



CENTER FOR ADVOCACY & POLICY

1127 Eleventh Street, Suite 501

Sacramento, CA 95814

Telephone: (916) 442-1036

Fax: (916) 442-1743

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TO: Little Hoover Commission
FROM: Lori Shellenberger, on behalf of ACLU of California
RE: Written Testimony for May 25, 2017, Hearing on
Increasing Voter Participation in California Elections

The ACLU of CA is dedicated to protecting and advancing civil rights and liberties, including the right to vote. Through coordinated litigation, policy, and organizing strategies we work to remove structural barriers to voter registration and participation in California's elections. We focus our efforts on historically marginalized communities to ensure that people with disabilities, people impacted by the criminal justice system, language minorities, and other underrepresented communities are not intentionally or inadvertently excluded from our democracy.

In addition to echoing the points made in the testimony submitted by our colleagues at Disability Rights California, the League of Women Voters of California, NALEO Educational Fund, and Asian Americans Advancing Justice - Los Angeles, we would like to highlight the following election reform efforts that, if successfully implemented, will put California at the forefront of building an inclusive and expanded democracy:

- ❖ **Voter's Choice Act**
- ❖ **Voting with a Criminal Conviction**
- ❖ **Voter Registration at Public Assistance Agencies and Offices Serving People with Disabilities**
- ❖ **New Motor Voter and Compliance with Federal Motor Voter**

Below is a short summary of these reform efforts and recommendations for successful implementation.

Voter's Choice Act (VCA)

California begins a shift to an entirely new way of conducting elections that could result in an overall increase in voter participation. **Some key goals of the VCA:**

- Send a ballot to every voter in the hope of increasing turnout.
- Provide multiple ways to return that ballot, including drop box locations for people who lack postage.
- Close neighborhood polling sites and open centrally located vote centers where any voter in the county can vote, regardless of their precinct, and that offer more guaranteed days of in-

person early voting, same day registration and voting, multilingual language assistance, more accessible voting machines, and ballot-on-demand.

- Offer more professionalized staff at vote centers to provide assistance to voters and minimize Election Day confusion and frustration.

The VCA authorizes 14 counties to shift to the vote center model in 2018, although not all 14 counties plan to do so. The law authorizes the remaining counties in the state to implement a vote center model in 2020, with the exception of Los Angeles County. Instead, in 2020 Los Angeles County will be allowed to forego mailing ballots to voters who are not registered as permanent vote-by-mail voters, and instead replace neighborhood polling sites with a slightly higher ratio of vote centers to voter (1 per 7,500 voters as opposed to 1 per 10,000 voters, and with an estimated 82% reduction in polling sites).

The VCA raised concerns about the impact a dramatic reduction in polling sites might have on certain communities given the large disparities in vote-by-mail usage rates between non-Hispanic whites and Latinos, higher rejection rates for mail ballots for certain underrepresented communities, and the importance of a neighborhood polling site and accessible voting machine for people with disabilities who want to cast a private and independent ballot. During the legislative process leading up to the passage of the VCA, Secretary of State Padilla's staff, along with Senate and Assembly Elections Committee staff, led a robust stakeholder input process that resulted in the inclusion of many best practices recommended by advocates to ensure that underrepresented communities would not slip through the cracks of an otherwise positive advance in elections:

- ✓ Mail ballots must be available in an accessible format for people with disabilities.
- ✓ Vote centers must have a minimum of three accessible voting machines.
- ✓ Vote centers should be staffed with bilingual poll workers in all the languages a county is required to offer by law.
- ✓ Counties are required to consider a number of factors when deciding where to place their vote centers and ballot dropoff locations, including proximity to public transportation, communities with historically low vote-by-mail usage, voters with disabilities, language minority communities, low-income communities, communities with low rates of household vehicle ownership, and communities with low registration rates who may need to take advantage of same day registration.
- ✓ Counties must have working Language Accessibility and Voter Accessibility Advisory Committees that are connected to impacted communities.
- ✓ Counties are required to draft and submit community outreach and education plans for public input at one public hearing, post amended plans for public comment, and get approval of the plan from the Secretary of State.
- ✓ Counties are required to contact voters at least 2 times in addition to the sample ballot and actual ballot mailings in order to educate them about the new options for casting a ballot.

Other best practices that are recommended and critical to the success of the VCA, particularly for marginalized communities:

- ✓ Outreach and education may be the most important component of successful rollout of the VCA in order to assist voters in navigating the new system, which is expected to result in approximately 86% fewer in-person voting sites on Election Day. Particular emphasis should be given to outreach and education to voters with limited English proficiency and voters

with low vote by mail usage rates. Voter engagement groups must be directly involved in planning and implementation.

- ✓ Counties should review and post information on the disparities in vote-by-mail participation and vote-by-mail ballot rejection rates so elections officials and grassroots, get-out-the-vote groups can tailor and target their education and outreach efforts for those communities.
- ✓ Counties should develop plans for robust public input on proposed vote center and dropoff locations. Community members are the best resource on public transportation routes and community usage.
- ✓ Counties should provide prepaid postage on mail ballots to ensure a higher rate of return. San Mateo attributed prepaid postage to an increase in turnout for its pilot vote center election in 2015.

Voting with a Criminal Conviction

California ended permanent disenfranchisement for people convicted of a crime when voters passed an initiative in 1974 to amend the constitution to prohibit only those currently imprisoned or on parole from voting, and automatically restoring voting rights once a sentence has been served. Unfortunately, disagreement over what imprisoned and parole mean has resulted in a long history of confusion over who can and cannot vote with a criminal conviction in California. This was further compounded when, in 2011, former Secretary of State Debra Bowen stripped voting rights from tens of thousands of Californians sentenced under the Criminal Justice Realignment Act (CJRA) of 2011.

Subsequent litigation and a new law signed by Governor Brown in September 2016 (AB 2466, Weber) have finally clarified, once and for all, the voting eligibility of people convicted of a crime: **only those people currently serving a state or federal prison sentence or on state supervised parole for conviction of a felony are ineligible to vote. Anyone else with a criminal conviction, including people convicted of a felony who are on probation, county supervision, or serving a jail sentence under the CJRA, can vote.**

Clarity in the law is an important first step toward ensuring that people are not unlawfully deprived of their right to vote. Unfortunately, confusion is still widespread in communities impacted by the criminal justice system, resulting in what is often referred to as *de facto disenfranchisement*. This means that entire communities often remain disenfranchised not because the law says they cannot vote, but because of the misperception that a criminal conviction results in permanent disenfranchisement. *De facto disenfranchisement* therefore results in the exclusion of eligible voters, a disproportionate number of whom are people of color. In California alone, three out of every four men in prison are either African American, Latino, or Asian American. While African Americans make up less than 7% of California's voting-age population, they represent 28% of those who cannot vote because of disenfranchisement and are overly represented in the community of people who mistakenly believe they cannot vote because of a prior conviction.

The integrity of California's elections is undermined when entire swaths of eligible voters are excluded from our democracy. **California can and should take several steps to further expand the franchise and ensure that no eligible voter is deprived of their right to vote because of misinformation about who can vote with a criminal conviction:**

- Amend the California Constitution to end this ugly remnant of the Jim Crow era and allow California citizens to vote regardless of a criminal conviction. Two states – Vermont and Maine – place no restrictions on voting with a criminal conviction. Fourteen states and the District of Columbia restrict voting while in prison but allow people on parole, who are living and working in their communities, to vote. California falls toward the middle of the spectrum and is among four states that do not allow people in prison or on parole to vote. Another 30 states place even greater restrictions on voting including, in a few states, permanent disenfranchisement.
- Until California ends felony disenfranchisement altogether, ensure that county elections officials and county courts are providing accurate, up-to-date information to eligible voters on who can vote with a criminal conviction.
- Designate the California Department of Rehabilitation and Corrections (CDCR), county probation departments, and county jails as voter registration agencies under the National Voter Registration Act to ensure that every individual is provided with accurate information on voter eligibility and given an opportunity to register to vote when they interact with those agencies and become eligible to vote.
- Centralize voter eligibility data for voter file maintenance between CDCR and VoteCal. This would eliminate the need for county-by-county superior court reporting to county elections officials and ensure that voter rolls are accurately and consistently maintained and updated to avoid over or under purging of people who can or cannot vote because of a criminal conviction.

Voter Registration at Public Assistance Agencies and Offices Serving People with Disabilities

The National Voter Registration Act (NVRA) was signed into law in 1993. Section 7 of the law aimed to reduce barriers to and expand opportunities for voter registration by requiring public assistance offices and state-funded programs primarily engaged in providing services to persons with disabilities to offer voter registration services to applicants and clients at every agency and office in each state. Section 7 also requires voter registration services be provided at Armed Forces recruitment offices and requires states to designate other offices as voter registration agencies. These offices are collectively referred to as voter registration agencies.

For the past five years, the ACLU of California (ACLU) has worked to improve implementation of Section 7 of the NVRA at the state and local level. The goal: to create a cost-efficient, statewide, sustainable voter registration infrastructure that is available to every eligible California voter, especially those who are traditionally underrepresented. With support from the James Irvine Foundation and the Future of California Elections, the ACLU utilized a collaborative approach to effective implementation, working closely with state and national voting rights advocates, disability rights advocates, state and local voter registration agencies, local elections officials, and the Secretary of State's office to ensure full compliance with the NVRA's mandate of expanding the availability of voter registration services so that Californians have the opportunity to register to vote and update their registration every time they interact with government.

In that short time, California's registration rate at public assistance agencies has gone from near the bottom of states in the country to among the best. In 2016, nearly 200,000 people registered to vote during transactions at voter registration agencies. This is a 100% increase in voter registrations over 2012, which was the first year of the ACLU of California's NVRA work. A few key factors that contributed to this dramatic increase in registration:

- ✓ In 2013, then-Senator Alex Padilla authored the strongest NVRA implementing statute in the country, SB 35 (2013). Under that statute, voter registration agencies are required to incorporate a link to California Online Voter Registration into their online applications; state and county voter registration agencies must designate an NVRA coordinator and notify their county elections offices of the sites in their county and obtain trackable voter registration cards; and counties must report and the Secretary of State must track monthly NVRA registration totals by county and by site; and voter registration agencies must conduct annual NVRA trainings.
- ✓ California became the first state in the country to designate its health benefit exchange, Covered California, as a voter registration agency, ensuring that consumers are offered the chance to register to vote or update their voter registration when applying for or renewing their health care plan. Since 2014, more than 125,000 people have registered to vote through Covered California.
- ✓ The ACLU, with support from the James Irvine Foundation and in partnership with the Secretary of State, NALEO and Disability Rights California, conducted county-by-county assessments, conducted in-person countywide trainings, and worked with county and state agencies to develop written NVRA policies.

Despite the increase in registrations at California's NVRA voter registration agencies, we can do better. More than 5.5 million eligible Californians remain unregistered to vote, and by improving the ease of registration at agencies we can capture many of those voters. **ACLU recommends the following steps to further increase registration at voter registration agencies:**

- Create a fully integrated online voter registration interface so that so that applicants applying for public benefits online can seamlessly register to vote with just a few clicks, as opposed to the current practice of being linked to California Online Voter Registration and having to enter information that the applicant just provided for their benefits application. California DMV was the first state agency to work with the Secretary of State to develop technology that pre-populates the voter registration application with the information the applicant has already provided to DMV. This technology was launched in 2016 for DMV's online renewal system and in just 8 months resulted in nearly 70,000 new voter registrations.
- Designate additional agencies as voter registration agencies under the NVRA, including offices throughout the state that serve people with disabilities, such as the California Department of Aging and college and university disability services offices. The Secretary of State is responsible for identifying and designating these agencies as voter registration agencies, but many that have been designated in other states remain undesignated in California.
- Remain vigilant about monitoring NVRA compliance. Staff turnover and inattention to NVRA policies persist in county agencies and even at the state level. For example, although registrations through L.A. County's Department of Public and Social Services (DPSS) nearly tripled in the past two years, site visits and investigation of their registration practices revealed cracks in the system that resulted in a failure to offer voter registration to thousands of online public benefits applicants. As a result, DPSS agreed to mail voter registration cards to more than 80,000 households in L.A. County that had been deprived of voter registration services in 2016.

New Motor Voter and Compliance with Federal Motor Voter

Background on Federal NVRA Compliance Issues. Under Section 5 of the NVRA, state motor vehicle agencies must provide a simultaneous opportunity to register to vote that does not require the customer to provide duplicative information already provided to the Department of Motor Vehicles (DMV). Until 2016, California refused to comply with the NVRA and provided customers a separate voter registration card they were required to complete if they wished to register to vote. As a result, California lagged far behind other states in the percentage of voter registrations coming from its DMV.

In February 2015, the ACLU, Demos, Project Vote and the law firm Morrison & Foerster formally notified Secretary of State Alex Padilla and the DMV of the state's noncompliance and their intent to sue on behalf of the League of Women Voters of California, California Common Cause, ACCE Institute, and National Council of La Raza if the state did not comply with the NVRA. After extended negotiations, the state ultimately agreed, in 2016, to incorporate voter registration into its in person and online transactions in compliance with the NVRA. **Those processes are described below and have resulted in a significant increase in voter registration at DMV, where nearly 500,000 people registered to vote under the new in-person and online processes that were implemented in April of 2016.**

DMV refused to commit to a timeline to bring its mail renewal transactions into compliance with the NVRA and continues to offer the million-plus customers who renew their license or ID by mail every year a separate voter registration card that must be completed and mailed by the customer if they wish to register to vote or update their voter registration information. On May 9, 2017, the parties to the original NVRA notice of noncompliance sued DMV in federal court for its failure to commit to remedying the NVRA violation prior to the 2018 elections.

The New Voter Registration Process at DMV:

- People renewing a driver's license online can register to vote with the click of a button and have the online registration form prepopulated with information already provided to the DMV.
- In DMV offices, people currently answer a series of questions about citizenship, eligibility, and whether they want to register to vote, update their voter registration information, change their address, or do not want to register. People who check yes will have their information electronically transmitted to the Secretary of State and be directed to a touchscreen testing terminal that has been programmed with optional voter registration questions like party preference, language preference and vote-by-mail preference.
- Unfortunately, not everyone completes the second step of the voter registration process and according to the latest available data, nearly 1/3 of registrants fail to visit the touchscreen terminal. **This means 1/3 of registrants are getting registered to vote without providing their language preference and other preferences.**
- For people who do not complete the optional voter registration information, the Secretary of State must follow up to offer those individuals the chance to provide that information. However, the only way to provide that information is by re-registering to vote. Moreover, although DMV offers its application in more than 30 languages, it currently does not have the ability to track or keep a record of the language used by the customer during their DMV transaction. Therefore, the Secretary of State must follow-up with voters in 10 languages

condensed into the same three-page letter. The letter does not include a voter registration card but instead directs people on how to obtain one or re-register online.

What New Motor Voter Will Do:

- Requires DMV to electronically transmit to the Secretary of State voter registration information associated with people who apply for non-AB 60 licenses and state identification, and for those who notify DMV of a change of address.
- Makes registering to vote the default: people who have affirmed they are eligible to vote but do not want to register will have to **opt out** of registration, as opposed to having to take affirmative steps to get registered
- Should make the voter registration section of DMV's forms much clearer and simpler. The current form used by DMV was developed without stakeholder input, does not clearly state the eligibility requirements and is potentially confusing to the customer. The form has multiple variations of answers to multiple questions and requires DMV employees to potentially make judgments about voter eligibility and could be subject to data entry error.
- DMV will send data on eligible people who opt out of voter registration to the Secretary of State for use for outreach and education.

What New Motor Voter Does Not Do:

- Unlike Oregon, there is no "lookback": New Motor Voter does not pull everyone who has ever been to DMV and suddenly add them to the voter file.
- Unlike Oregon, DMV does not make the voter eligibility determination and automatically add someone to the voter file. The customer must attest to eligibility during their DMV transaction.
- No AB 60 license holders will have their information transmitted to the Secretary of State.

ACLU Recommendations for New Motor Voter Implementation:

- Multilingual field testing of the voter eligibility and opt out language for voter registration and changes of address. California is the first state to implement a law like this and is therefore tasked with developing the best practice to ensure people understand the form and that no one inadvertently registers to vote.
- DMV should track and transmit the language of the DMV transaction to the Secretary of State to ensure meaningful, in-language follow-up with registrants.
- Centralized mailing of voter notification cards from the Secretary of State instead of county elections officials so that notification cards can be sent in the language of the DMV transaction so that voters who need follow-up understand
- Timely implementation *before* the 2018 elections. This is particularly important as DMV anticipates increased traffic at its field offices beginning in January 2018, as a result of REAL ID implementation. This obviously presents an opportunity to register more voters. But more importantly, as DMV employees face increased traffic in field offices, the New Motor Voter registration language will be less confusing than the current system and easier for DMV employees to navigate for data entry purposes and less subject to customer and employee error.