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Introduction

Since 1992, the California Democratic Party (CDP), through our Voter Protection Team, has been protecting the rights of all voters and ensuring that every vote counts.

This CDP VPT Primer on the *November 3, 2020 Presidential General Election* from the Voter Protection Team, spearheaded by Steven Kamp, Esq., principal author of the CDP VPT *Preparing for Election Day Legal Manual* includes a general overview and key points on voting and election for this election cycle, **including all laws in effect on November 3, 2020. This Recall Primer includes these statutes as well**

as several new laws in effect for 2021 that largely extend the 2020 pandemic election procedures into 2021.

If voters encounter issues with voting, or if your Central Committee, campaign, or organization encounter issues relating to election and voting, please contact our **Voter Protection Team Hotline: (877) 321-VOTE (8683) or email voterprotectionteam@cadem.org.**

Voter Purge Alert: *In January 2020, the Secretary of State and the Los Angeles County Registrar of Voters entered into a settlement with the rightwing group Judicial Watch, in which all 58 counties are required to CANCEL THE REGISTRATIONS of any person who did not vote in both the November 2016 and November 2018 elections, AND who did not respond to a registration confirmation postcard. If this process continues after 2020, a voter's registration could be purged for failure to vote in November 2018, failure to vote in November 2020, and failure to respond to a registration confirmation postcard.*

Under the federal National Voter Registration Act of 1993, the last day any voter can be purged based on this settlement or other use of U.S. Post Office National Change of Address data is 90 days before Election Day, which in the 2021 Recall Election context is June 5, 2021. Voters should immediately contact their county elections office and check to see if they are registered at their current address. If not, re-register immediately. Although voters can now register through Election Day, the August 16, 2021 initial Vote-by-Mail (VBM) ballot mailing only goes to active registered voters who are on the rolls as of August 16, 2021 (subsequent registrants through August 30 are mailed VBM ballots within five days of their registration).

Inactive Registration Alert: *Voters who fail to vote in two successive federal general elections and who fail to respond to a residency confirmation postcard may also have their registrations by the county elections office switched from "active" to "inactive", meaning they remain eligible to vote in elections but do not receive election mail, including the VBM ballot mailing that starts August 16.¹*

*If the county elections office informs a voter that their registration at their registration address is listed as "inactive", the voter should immediately "confirm their residency" at their registration address to the county elections office. This should result in the county elections office switching the registration status to "active." If the county elections office will not do this, the voter should immediately re-register. **The Secretary of State has directed registrars that the voter's most recent registration supersedes all previous ones.²** The new registration (or a newly "active") registration on or before August 30 should result in the voter being placed on the mailing list for VBM ballots that go out starting August 16. If the voter registers or re-registers between August 31 and September 14, the voter should at the same time request a VBM ballot, or vote in person*

VBM Registration Alert: *To receive the VBM ballot going out to "everyone" starting August 16, one must be registered to vote on or before August 30, 2021. Persons who register between August 31 and September 14 will have to vote on a **requested VBM or emergency VBM** ballot, or on a machine at registrar offices, VCA county Vote Centers, or polling places.*

Pandemic Alert: *Reduced in-person voting options. The reduced in-person voting options in 2020*

¹ They also do not receive the state or county voter pamphlets.

² As discussed in the 2020 Manual, See Secretary of State memorandum to registrars (CCROV) Number 17007 on Conditional Voter Registration.

continue into 2021, with only the 15 VCA counties required to have vote centers open starting September 4. The other counties do not have to open vote centers until September 11, and if they use traditional polling places, do not have to offer any in-person voting prior to Election Day other than at the registrar.

Voters with “inactive” registrations can always “offer to vote” at a VCA County Vote Center or at a polling place, and such “offering to vote” automatically upgrades their registration to “active.” However, the September 14, 2021 election has fewer in-person voting options. Urgency Senate Bill 152 requires VCA counties to open some vote centers ten (10) days before September 14, but has increased the number of voters per vote center to one per 50 or 60 thousand voters. A larger number of Vote Centers will be open in the last four days between September 10 and 14 in the VCA counties and the Consolidated Polling Place counties, but in the traditional polling place counties, the only pre-election day in-person voting is at the Registrar of Voters.

The only in-person voting option definitely open on all of the 28 days before September 14 is one registrar office in each county, where voters may register, update their registration, get a replacement or provisional ballot, deposit their voted VBM ballot, or vote on a machine. Urgency Senate Bill 152 requires these offices to open starting August 17 during regular business hours, and to **be open on Election Day from 7 a.m. to 8 p.m.**

The 40 counties not using the VCA have two options: use every polling place used in the 2020 March 3 primary (but only on Election Day), or consolidating precincts to result in one polling place for every ten thousand active registered voters, **These Consolidated Polling Places must be open at a one per every 10 thousand voters ratio starting Saturday September 11, and can be operated either as consolidated precinct polling places or as county-wide Vote Centers.**

Donald Trump Voter Suppression Alert: In 2020, we advised voters concerned about the ability of the U.S. Postal Service to deliver their ballot on time, to use the county ballot receptacles. Even though the Donald Trump U.S. Postal Service appointees are being removed, we still urge voters to use county secured drop boxes that open up starting August 17. Other county ballot receptacles are the Registrar of Voters office, Vote Centers in Voters Choice Act counties, and on Election Day in the 40 counties still using polling places, any polling place.

Signature Dating Alert: If you use the U.S. Postal Service, be sure to place next to your signature on the outer envelope a date that is on or before September 14, 2021.³

The in-person ballot return deadline is 8:00 p.m. September 14.

The mailed or courier-delivered postmark deadline is 8:00 p.m. September 14, although the Postal Service no longer places time marks on postmarks.

Voting Technology Alert: The machines used in 2018 have all been replaced. Fortunately, Direct Recording Electronic machines are gone. They have largely been replaced by ballot marking devices. One of these, the ES&S Express Vote used as a backup in five counties, has an “Autovote” feature where voters may inadvertently cast their ballot without first looking at the print-out of their selections.

Election Security Alert – Urgency Legislation In Effect:

³ Reason: the U.S. Postal Service often does not postmark postage-prepaid mail (starting 2019, all California VBM ballot return envelopes are **postage prepaid**). As discussed in **the 2020 Manual**, where there is no postmark or the postmark is illegible, registrars use the date listed by the voter next to the signature.

Effective July 16, 2018, any person or entity who has received voter registration information must disclose any security breach to the California Secretary of State “in the most expeditious time possible and without unreasonable delay” (Section 2188.3, added by the Statutes of 2018, chapter 96 (Assembly Bill 1678) (Berman)(urgency legislation)).

The Secretary of State has established an Office of Elections Cybersecurity and Enterprise Risk Management and its’ “Report Misinformation” link is the portal for these disclosures at the e mail address VoteSure@sos.ca.gov . **The phone number is (916) 653-6814. The portal for reporting voter registration data breaches is www.databreachreport@sos.ca.gov. Telephone (916) 653-6774**

This legislation also makes it a crime to distribute false voting location, voting qualifications, or day of the election information (Section 18302). **Effective 2021, Senate Bill 739 (Statutes of 2020, Chapter 109) makes it a misdemeanor to distribute with actual knowledge and intent to deceive any literature or communications with incorrect, false, or misleading VBM information.**

Election Security Alert: – Deepfake Videos Now Banned In The 60 Days Before September 14.

2019 Assembly Bill 730 (Statutes of 2019, Chapter 493) amends Code of Civil Procedure Section 35 and adds Elections Code Section 20010 to prohibit the publication in the 60-day period before an election any video that has been “intentionally manipulated”.

Alert: New September 16 Unprocessed Ballot Report Requirement. Effective 2020, registrars starting on E plus 2 (September 16), are required to report to the Secretary of State the estimated number of outstanding unprocessed ballots (Statutes of 2019, Chapter 91 (Assembly Bill 566), adding Elections Code Section 15305).

Voter Registration – Now Available Through and On Election Day Including At all Polling Places; But Must Be Actively Registered By Between August 16 and August 30 To Get On The Mail Ballot List

Voter Registration Deadlines: There are now three voter registration deadlines: (1) August 30, 2021 for regular voter registration (15 days prior to Election Day) and (2) **Election Day** for “conditional voter registration” at *polling places* (new for 2020), registrar’s offices, satellite voting locations, and vote centers between August 31 and September 14. **Campaigns no longer have to stop registering voters 14 days before the September 14, 2021 Recall Election Day.**

The third voter registration deadline is the deadline to receive the automatic mail ballot. These ballots go only to “active registered voters” who are on the county voter registration roll between August 16 and August 30. The first ballots are required by urgency 2021 Senate Bill 29 to go out on August 16 to all active registered voters as of that date, with subsequent mailings going out to voters who register between August 17 and August 30, within five calendar days of their date of registration.

Conditional Voting (Same Day Voter Registration): Voters who have not registered as of August 30, 2021 can be directed to polling places in the 40 counties using them, registrar’s offices, satellite voting locations, or vote centers in the [15 Voter’s Choice Act counties](#) (including the big counties of Los Angeles, Orange, Santa Clara, San Mateo, Sacramento, and Fresno). At these Vote Centers, voters may register and vote any time in the last 14 days up to and including 8:00 p.m. on Election Night. Find a list your closest polling place, registrar’s office, or vote center here: <https://www.sos.ca.gov/elections/polling-place/>

In non-VCA counties that use Consolidated Polling Places, urgency 2021 Senate Bill 152 requires the Consolidated Polling Places to be open during the September 10 – 14 period. Counties have the option of

treating them as countywide vote centers or allowing their use only by voters or persons in the consolidated precincts.

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. *It was extended to polling places and satellite voting locations by 2019 Senate Bill 72 (Statutes of 2019, Chapter 565). It has been required since 2018 in Vote Centers.*

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 September 14, 2021 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 11:59 p.m. August 30, 2021 (see Elections Code Section 2102, subdivision (a)(4)). Any registration after 11:59 p.m. August 30, 2021 must be done in person at the polling place, 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 **However, given the many well-publicized problems with this system, we recommend that any voter with doubts about their registration status check their status in-person or online with their county registrar and if necessary re-register by mail or preferably in person.**

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 *September 14, 2021*, the requirement for that voter disappears.

Felons and Voting: Thanks to the November 2020 passage of Proposition 17, persons on parole may now register and vote.⁴ The only persons prohibited from registering and voting are persons actually imprisoned in state or federal prisons. The new prison realignment law has transferred many state prisoners to county jails. Elections Code Section 2101, subdivision (c) [Statutes of 2016, Chapter

⁴ Statutes of 2020, Chapter 346 (Assembly Bill 646), amending Elections Code Sections 2101 and other provisions to remove prohibitions on parolee registration and voting).

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.

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 (On or Before August 30, 2021): 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 August 30, 2021 and arrive at the registrar by 8:00 p.m. September 14, 2021; if personally delivered, must be delivered to the registrar no later than August 30, 2021.

Address Change (After August 30, 2021): Voters who move in the last 14 days (between August 31, 2021 and September 14, 2021, 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. **NOTE: 2020 Senate Bill 207 became law last year, and allows voters to change their address simply by sending the County Registrar a written request signed under penalty of perjury.**

Military/Overseas Voters Are the Only Persons Who May Register and Vote by FAX, And No One May Vote By Electronic Mail:

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. *No one may vote by electronic mail.*

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.” **Effective 2019, all VBM ballot return envelopes are postage prepaid (Statutes of 2018, Chapter 120 (Assembly Bill 216)).**

As discussed above, for this election only, 2021 urgency Senate Bill 29 requires registrars to send every active voter registered by August 30 a VBM ballot, even if the voters are not PVBM or VCA county voters.

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 September 7, 2021. 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 September 7, 2021.

Voter's Choice Act in 15 counties (Los Angeles, Amador, Butte, Calaveras, El Dorado, Fresno, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara and Tuolumne 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 the 15 VCA counties listed above, 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. Vote Centers in VCA counties are required to be open in the 11 days between Saturday, September 4 and Tuesday, September 14; outside these counties, Vote Centers are required to be open only between September 11 and 14.**

Urgency 2021 Senate Bill 152 requires each county to have at least one all-purpose Vote Center to be open starting at 0900 hours August 17 and continuing through Election Day.

The “vote centers” are open in the last 10 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 publicized ballot drop-off box locations.

In addition, three small rural counties (Alpine, Plumas, and Sierra) send every registered voter a VBM ballot but do not use Vote Centers or polling places. Some precincts in the 40 non-VCA counties are designated by registrars as absentee voting precincts where every registered voter is sent a VBM ballot.

Los Angeles County is now a complete VCA county, even before 2020 urgency Assembly Bill 860. Following the Primary Day difficulties, Los Angeles County committed to mailing every active registered voter a ballot in advance of the November election, and will do so again for this September 14, 2021 Recall Election.

In addition, Los Angeles County starting with the March 3rd election **began** using a new custom-designed voting machine called “Voting Solutions for All People” (VSAP). On this new machine, voters mark choices on a touchscreen, and the machine spits out a paper ballot that the voter checks before depositing. Note that the touchscreen will present only four choices, but on September 14, 2021 this is an issue only on the “second ballot” listing over 40 recall election candidates.

Designating Any Person to Return a Voter’s Vote-By-Mail Ballot: Voters receiving VBM ballots may designate “any person” over the age of 16 to return the voted ballot.⁵

Effective 2019, failure of the representative to sign the return envelope or write his or her name cannot be the “sole” reason for rejecting a ballot (Statutes of 2018, Chapter 203 (Assembly Bill 206), adding subdivision (c) to Elections Code Section 3011).

Returning “Regular” Vote-By-Mail Ballot at Any Polling Place In California: Voters may return “regular” non-emergency voted VBM ballots to the registrar in the voter’s county or to any polling place or vote center anywhere in California by 8 p.m. September 14, and the receiving registrar must get them to the voter’s county of registration no later than September 22, 2021 (**E plus 8**).⁶

Emergency Vote-By-Mail Ballot Returned in The Voter’s County: There is also an “emergency” vote by mail ballot request procedure effective between September 8, 2021, and **8 p.m. September 14, 2021**. 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, *and the voted ballot must be returned in the voter’s county*. The Secretary of State website now has an emergency VBM ballot request form.

Vote-By-Mail Ballot Status Tracking: All 58 counties are now offering the Secretary of State “Where’s My Ballot” tracking tool. The Web address is WheresMyBallot.sos.ca.gov.

Vote-By-Mail Ballot Postmarked by Election Day: For the September 14, 2021 election only, 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 seven (7) days AFTER Election Day (i.e., on or before Tuesday, September 21, 2021) – but only if the ballot envelope is postmarked or courier-stamped on or before September 14, 2021, or, if the postmark is nonexistent or illegible, the ballot envelope is signed by the voter and dated on or before September 14, 2021. **It is critical that the voter place next to their signature a date that is on or before September 14, because the U.S. Postal Service often does not postmark postage-prepaid envelopes.** Note that the registrar ballot receipt deadline has been changed from the 2020 deadline of E plus 17 to E plus 7.

⁵ VBM ballots that are either mailed to the voter under Senate Bill 29, or requested and received under the “regular” Section 3017 procedure on or before September 7, 2021, 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.

⁶ Effective 2017, the in-county limitation on returning “regular” non-emergency voted VBM ballots has been repealed;

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. September 14, 2021, either at the registrar, any polling place in the voter's county, at a Vote Center, or at registrar-designated ballot drop-off locations.

Missing VBM Signatures And Mis-Matched VBM Signatures: Important pro-voter laws now in effect

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 5 p.m. October 12, which is two days before October 14 certification in most counties; or (3) insures that the county elections office receives (by mail, fax, or in person) an Unsigned Ballot Statement on or before October 12, 2021 5 p.m. **Note that if the county certifies before October 14 (small ones often do), the October 12 deadline is pushed up.**

Registrars are required to notify voters of missing signatures or mismatched signatures on or before Wednesday, October 6, 2021.

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: Some county elections offices use signature verification machines to compare **the VBM return envelope signature** registration file affidavit signature **or other signatures on file** (e.g., VBM application, VBM identification envelope, and provisional ballot envelope). 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.

*Effective September 17, 2018, Senate Bill 759 Statutes of 2018, (Chapter 446), followed in 2019 by Senate Bill 523 (Statutes of 2019, Chapter 568), requires registrars to **notify** voters on or before Wednesday, October 6, 2021 that their VBM signature is either missing or does not compare with their registration signature, and allow them to submit a Signature Verification Statement by 5 p.m. two days before certification. **This certification date is typically October 14 (the state deadline), making the Signature Verification Statement deadline October 12, but if the county certifies before October 14, this deadline is moved up by a corresponding number of days.***

For Get-Out-The-Vote operations, *these changes* mean 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 by Certification Minus 2. However, submitting a signed Unsigned Ballot Statement simply keeps the sans-signature VBM envelope from immediately being tossed (the pre-2016 procedure). *A Signature Verification Statement containing a new matching signature will insure that it gets counted.*

Surrendering Unvoted VBM Ballots: If a voter receives a VBM ballot but wants to vote in person, the voter can go to a Vote Center, satellite voting location, or polling place and surrender the unvoted VBM

ballot. The voter does not have to surrender the VBM identification or return envelope.⁷ The voter votes a nonprovisional regular ballot if the voter either surrenders the unvoted VBM ballot, or if the voter does not have the unvoted VBM ballot, the voter can ask the Vote Center, satellite voting location, or polling place official to check the registration records and verify and notate that the voter has not voted the VBM ballot. If the official can so verify, and can further verify that the voter is in the right polling location, the voter votes a regular ballot. Otherwise, the voter must vote a provisional ballot, which is counted if the provisional ballot envelope signature “compares” with the voter’s registration card signature or a Signature Verification Statement submitted by the voter.⁸

Election Day:

Satellite Voting Locations: Registrars are allowed to announce satellite voting locations by general news release not later than 14 days before September 14 (August 31, 2021 – September 14, 2021), but satellite voting with 48-hour notice is now permitted in counties with declared emergencies or disasters. The fifteen 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.

The recent much-discussed U.S. Supreme Court Minnesota T-Shirt Case (Minnesota Voters Alliance v. Mansky, 585 U.S. ___, 201 L.Ed.2d 201, 138 S.Ct.1876 (Case No. 16-1435, decided June 14, 2018) is irrelevant to California, because all this decision did was invalidate a state ban on polling place wearing of “political” apparel containing messages that went beyond advocating for or against candidates or ballot measures – apparel that communicated the words “Election Integrity Watch” and “Please ID Me”. California Elections Code section 319.5 prohibits only the visible or audible dissemination of “information that advocates for or against any candidate or measure on the ballot.” Note also that California law DOES NOT prohibit the wearing of party or ideological apparel or insignia that do not mention candidates or ballot measures.

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

⁷ California Secretary of State CCROV Memorandum 20041 (February 5, 2020).

⁸ California Secretary of State CCROV Memoranda 20041 (February 5, 2020) and 20019 (January 16, 2020), and Elections Code Section 3015.

- 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.

Voter Checkoffs and Electronic Poll Books: *A new piece of technology allowed for the first time in 2018 is the electronic poll book ("an electronic list of registered voters that may be transported to the polling location"). Note that in the fifteen VCA counties, the voter index is necessarily county-wide, and each Vote Center is required to have a county-wide electronic poll book.*

Elections Code Section 14294 has long required that "[a]t all elections, a member of the precinct board shall mark, "in the space provided on the voter list posted at or near the polling place" the name of each person who has voted, by drawing a line through the name of the voter, with a pen or indelible pencil. ... at least once each hour, to and including 6 p.m." In counties where a voter list is not used, "the board member shall draw a line under the last name signed in the roster at 6 p.m. or at the time of discontinuance of this procedure, whichever occurs last." Ibid.

Effective 2018, "[i]f an electronic poll book is used at the polling place or Vote Center, the elections official may use a printout or an electronic means of notification of the list of each person who has voted. The elections official shall provide the printout of electronic notification at least once each hour, to and including 6 p.m. ' or at the time of discontinuance of this procedure, whichever occurs last." [Section 14294, subdivision (b), added by the VCA in the Statutes of 2017, chapter 806 (Senate Bill 286 (Stern), Section 60)].

Time Off to Vote: California has a Time Off to Vote law giving two hours to vote on Election Day. Voters must be paid for these hours.⁹ This statute may be used by employees who give notice by the Friday before Election Day (September 10, 2021).

Employers Now Prohibited From Requiring Employees To Bring VBM Ballots To Workplaces. New Section 14004, effective 2020, prohibits employers from “require[ing] or request[ing]” that an employee bring a VBM ballot to work or vote the VBM ballot at work, and criminal penalty Section 18503 makes this punishable by a fine of \$10,000 per election..

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

Voters And Observers May Bring Smartphones And Tablets To Polling Places: Effective January 1, 2020, new Elections Code Section 2302 prohibits precinct boards and registrars from prohibiting “[a] voter or any other person ... from bringing an electronic device including a smartphone, tablet, or other handheld device, at a polling place”, provided the devices are not used to violate any provision of the Elections Code. (Statutes of 2019, Chapter 561 (Assembly Bill 1707)).

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 added the following languages: Panjabi (Punjabi), Hmong, Syrian, Armenian, Persian, and Arabic. The statewide language determination summary is available on the Secretary’s website in County Clerks Registrar of Voters (CCROV) Memorandum 20096, issued May 21, 2020. The direct link is: <http://elections.cdn.sos.ca.gov/ccrov/pdf/2020/may/20096ji.pdf>

Provisional Ballots (Yes) and Voter Challenge Statutes (Not):

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

⁹ Elections Code Section 14000.

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:

VBM ballots in all 58 counties use Optical Scan (OS) technology, typically a Ballot Marking Device. All 58 California counties now use an optical scan system as their primary polling place technology. The last California DRE device was one used in Yolo County on November 3, 2020 as a disabled-accessible option, and it has been retired and replaced. The California Secretary of State Top to Bottom Review in 2007 certified one DRE machine (the Hart e-Slate) for unlimited use; fourteen years later, no DRE machines are in use.

In some counties, a different technology from the same vendor is used for VBM counting. All counties have a third technology for “accessibility support”, usually from the same vendor as the other two technologies.

Two new optional voting technologies are now in use: Remote Access Vote by Mail (RAVBM), and Ballot-on-Demand (BOD). **RAVBM and BOD technology is critical for persons displaced from their registration address by natural disasters, because they allow online print-out the ballot type for the voter’s new address.**

The county-by-county voting technology list for the September 14 election should be up on the Secretary of State website by August.

The Vote Count:

New Unprocessed Ballot Report Requirement. Effective 2020, registrars starting on E plus 2 (September 16), are required to report to the Secretary of State the estimated number of outstanding unprocessed ballots (Statutes of 2019, Chapter 91 (Assembly Bill 566), adding Elections Code Section 15305).

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 or Risk-Limiting Audit: 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. **Effective March 3, 2020, registrars are authorized to use the "risk limiting manual audit" in lieu of the 1% manual tally (Statutes of 2018, Chapter 913 (Assembly Bill 2125; Statutes of 2020, Chapter 33 (Assembly Bill 2400))), adding Sections 15365-15367 to the Elections Code.**

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 2020 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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