Sacramento who vote at the polls have for years been able to verify they have not over-voted by completing a paper ballot and feeding it into a scanner; if they have over-voted a contest they are alerted and given the chance to fill out a new ballot. But this service may disappear in the new vote center environment; the county elections staff is so far noncommittal as to whether they will purchase equipment that meets this requirement.

It has been heartening and inspiring to see so many individuals getting involved in Sacramento County's implementation, and for so many dedicated and experienced staff in the county's elections department to be deeply engaged in this process. There is, however, concern among many voter advocates that the county's Board of Supervisors is not providing the elections department with sufficient resources needed to conduct a robust voter education and outreach campaign.

The county had been considering adding \$290,000 to its budget for this purpose but that proposal has not been approved and instead the county has only \$71,000 to work with for outreach, advertising and publicity. This is not sufficient in a county serving multiple languages in a major media market with 775,000 registered voters and nearly a million eligible voters. Advocates are also concerned that the county's current social media policy restricts the election department's communications and requires that tweets and posts be approved by the countywide media office, depriving staff of the ability to engage in social media in a real-time manner.

What do California voters think about vote centers?

Lastly, I want to highlight some important new research that was recently released by the California Civic Engagement Project. Last year, the CCEP conducted a series of focus groups, followed by a statewide survey, to ask California voters what they think of vote centers and the proposed new voting model. Here are some key findings:

- The overwhelming majority of voters surveyed - 61 percent - did not like the idea of vote centers;
- Two-thirds of voters surveyed said they are willing to travel only 15 minutes or less to vote; and
- One in four voters who don't use the mail now to send in their ballot said they do not trust the US Postal Service to get their ballot in safely or in time to be counted.^{xi}

These survey findings indicate there is much work to be done to convince voters that these changes are for their benefit, which is all the more reason why counties implementing the VCA need to be proactive and dedicate the resources needed to fully educate all potential voters about the changes ahead. The reality for counties, however, is these changes are largely driven by economic concerns.

Cost factors are driving elections policy in California

Sacramento County's voting equipment is nearing its end of life, and the county anticipates spending half as much to acquire new voting equipment for 78 vote centers than it would have needed to spend to purchase new equipment for its 548 polling places. While cost savings are certainly beneficial they should not be driving elections policy.

The reality is, costs have been the driving factor in many decisions being made regarding how we vote in California. Until the State of California starts requiring counties to treat voters equally, and pay for the costs associated with doing so, we will be stuck with a patchwork of practices that vary from county to

county that make it difficult for voters to fully understand their voting rights and opportunities, with the Voters Choice Act being the biggest and most impactful optional election law yet enacted.

Many voters rely on friends, family members and co-workers to help them prepare to vote. But under the Voters Choice Act, voters will find themselves in starkly different voting situations depending on where they live, and the ability to help one another prepare to vote will be significantly reduced. Do you automatically get a ballot in the mail, or do you have to request one? Do you have a neighborhood polling place you can walk to, or not? Do you have an early voting opportunity or not? Do you have eleven days to vote in person, or just one day?

We have not adopted the “Colorado Model”. We are in fact putting into place the situation that existed in Colorado prior to that state’s adoption of a new statewide law creating an equal and uniform voting experience for all of that state’s voters. Colorado did this in response to confusion among its state’s voters resulting from counties implementing varying vote-by-mail and voting location practices and options. Perhaps in a few years we will truly follow suit and similarly enact a uniform system that gives voters equal rights and voting opportunities. And the only likely way that will happen is if the political leaders in Sacramento are willing to pay for it.

California elections need more uniformity, not less

What we need in California elections is more uniformity, not less. We need to take the guesswork out of voting and require counties to treat voters equally and give voters the same opportunities regardless of where they live. We like to congratulate ourselves in California that we don’t impose the kinds of onerous barriers on the voting process that we see in other states, such as restrictive absentee voting rules or aggressive voter purge laws. But at the same time, we don’t require our counties to do a number of things that would help voters.

In the last election, seven counties provide paid postage for vote by mail envelopes. But most did not. Several counties offer weekend voting opportunities but many do not. State law allows counties to accept vote by mail ballot requests over the phone, but all counties are not required to do this. The ones that have the resources offer more services. This is not equal opportunity. Our state’s political leaders need to recognize that it should not matter which county you live in; all Californians deserve equal treatment and opportunities in the voting process.

ⁱ CVF’s report is online at <http://www.calvoter.org/votebymail>.

ⁱⁱ See "Disparities in California's Uncounted Vote-by-Mail Ballots: Youth, Language Preference and Military Status," October 2014, <http://regionalchange.ucdavis.edu/ourwork/projects/ccep/UCDavisVotebyMailBrief3.pdf>.

ⁱⁱⁱ See “Asian Americans face higher than average vote-by-mail ballot rejection rates in California,” an Issue Brief published August 2017 by Asian Americans Advancing Justice California, online at https://www.advancingjustice-la.org/sites/default/files/issuebrief-vbm-FINAL-1_0.pdf.

^{iv} CVF’s letter seeking amendments to SB 450 is online at http://www.calvoter.org/issues/votereng/CVF_SB_450_amendments_letter.pdf.

^v The ACLU's lawsuit is online at [https://www.aclunc.org/docs/Petition for Writ of Mandate FINAL.PDF](https://www.aclunc.org/docs/Petition_for_Writ_of_Mandate_FINAL.PDF) and Kim Alexander's declaration is online at [http://www.calvoter.org/issues/votereng/advocacy/2017-18/Kim Alexander Declaration ACLU.pdf](http://www.calvoter.org/issues/votereng/advocacy/2017-18/Kim_Alexander_Declaration_ACLU.pdf).

^{vi} The letter of concern on this issue signed by CVF and other advocacy groups is online at http://www.calvoter.org/issues/votereng/advocacy/2015-16/2016_06_23_SB_450_Concerns_Letter.pdf.

^{vii} CVF's AB 216 letter of support is online at [http://www.calvoter.org/issues/votereng/advocacy/2017-18/CVF AB 216 Support Letter.pdf](http://www.calvoter.org/issues/votereng/advocacy/2017-18/CVF_AB_216_Support_Letter.pdf).

^{viii} The Secretary of State's August 18th, 2017 Memorandum to County Clerk/Registrar of Voters (CC/ROV) #17066, "California's Voter's Choice Act: Use of Regular Ballots at Vote Centers" is online at <http://elections.cdn.sos.ca.gov/ccrov/pdf/2017/august/17066js.pdf>.

^{ix} See the Secretary of State's information page on provisional voting for more information, online at <http://www.sos.ca.gov/elections/voting-resources/provisional-voting/>.

^x Section 301(A) of the Help America Vote Act requires the following:

SEC. 301. VOTING SYSTEMS STANDARDS. (a) REQUIREMENTS.—Each voting system used in an election for Federal office shall meet the following requirements: (1) IN GENERAL.— (A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall— (i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted; (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and (iii) if the voter selects votes for more than one candidate for a single office— (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

^{xi} The California Civic Engagement Project's survey and focus group results are online at <http://ccep.ucdavis.edu/issue-briefs>.