



CALIFORNIA DEMOCRATIC PARTY
MEMORANDUM

To: Interested Parties
From: Coby King, Esq., Promote and Protect the Vote (P2TV) & CDP Voter Protection Director
Steven Kamp, Esq., P2TV *Preparing for Election Day Legal Manual* Principal Author, Sept 12, 2022
Re: California Democratic Party (CDP) Voter Protection Team (VPT) Program
November 8, 2022, General Election -- Primer on Voting and Election
CDP VPT Hotline: 877-321-VOTE (8683)

Updated 9.19.22

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.

Since the 2020 election cycle, the CDP has worked to redevelop its' Statewide Voter Protection Hotline to make sure that voters have the proper information and to continue to protect the vote in all corners of the State.

This CDP Voter Protection Team Primer on the *November 8, 2022, Primary Election* from the Voter Protection 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, **including all laws in effect on November 8, 2022.**

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

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October 10, 2022, Is the First Date the Ballots Are Mailed

Vote By Mail Now Permanent – The Pandemic Emergency legislation requiring registrars in each of the 58 counties to send every active registered voter a vote-by-mail ballot (including in the **28** non- VCA Counties) – has now been made permanent by Statutes of 2021, chapter 312 (Assembly Bill 37).

Every voter who registers on or before October 24, 2022, is required to be mailed a ballot within five days of October 10 or within five days of the registration date between October 11 and October 24, inclusive.¹

However, if the registrar has listed the voter as “inactive”, such voter is not required to be sent a ballot until the voter re-activates her or his status or re-registers.² Thus, prior to October 10, 2022, voters should check with their county elections official to make certain they are listed as “active.” If the response is “inactive”, either expressly ask to be upgraded to “active”, or re-register. Under Secretary of State County Clerks Registrar of Voters memorandum 17007 (January 17, 2017), the voter’s most recent registration supersedes all prior registrations.³

Voters may check their registration status online at the Secretary of State website, www.sos.ca.gov [“Elections”, “Voter Registration Status”], or at www.voterstatus.sos.ca.gov .

¹ Secretary of State 2022 Election Guide, General Election Calendar, page 7-11, paragraph 56.

² See Elections Code Section 3000.5, subdivision (c), cross-referencing Section 2226, subdivision (a) (“this section . . . shall not be construed to authorize a voter with an inactive voter registration status to receive a vote by mail ballot for an election”). See also, Secretary of State Secretary of State CCROV Memorandum # 20135 (June 30, 2020) (these inactive voters are eligible to vote but do not receive election mail).

³ Secretary of State CCROV memorandum 17007, page 17, answer to question 16.

To register to vote, the person must be age 18 or older on or before November 8, 2022

Elections Code Section 2101, subdivision (a) requires that the voter “*be at least 18 years of age at the time of the next election*”, meaning the voter who turns 18 on November 9 cannot vote until the 2023 or 2024 elections.

Election Security Alert – Urgency Legislation in Effect

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 email address www.sos.ca.gov/elections/vote-sure . The Elections Division phone number is (916) 657-2166.

This legislation also makes it a crime to distribute false voting location, voting qualifications, or day of the election information (Section 18302). Effective 2020, it is also a crime to distribute false information regarding qualifications to apply for, vote, or return a VBM ballot.⁵

⁴ Statutes of 2020, chapter 1.

⁵ Statutes of 2020, chapter 109 (Senate Bill 739), Section 3 amending Elections Code Section 18302.

Deepfake Videos Now Prohibited 60 Days Before November 8

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

Voter Registration – Now Through and On Election Day Including all Polling Places

Voter Registration Deadlines: There are now two voter registration deadlines: (1) **October 24, 2022**, for regular voter registration (15 days prior to Election Day) and (2) **November 8, 2022** (General Election Day) for “*conditional voter registration*” at polling places, registrar’s offices, satellite voting locations, and vote centers between October 25 and November 8 at 8:00 p.m. Campaigns no longer must stop registering voters 14 days before the November 8, 2022, General Election Day.

Conditional Voting (Same Day Voter Registration): Now, voters who have not registered can be directed to polling places (in the 28 counties using them), and to registrar’s offices, satellite voting locations, or vote centers in the 27 Voter’s Choice Act (VCA) counties (including Los Angeles County). In these VCA counties, the person can register and vote any time in the last 14 days up to and including 8:00 p.m. on Election Night. Find a list of your closest polling place, registrar’s office, or vote center here: www.sos.ca.gov/elections/polling-place/.

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.

For a discussion of how CVR works, see Secretary of State CCROV Memorandum # 22100 (May 6, 2022).

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 November 8, 2022, 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. October 24, 2022 (see Elections Code Section 2102, subdivision (a)(4)). Any registration after 11:59 p.m. October 24, 2022, 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. **To vote in the November 8, 2022, General Election, one must be age 18 on or before November 8, 2022.**

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 November 8, 2022, the requirement for that voter disappears. See discussion in Secretary of State CCROV Memorandum # 22099 (May 6, 2022).

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. **Effective 2021, persons on parole (state or federal) may register and vote, thanks to 2020 voter approval of Assembly Constitutional Amendment 6 and Statutes of 2020, chapter 320 (Assembly Bill 646).**⁶

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; those 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.”

The Secretary of State on April 28, 2022, issued a comprehensive new CCROV Memorandum (#22089) in the form of a four-page reference sheet entitled “Disability Sensitivity at the Polls” which identifies and provides direction to poll workers in multiple situations (e.g., “Meeting A Person with A Disability”).

⁶ Amending Sections 2101, 2105.6, 2105.7, 2106, 2150, 2201, 2212, 2300, and 14240.

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. These voters should also inform the registrar they the voter is no longer registered under their previous name so that the duplicate registration can be removed from the roll.¹ (Secretary of State, April 2022 Voting Law Compliance Handbook, page 3, answer to second question).

Address Change (On or Before October 24, 2022): 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 October 24, 2022, and arrive at the registrar by 8:00 p.m. November 8, 2022; if personally delivered, must be delivered to the registrar no later than October 24, 2022.

Address Change (October 25 – November 8 of 2022): Voters who move in the last 14 days (between October 25, 2022, and November 8, 2022, 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. This option is discussed in Secretary of State CCROV Memorandum #22074, issued April 20, 2022, which also includes written requests forms in English, Spanish, Chinese, Hindi, Japanese, Khmer, Korean, Tagalog, Thai, and Vietnamese).⁷

NOTE: Chaptered 2020 Senate Bill 207 allows voters to change their address simply by sending the County Registrar a written request signed under penalty of perjury.

Voters displaced by natural disasters may be able to register and vote at their previous address; see Secretary of State CCROV Memorandum #22094 (May 4, 2022).

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.

⁷ Word versions of these forms available from Reina Miller at rmiller@sos.ca.gov, telephone (916) 695-1557. Use of the Secretary of State form is not required but is encouraged.

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. Any voter is now allowed to request and receive via electronic mail a printed out remote access VBM (RAVBM) or Ballot on Demand, but the actual voted ballot must be personally delivered, courier-delivered, or mailed. See discussion in Secretary of State CCROV Memorandum #22104, issued May 6, 2022.**

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)).

Voter's Choice Act Expands From 15 to 27 counties: The VCA counties are now: Los Angeles, Alameda, Amador, Butte, Calaveras, El Dorado, Fresno, Kings, Madera, Marin, Merced, Mariposa, Napa, Nevada, Orange, Riverside, Sacramento, San Benito, San Diego, San Mateo, Santa Clara, Santa Cruz, Sonoma, Stanislaus, Tuolumne, Ventura, and Yolo Counties). Kings County is VCA County Number 27; another county may join at some point in 2022.⁸

Voting Centers and Voting by Mail: The new Voter's Choice Act (VCA) effectively makes every registered voter a permanent vote-by-mail voter. In the 27 VCA counties listed above, 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, and the County Elections Official Office is always available.

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. This is also true of some precincts in the 28 non-VCA counties where the registrar has designated these precincts as VBM-only precincts.

Los Angeles County was a “VCA Light” county in the March 2020 primary but starting with the November 2020 began sending every registered voter a ballot (which is now required of all counties, as discussed above).

In addition, Los Angeles County began using a new custom-designed voting system starting in the March 3, 2020, primary. 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 at a time on the screen. For offices with many candidates, voters will need to go through many touchscreens.

⁸ Secretary of State February 2, 2022, News Release, “Secretary Weber Announces New Counties Adopting Voter's Choice Act Model.”

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 November 1, 2022, 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.

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 in Any County: Effective 2017, the in-county limitation on returning “regular” non-emergency voted VBM ballots has been repealed; voters may now return ballots to the registrar in the voter’s county or to any polling place, **drop box**, or vote center⁹ anywhere in California, and the receiving registrar must get them to the voter’s county of registration no later than November 16, 2022.¹⁰ **These authorized methods are the only valid way to return a voted VBM ballot; beware of unauthorized and fake drop boxes, as the Secretary of State discusses in CCROV Memorandum #22112 (May 12, 2022).**

Emergency Vote-By-Mail Ballot Returned in The Voter’s County: There is also an “emergency” vote by mail ballot request procedure effective between November 2 and November 8 of 2022. 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 and all County Election Official websites have ballot tracking links.**

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 seven (7) days AFTER Election Day (i.e., on or before Tuesday, November 15, 2022) – but only if the ballot envelope is postmarked or courier- stamped on or before November 8, 2022, or if the postmark is nonexistent or illegible, the ballot envelope is signed by the voter and dated on or before November 8, 2022. Note that the Secretary of State has authorized County Elections Officials to use Secretary of State authorized barcode scanners to decode fluorescent United States Postal Service identification tags on envelopes lacking a postmark.¹¹

⁹ Secretary of State CCROV Memorandum #22112 (May 11, 2022), page 2, “Authorized Methods for Return of Vote-by-Mail Ballots.”

¹⁰ Secretary of State CCROV Memorandum #22013 (May 11, 2022), discussing Section 3017, subdivision (a)(3).

¹¹ Secretary of State CCROV Memorandum #22014 (May 11, 2022).

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. November 8, 2022, either at the registrar, any polling place in the voter's county, at a Vote Center, 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.

Missing VBM Signatures & Mis-Matched VBM Signatures: Important pro-voter laws

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 Certification Date minus 2 (usually December 6, 2022) at or before 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 Certification Date minus 2 (usually December 6, 2022) close of business.

The signature on the "*Unsigned Ballot Statement*" must compare with the voter's registration affidavit signature to be placed in the pile of ballots to be counted. Signature comparison is also required for signed VBM ballots and provisional ballots. **Effective 2022, during the comparison process there is a presumption that the signature on a VBM identification envelope, signature verification statement, unsigned ballot statement or provisional ballot envelope is the voter's signature. In addition, if a VBM or provisional ballot is rejected by a machine, it cannot be put aside unless two registrar employees agree that *beyond a reasonable doubt* the signature does not compare. And if they do, the voter must be contacted the next business day and has until Certification Minus Two to give the registrar a Signature Verification Statement.**¹²

The Secretary of State has issued new signature verification Regulations (20910, 20960, 20961, and 20991) that specify the procedures registrars must follow; state these expressly apply to VBM ballots, provisional ballots, and CVR provisional ballots; and that that the cure process applies to all three.

Vote-By-Mail-Related Signature Verification: Some 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.

Three chaptered bills in the last four years [Senate Bill 759 Statutes of 2018 (Chapter 446); 2019 Senate Bill 523 (Statutes of 2019, Chapter 568); and 2021 Senate Bill 503 (Statutes of 2021, Chapter 319), and new Secretary of State Regulation 20960 require registrars to **notify** voters between the first business day after a signature issue is discovered AND at least eight days before certification.

The voter must be informed either that their signature is missing from the VBM envelope, or that that the voter's VBM envelope signature does not compare with their registration signature. Voters are informed that they must submit (as appropriate) the Unsigned Ballot Statement or the Signature Verification Statement and allow them to submit the appropriate one by 5 p.m. two days before certification. Secretary of State Regulation 20992, subdivision (e) requires registrars to include a postage prepaid return envelope along with the notice.

NOTE: Certification must take place no later than December 8, 2022, but many smaller counties certify earlier. The signature mismatch cure deadline is uniquely keyed to the certification date, whereas every other deadline is keyed to Election Day. The Secretary of State lists December 6, 2022, 5 p.m. as the Signature Verification Statement deadline¹³, but if a county certifies earlier than December 8, this deadline moves up. Thus, contact the County Elections Official as soon as possible after November 8, 2022, to get an idea of the anticipated certification date, and adjust signature verification deadlines accordingly.

¹² Statutes of 2021, chapter 319 (Senate Bill 503).

¹³ *California Secretary of State 2022 Election Guide*, November 8, 2022, General Election Calendar, page 7-21, paragraph 109.

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 up to day Certification Minus Two. They should also determine whether the Registrar has contacted the voter about a signature comparison issue and ensure that the voter submits a Signature Verification Statement by this deadline.

For a discussion of all these important points except the new Secretary of State Regulations, see Secretary of State CCROV Memorandum # 22092 (May 4, 2022). For the Regulations, see the Secretary of State website under "Elections", "Helpful Resources", "Regulations", "Current Regulations", "Petition Processing, Signature Verification, Ballot Processing, and Ballot Counting."

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.¹⁴ 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.¹⁵

Election Day

Satellite Voting Locations: Registrars are allowed to announce satellite voting locations by general news release not later than 14 days before November 8 (October 25, 2022 – November 8, 2022), but satellite voting with 48-hour notice is now permitted in counties with declared emergencies or disasters. The 27 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 a.m. to 8:00 p.m. on Election Day. No electioneering is allowed within 100 feet from a polling location (building containing polling place, election official's office, satellite voting location, or vote center). **Effective 2022, the electioneering prohibitions have been extended to prohibit "obstructing access to" and "obstruct(ing) ingress, egress, or parking"** of: (1) VBM drop boxes; (2) curbside voting locations; (3) polling places; (4) elections official offices; and (5) satellite voting locations.¹⁶ These statutes already prohibit speaking to voters about marking the voter's ballot, soliciting votes, or disseminating visible or audible electioneering information (see Statutes of 2021, Chapter 318 (Senate Bill 35)).

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

¹⁴ California Secretary of State CCROV Memorandum 22110 (May 10, 2022).

¹⁵ California Secretary of State CCROV Memorandum # 22101 (May 6, 2022).

¹⁶ Statutes of 2021, chapter 318 (Senate Bill 35), amending Sections 319.5, 18370, 18372, 18541, and 18568.

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: California law **DOES NOT** prohibit the wearing of party or ideological apparel or insignia that do not mention candidates or ballot measures. The Secretary of State Election Observer Rights and Responsibilities CCROV Memorandum #22109 was issued May 10, 2022 and can be found on its' website; see also, CCROV Memorandum #22093 (May 4, 2022) on "prohibitions on electioneering and the corruption of the voting process" and CCROV Memorandum # 22103 (May 6, 2022) on voter intimidation and prohibited voter challenges. **Similar CCROV memoranda will be issued in October.**

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 for the conviction of a felony
 - not currently found mentally incompetent to vote by a court
- Paroles can now register and vote, as discussed above.
- Persons in Non-State, Non-Federal Prisons may register and vote, as discussed above.
- 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 election official at a polling place for a new ballot,
 - Exchange your vote-by-mail ballot for a new one at an election's 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 election 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: In the 27 VCA counties, the voter index is necessarily county-wide, and each Vote Center is required to have a county-wide electronic poll book. However, of the 21 counties listed by the Secretary of State as “do not use[ing]” electronic pollbooks in the June 2022 primary, three were VCA counties: Marin, Riverside, and Santa Cruz.

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, “if 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 law¹⁸ giving two hours to vote on Election Day. It may be used by employees who give notice by the Friday before Election Day.

Employers Now Prohibited from Requiring Employees to Bring VBM Ballots To Workplaces. New Section 14004, effective 2020, prohibits employers from “requiring or requesting” 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.

¹⁷ “Primary Election: Office of United States Senate.”

¹⁸ Section 14000.

Ballot Selfies: Effective 2017, voters may take ballot “selfies”, thanks to the Statutes of 2016, chapter 813, repealing Section 14276 and amending Section 14291. **However, other camera use at polling places is viewed as “limited” per Secretary of State CCROV Memorandum #22111 issued May 11, 2022, consistent with prior Secretary of State CCROV memoranda.**

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 states 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, Syriac, Armenian, Persian, and Arabic. The most recent statewide language determination summary issued on March 1, 2022, is available on the Secretary’s website in County Clerks Registrar of Voters (CCROV) Memorandum 22039.

The direct link is: <https://elections.cdn.sos.ca.gov/ccrov/2022/march/22039sr.pdf>

This CCROV’s link above shows a chart that notes multiple reinstated languages in many counties.

The Secretary of State has a year-round 24/7 telephone-based interpreter service that is free to all county elections offices and provides interpreters in any Voting Rights Act Section 203 language. See CCROV Memorandum #22072 (issued April 18, 2022).

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 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. **For an extensive discussion of prohibited voter intimidation and challenges, see Secretary of State CCROV Memorandum # 22103 (May 6, 2022).**

Voting Technology

Punch cards and **Direct Recording Electronic (DRE) machines** have been **eliminated**. VBM ballots in all 58 counties use Optical Scan (OS) technology. No California county uses DRE machines – the last one (a backup device in Yolo County) was retired in 2021.

Registrars 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.**

In 2020 and 2021 the Dominion Image Cast became the dominant voting technology in the 58 California counties. Forty counties used the system, up from seven in 2016 and 16 in 2018. The county-by-county voting technology list for the June 7 primary went up on the Secretary of State website on May 10; the list is a PDF document entitled “*Voting Technologies in Use by County*” under “*Voting Systems Used by Counties*.” Forty counties continue to use Dominion Image Cast. The November list should be up in October.

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 2022 elections are the twelfth statewide California elections affected by these requirements. OS machines leave a paper trail. **As noted above, effective 2021 there are no longer any DRE machines used in California.**

The Vote Count

New Secretary of State Regulations:

In 2022, the Secretary of State issued new ballot counting regulations (20982) through (20993) that include general vote counting standards (20982), Optical Sca System Counting Standards (20983), other paper voting systems (20982), DRE Systems (20985), VBM processing (20990), standards for valid/invalid provisional ballots (20993).

These specify the requirements for both the process of counting ballots and what ballots are valid and invalid.

New Unprocessed Ballot Report Requirement: Effective 2020, registrars starting on Election Day plus 2 (November 10, 2022), 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 is not 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.” *However, “the duty of the court [is] to validate the election if possible. That is to say, the election must be held valid unless plainly illegal.” The judge hearing an election contest is required to do everything possible to validate the election – see 1st DCA published decision of April 25, 2022, Webster Lincoln v. Antonio Lopez, Case No. 162529, slip opinion, page 7 citing Rideout v. City of Los Angeles (1921) 185 Cal. 426, 430.*

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” was eliminated in 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), adding Sections 15365-15367 to the Elections Code; this option continues in 2022 per Statutes of 2020, chapter 33 (Assembly Bill 2400).**

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 31 close (one percentage point margin or less) statewide elections between 1849 and June 7, 2022, would qualify: the 2014 Controller primary race for the second Top Two position. The 2022 Insurance Commissioner Top Two margins were a raw 7,677 and a percentage 0.0011417773. The threshold for a recount is either a raw margin of 1,000 or a percentage margin of 0.00015.

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:

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