MEMORANDUM

To: Democratic County Central Committees, Campaign Committees of Democratic Candidates, and Interested Parties

From: Coby King, Esq., Promote and Protect the Vote (P2TV) Director; Steven Kamp, Esq., P2TV Preparing for Election Day Legal Manual Principal Author; Clark Lee, Esq., Political Director; and Kasey Walukones, Deputy Political Director

Date: May 31, 2018

RE: California Democratic Party (CDP) Promote & Protect the Vote (P2TV) Program
June 5, 2018 Statewide Direct Primary Election – Primer on Voting and Election CDP P2TV Hotline: 877-321-VOTE (8683)

Introduction

Since 1992, the California Democratic Party (CDP), through our Promote and Protect the Vote (P2TV) Program, has been protecting the rights of all voters and ensuring that every vote counts.

This CDP P2TV Primer on the June 5, 2018 Statewide Direct Primary Election from the P2TV Team, spearheaded by CDP P2TV Preparing for Election Day Legal Manual Principal Author Steven Kamp, Esq., includes a general overview and key points on voting and election for this election cycle.

If voters encounter issues with voting, or if your Central Committee, campaign, or organization encounter issues relating to election and voting, please contact our Promote and Protect the Vote Hotline: (877) 321-VOTE (8683).

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Voter Registration – Now Available Through and On Election Day

Voter Registration Deadlines: There are now two voter registration deadlines: (1) May 21, 2018 for regular voter registration (15 days prior to Election Day) and (2) Election Day for “conditional voter registration” at registrar’s offices, satellite voting locations and vote centers. Campaigns no longer have to stop registering voters 14 days before the June 5, 2018 Primary Election Day.

Conditional Voting (Same Day Voter Registration): Now, voters who have not registered can be directed to county registrar’s offices, satellite voting locations, or vote centers (Voter’s Choice Act counties) where they can register and vote any time in the last 14 days up to and including 8:00 p.m. on Election Night. The Election Day registration option created in 2012 legislation is finally in effect now that the Secretary of State statewide voter database is up and running.
New Citizens and Provably Discharged Military-Overseas Voters: Pre-2018 statutes authorizing new citizens and provably discharged military-overseas voters to register in the last 14 days before Election Day 2018 still exist and will be implemented by election officials if asked.

Online Voter Registration: Online registration may be done ONLY via the Secretary of State website, www.sos.ca.gov, and the website registration affidavit must be submitted electronically on or before May 21, 2018 (see Elections Code Section 2102, subdivision (a)(4)). Any registration after May 21, 2018 must be done in person at the registrar, satellite voting office, or vote center.

Motor Voter Law: Effective 2016, the Department of Motor Vehicles (DMV) and Secretary of State began jointly administering a California New Motor Voter Program, where persons getting California Drivers Licenses are automatically registered unless they affirmatively opt out. The statute also requires the DMV to electronically transmit voter registration information to the Secretary of State.

Additional Documents Follow-Up: Effective 2015, if a registration affidavit “does not contain all of the information required”, the registrar is required to either send the affiant a new registration card or “any other document” on which the affiant may provide missing information. Note pre-2015 law still in effect that specifically states certain missing information does not invalidate the affidavit.

Voter Pre-Registration of 16- and 17-Year-Olds: Effective 2015, persons who are at least 16 years of age may pre-register with a registration affidavit or online registration that takes effect of the pre-registrant’s eighteenth birthday.

Voter ID Requirement (Some First-Time Voters): The federal Help America Vote Act (HAVA) law requires voters who (1) registered for the first time in their county after January 1, 2006, (2) sent in their registration by mail, AND (3) do not have a verifiable driver’s license number, Department of Motor Vehicles identification number, or last four digits of their social security number (either on the voter registration form or through Secretary of State/registrar database verification), must provide proof of residence for this federal election only, either at the polls or with their returned vote by mail ballot. Failure to do so will require the ballot to be treated provisionally. After a voter provides ID on June 5, 2018, the requirement for that voter disappears.

Felons and Voting: The new prison realignment law has transferred many state prisoners to county jails. Elections Code Section 2101, subdivision (c) [Statutes of 2016, Chapter 757 (Assembly Bill 2466 (Weber), Section 2] enacted in response to an American Civil Liberties Union lawsuit narrows the category of disenfranchised felons to persons serving non-juvenile conviction time in a federal or state prison, or on California Department of Corrections and Rehabilitation parole.

Voters with Disabilities: Voters with disabilities who are unable to write their names may now use a signature stamp. They may also sign the registration affidavit “with a mark or cross” or with the assistance of another person; legislation effective 2015 expressly states that persons shall not be disqualified from voting for using a signature stamp, signing with an “X”, or receiving assistance in completing the affidavit. Effective 2016, new legislation states that a person is presumed competent to vote regardless of conservatorship status; that reasonable accommodations must be made in the registration affidavit process; and that the right to vote cannot be taken away without “clear and convincing evidence” that the person “cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process.”

Voter Registration Drives: Persons or organizations registering voters are required to maintain the confidentiality of California Driver’s License numbers, Identification Card numbers, and Social Security
Numbers. They are also subject to misdemeanor penalties for knowingly misrepresenting that they assisted another person to register to vote.

**Voter Registration Notification:** Registrars are now required to send notification cards to voters whose party affiliation has been changed.

**Surname Changes and Address Changes**

**Surname Changes:** Effective 2016, voters who “lawfully change their surname” MUST re-register under the new surname.

**Address Change (After May 21, 2018):** Voters who move in the last 14 days (between May 22, 2018, and June 5, 2018, inclusive) may register and vote at their new address if the move is within the same county. Voters also have the option of going back to their old precinct, voting at the County Registrar, or voting by VBM ballot. “New address voting” is via a special provisional ballot. These voters need not present “proof of residence.” These voters may also go to the registrar and register at their new address through Election Day.

**Address Change (On or Before May 21, 2018):** Voters may now change their voter registration addresses anywhere in California, via registration affidavit or via letter or “written notice”; the statute limiting letter changes to intra-county moves has been changed effective 2016 to permit voters to change their address by sending a letter or “written notice” with the old and new addresses to the registrar in the new county. However, the letter must be postmarked on or before May 21, 2018 and arrive at the registrar by 8:00 p.m. June 5, 2018; if personally delivered, must be delivered to the registrar no later than May 21, 2018.

**Military/Overseas Voters Are the Only Persons Who May Register and Vote by FAX**

Since 2003, Armed Forces members/spouses/dependents (both stateside and overseas) and Californians domiciled abroad have been able to register and vote via FAX. The Legislature in 2013 recast these statutes, with the upshot that: (1) the category of “military-overseas voters” includes any Armed Forces Member, activated National Guard or state militia person, Merchant Marines, U.S. Public Health Service and National Oceanic & Atmospheric Administration commissioned corps persons, spouses and dependents of these persons, and separately, any Californian domiciled abroad who was last registered to vote in California or was eligible to do so; (2) all voters in any of these categories may request and receive ballots via electronic mail and FAX (or postal mail); but (3) voters in these categories cannot return voted ballots via electronic mail, but only via FAX, mail, courier, or in-person.

**Vote-By-Mail Ballots and the California Voter’s Choice Act**

**Vote-By-Mail:** Absentee ballots are now referred to in the Elections Code as “vote by mail ballots.”

**Permanent Vote-By-Mail Status:** Voters may request permanent vote-by-mail (VBM) voter status, now referred to in the Elections Code as “permanent vote by mail voter status,” when they register to vote (by checking a new box on the registration card) or may request this status in writing at any time on or before May 29, 2018. The requirement that the voter vote by VBM in one of two successive November elections has now been changed to one of four successive November elections. Certain military-overseas voters and emergency response workers may be able to obtain VBM ballots after May 29, 2018.

**Voter’s Choice Act (Madera, Napa, Nevada, Sacramento, and San Mateo Counties) – Voting Centers and Voting By Mail:** The new Voter’s Choice Act (VCA) effectively makes every registered
voter a permanent vote-by-mail voter, but only in counties authorized and choosing to participate. In 2018, only five counties are using the VCA: Madera, Napa, Nevada, Sacramento, and San Mateo. In these counties, every registered voter is mailed a permanent VBM ballot. Neighborhood polling places are abolished and are replaced by “vote centers” serving larger numbers of persons. The “vote centers” are open in the last 10 or 3 days before Election Day and on Election Day, and allow voters to drop off ballots, cast ballots, register, update their address, change registration, get replacement ballots, and get provisional ballots. Counties also have ballot drop-off box locations. In 2020, all counties will have the option of using the VCA system, including Los Angeles, if it meets specified conditions.

Designating Any Person to Return a Voter’s Vote-By-Mail Ballot: VBM ballots requested and received under the “regular” Section 3017 procedure on or before May 29, 2018, NO LONGER NEED BE RETURNED by a designated relative or by any co-resident of the voter’s household. Effective 2017, Elections Code 3017 has been changed to delete these longstanding requirements and instead expressly permit the voter to designate “any person” to return the voted ballot. The prohibition on campaign workers delivering ballots has also been repealed and has been replaced by a prohibition on paying ballot returners based on the number of ballots. Effective 2007, Section 3009 imposes an “age 16” requirement on the ballot recipient, even though Section 3017 does not impose this requirement on the person returning the ballot.

Returning Vote-By-Mail Ballot at Any County: Effective 2017, the in-county limitation on returning voted ballots has been repealed; voters may now return them to the registrar in the voter’s county or to any polling place or vote center anywhere in California, and the receiving registrar must get them to the voter’s county of registration no later than June 13, 2018.

Emergency Vote-By-Mail Ballot: There is also an “emergency” vote by mail ballot request procedure effective between May 30, 2018, and June 5, 2018. The voter or any person who is the voter’s representative may pick up and return the ballot provided the returning person is either the voter or the same person who picked up the ballot. A separate form must be used because this procedure is based on Elections Code Section 3021 instead of Section 3017.

Vote-By-Mail Ballot Status Tracking: Registrars are required to allow online Internet Website or toll-free telephone tracking of the receipt of voted VBM and provisional ballots.

Vote-By-Mail Ballot Postmarked by Election Day: Effective 2015, VBM ballots that are not personally delivered or military-overseas faxed are counted if they arrive BY MAIL or via BONA FIDE PRIVATE DELIVERY COMPANY at the registrar within three (3) days AFTER Election Day (i.e., on or before Friday, June 8, 2018 – but only if the ballot envelope is postmarked or courier-stamped on or before June 5, 2018, or if the postmark is nonexistent or illegible, the ballot envelope is signed by the voter and dated on or before June 5, 2018.

Note that the postmark-receipt law applies only to mailed or courier-delivered VBM ballots. It expressly does not apply to personally delivered or overseas-military-faxed VBMs, which still must arrive no later than 8:00 p.m. June 5, 2018, either at the registrar, any polling place in the voter’s county, or at registrar-designated ballot drop-off locations. New legislation effective 2016 expressly authorizes registrars to use ballot drop-off locations, and the Secretary of State in 2017 issued “regulations establishing guidelines” for registrar use of ballot drop-off locations.

Vote-By-Mail Unsigned Ballot Statement: Effective 2016, VBM voters who forget to sign the VBM identification envelope may get the VBM most of the way to being counted, provided the voter does one of the following: (1) at or before 8:00 p.m. on Election Day, drops off an Unsigned Ballot Statement at a polling place or ballot drop off location; (2) signs the VBM identification envelope in the county elections
official’s office, on or before Wednesday, June 13 at 5:00 p.m.; or (3) insures that the county elections office receives (by mail, fax, or in person) an Unsigned Ballot Statement on or before the June 13, 2018 close of business.

The signature on the Unsigned Ballot Statement must compare with the voter’s registration affidavit signature in order to be placed in the pile of ballots to be counted. Signature comparison is also required for signed VBM ballots and provisional ballots.

**Vote-By-Mail-Related Signature Verification:** Most county elections offices use signature verification machines to compare registration file affidavit signatures with VBM application, VBM identification envelope, and provisional ballot envelope signatures. Effective 2015, any VBM identification envelope signature or provisional ballot envelope signature that is rejected by a machine must be “visually examined” by the county “elections official” who must “verify that the signatures do not compare” before rejecting the ballot.

However, on March 5, 2018, the San Francisco Superior Court in LaFollette v. Padilla, Case No. CPF-17-515931, enjoined the Secretary of State and the Sonoma County Registrar of Voters from refusing to count ballots unless the voter whose signature was questioned was given notice and an opportunity to cure the signature mismatch with a new signature before the election result certification date (E plus 30, or July 5, 2018). As this is written, this decision has not been appealed, but there is no word about any new registrar or Secretary of State procedures to enable voters to cure signature mismatches, even though the writ entered by the court expressly directs the Secretary of State to inform registrars of “these rulings.” Stay tuned.

For Get-Out-The-Vote operations, this means that vote count monitors can see the VBM identification envelopes without signatures, note the voter’s name and address, and contact the voter to sign and get filed an Unsigned Ballot Statement within eight days of Election Day. However, submitting a signed Unsigned Ballot Statement simply keeps the sans-signature VBM envelope from immediately being tossed (the pre-2016 procedure). They may also assist voters who need to cure signature mismatches.

**Election Day**

**Satellite Voting Locations:** Registrars are allowed to announce satellite voting locations by general news release not later than 14 days before June 5 (May 22 – June 5, 2018), but satellite voting with 48-hour notice is now permitted in counties with declared emergencies or disasters. The five Voter’s Choice Act counties will be running vote centers during this period.

**Election Day Polling Location Generally:** The polls are open from 7:00 am to 8:00 pm on Election Day. No electioneering is allowed within 100 feet from a polling location.

**Voter Bill of Rights:** The specific rights of voters to (among several rights) cast provisional ballots, vote if in line at 8:00 p.m., cast replacement ballots, return completed vote by mail ballots, and receive voting assistance are enumerated in the new Voter Bill of Rights now required to be included in the California Voter’s Pamphlet and “conspicuously posted both inside and outside every polling place.” It is also on the Secretary of State website, along with portals for “check your voter registration status”, “polling place lookup”, county registrar early voting and VBM drop-off locations, and tracking the counting of VBM and provisional ballots.

- The right to vote if you are a registered voter. You are eligible to vote if you are:
  - a U.S. citizen living in California
  - at least 18 years old
• registered where you currently live
• not currently in state or federal prison or on parole for the conviction of a felony
• not currently found mentally incompetent to vote by a court
• The right to vote if you are a registered voter even if your name is not on the list. In this case, you will vote using a provisional ballot. Your vote will be counted if elections officials determine that you are eligible to vote.
• The right to vote if you are still in line when the polls close.
• The right to cast a secret ballot without anyone bothering you or telling you how to vote.
The right to get a new ballot if you have made a mistake, if you have not already cast your ballot. You can:
  • Ask an elections official at a polling place for a new ballot,
  • Exchange your vote-by-mail ballot for a new one at an elections office, or at your polling place, or
  • Vote using a provisional ballot.
• The right to get help casting your ballot from anyone you choose, except from your employer or union representative.
• The right to drop off your completed vote-by-mail ballot at any polling place in California.
• The right to get election materials in a language other than English if enough people in your voting precinct speak that language.
• The right to ask questions to elections officials about election procedures and watch the election process. If the person you ask cannot answer your questions, they must send you to the right person for an answer. If you are disruptive, they can stop answering you.
• The right to report any illegal or fraudulent election activity to an elections official or the Secretary of State’s office.

**Ballot Supplies at Polling Place/Vote Center:** If the supply of ballots runs out, Elections Code Section 14299 requires delivery of sufficient replacement ballots to ensure that all eligible voters may cast ballots within two hours. While awaiting delivery of additional ballots, the precinct board must provide each voter with the option of voting immediately using an alternative procedure established prior to the election and approved prior to the election by the Secretary of State.

**Time Off to Vote:** California has a Time Off to Vote law giving two hours to vote on Election Day. It may be used by employees who give notice by the Friday before Election Day.

**Ballot Selfies:** Effective 2017, voters may take ballot “selfies”, thanks to the Statutes of 2016, chapter 813, repealing Section 14276 and amending Section 14291.

**Voter Intimidation:** Persons convicted of violating California statutes against voter intimidation are not only subject to fines and imprisonment, but now may also be ordered to make payments into a Voter Intimidation Restitution Fund.

**In-Language Access and Assistance**

State law notes that the Legislature’s intent is to encourage non-English-speaking citizens to vote, like all citizens, and that appropriate efforts be made to minimize obstacles to voting by those voters who do not have sufficient English skills to vote without assistance. Both federal law (Voting Rights Act of 1975, Section 203) and state law include requirements to provide in-language access for voters in non-English languages if statutory requirements are met, such as facsimile ballots or posted photocopies of ballots in qualified non-English languages.
Under Elections Code Section 14201(b)(1), the Secretary of State must identify (1) the number of residents of voting age in each county and precinct who are (2) members of a single language minority, that (3) lack sufficient skills in English to vote without assistance. If that number equals 3 percent or more of the voting age residents of a particular county or precinct, “the Secretary of State shall find a need to provide at least two facsimile copies with the ballot measures and ballot instructions printed in Spanish or other applicable language in the affected polling places.” In 2018, the Secretary of State has added the following languages: Panjabi (Punjabi), Hmong, Syriac, Armenian, Persian, and Arabic. The statewide language determination summary is available on the Secretary’s website; the direct link is: [http://elections.cdn.sos.ca.gov/ccrov/pdf/2016/december/16333ji.pdf](http://elections.cdn.sos.ca.gov/ccrov/pdf/2016/december/16333ji.pdf)

**Provisional Ballots and Voter Challenge Statutes**

Voters who cast provisional ballots in the wrong precinct are entitled to have the ballot counted as to “the votes for the candidates and measures on which the voter was entitled to vote in his or her assigned precinct.” PROVISIONAL BALLOTS IN CALIFORNIA ARE AN EFFECTIVE FAIL-SAFE MEASURE – thanks to both the Elections Code Section 14310 California provisional ballot option, and the federal Help America Vote Act written affirmation that may be used to terminate a voter challenge and immediately obtain a California provisional ballot.

**Voting Technology**

Punchcards have been completely eliminated. VBM ballots in all 58 counties use Optical Scan (OS) technology. Only two of the 58 California counties are using a Direct Recording Electronic (DRE) system as their primary polling place technology; all of the other 56 are using OS technology. In 42 of these 56 OS counties, a DRE machine is used as an optional disabled-accessible backup technology; in the other 14, a disabled-accessible OS machine is used. The California Secretary of State Top to Bottom Review certified one DRE machine (the Hart e-Slate) for unlimited use, and certified the Sequoia and Premier Election Solutions (Diebold) DRE machines only for use as an optional disabled-accessible device, limited to one per polling place. Each polling place using a DRE system must be provided paper ballots equivalent to 10% of its total voter registration, based on the March 9, 2018, registration total.

Registrar are required to establish procedures for the use of paper ballots in the event DRE machines become “nonfunctional.” Precinct boards must provide paper ballots upon request to any voter who requests one; if provisional ballots are used for this purpose, they are counted as regular ballots and are not subject to the provisional ballot signature verification requirements. The Secretary of State is required to conduct parallel monitoring (Election Day simulation) on a random sample of each DRE system in use on June 5, 2018, and must announce the parallel monitoring results prior to certification of the June 5, 2018 election results.

Voting technology selection has stabilized; the county by county technology list for 2014 was unchanged from 2012, but in 2016, seven counties switched to the Dominion ImageCast system; the county-by-county list should be up on the Secretary of State website in May.

The Voter Verified Paper Audit Trail (VVPAT) requirement applies to DRE machines certified on or after January 1, 2005, or used on or after January 1, 2006. The 2018 elections are the ninth statewide California elections affected by these requirements. OS machines by definition leave a paper trail.

**The Vote Count**

**Uniform Vote Counting Standards:** Pursuant to HAVA, the Secretary of State has published Uniform Vote Counting Standards for vote by mail ballots, provisional ballots, optical scan ballots, DRE ballots,
and write-in votes. Effective 2012, the prohibition against placing extraneous “identifiable” marks on the ballot has been narrowed to require only that personally identifying information not be included, and to expressly state that even if such marks are included, the ballot is to be duplicated and counted in the same manner that a damaged ballot is counted under existing law.

**Contesting Elections:** Elections may be contested on the ground that eligible persons were denied the right to vote in numbers “as to change the result.”

**Ballot Tabulation:** For all statewide or congressional/legislative vacancy elections, vote totals for vote-by-mail ballots and ballots cast at the polling place must be separately tabulated for each precinct.

**Ballot Counting Observers:** Political parties are allowed designate two representatives to monitor the central ballot counting in each county; the longstanding requirement that the representatives be “qualified data processing specialists or engineers” has been eliminated, effective 2007.

**Ballot Counting Location:** Effective 2016, a new statute authorizes counting of ballots either at the precinct or at a central counting location, and requires central counting location counting to be public and take place with 48 hours written notice by the county elections official to the public.

**One Percent (1%) Manual Tally:** The 1% manual tally conducted after each election must now include VBM ballots. It is also now required to be posted online on each registrar’s website. Effective 2012, County Registrars may make a separate manual tally of one percent each of polling place and VBM ballots.

**Statewide Recount:** Effective 2016, California now has a new statewide recount law for United States Senate and statewide constitutional office primary and general elections, that empowers the Governor to order a state-paid manual recount for offices other than Governor, or the Secretary of State to order a state-paid recount for a gubernatorial election. However, the required margin is so narrow that only one of the 30 close statewide elections between 1849 and 2016 would qualify: the 2014 Controller race.

If a state-paid recount is ordered, there is no other recount. However, if a state-paid recount is not ordered, voters or (effective 2015, campaign committees) may request and pay for recounts.

**Additional Questions**

If you have additional questions, please contact:

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