



February 1, 2021

The Honorable Shirley Weber  
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*Via Electronic Mail*

**Re: Working Together to Build a More Fair and Inclusive Democracy for All Californians**

On behalf of the ACLU of Northern California, ACLU of Southern California, and ACLU of San Diego and Imperial Counties (collectively, ACLU Affiliates in California), we congratulate you on being appointed California's Secretary of State. While you were in the Assembly, we appreciated your leadership and partnership on critical issues facing our communities and look forward to working with you in your new role. The ACLU Affiliates in California are dedicated to protecting and advancing civil rights and liberties, including the right to vote. Through coordinated litigation, policy, and organizing strategies we work to remove structural barriers to voter registration and participation in California's elections. We focus our efforts on historically disenfranchised communities to ensure that people with disabilities, people impacted by the criminal system, Californians with limited-English proficiency, people of color, and other underrepresented communities are not intentionally or inadvertently excluded from our democracy. We are excited for your leadership in making our democracy stronger and more inclusive. We want to take this opportunity to highlight recent successes to advance voting rights as well as suggest policy improvements your office can champion or support to make California's elections more accessible.

***Critical and Bold Reforms Have Secured California's Position as a Voting Rights Leader***

California has made significant strides to become one of the nation's leaders in voting rights: from implementing the New Motor Voter program; designating additional state agencies as voter registration agencies; offering voter registration at juvenile detention facilities; expanding language access to additional communities; restoring voting rights to people sentenced to community supervision under realignment, people in county jails, people on parole, and people under conservatorship; ensuring due process for voters with signature mismatches; providing conditional voter registration at all voting locations; allowing 16- and 17-year-olds to pre-register to vote; increasing early voting opportunities; to expanding the availability to vote by mail. These policy victories are the result of strong partnerships and efforts by the Secretary of State's office, county elections officials, and civil rights, voting rights, and community-based organizations. The impact of these reforms is significant: our democracy is much more representative and accessible, and more Californians are registering to vote and voting.

***More Needs to be Done to Create a Truly Inclusive, Accessible, and Multi-Lingual Democracy***

But more needs to be done to ensure that all Californians can and are encouraged to participate in our democracy. We are confident that your office will successfully lead this charge and we are ready to partner with your office to make this a reality. There are three significant areas where further policy reform is needed. First, steps can be taken to make registering to vote more accessible. Second, certain communities of voters remain without any or sufficient language access, and there are practical steps that can be taken to ensure they are not left out. Third, drawing on lessons from the November 2020 General Election (November election), there are best practices that can be adopted or modified to make it easier for Californians to vote, especially as the use of vote-by-mail ballots becomes more common.

***1. California's Voter Registration Systems Must Become Tools to Empower Underrepresented Voters***

The requirement that an eligible individual be registered to vote before they may cast their ballot is core to the infrastructure of California's democracy. In many ways this requirement can provide both barriers and opportunities to voter participation, particularly for historically underrepresented voters. California has made significant improvements over recent years to the accessibility of voter registration. Ahead of the November election, California had more than 22 million registered voters for the first time ever.<sup>1</sup>

While this historic number of registered voters is a major victory—one which can largely be attributed to structural reforms championed by advocates in recent years—it nonetheless means that there are still more than 3 million eligible adults in California who remain unregistered.<sup>2</sup> Studies have shown that these eligible, unregistered voters are disproportionately younger, poorer, people with disabilities, people with limited English proficiency, and people of color.<sup>3</sup> However, once a voter is registered, disparities in their turnout during elections tend to decrease.<sup>4</sup> When done well, voter registration systems can be used as tools to educate and engage voters, as well as to ensure that contact, eligibility, and preference information for voters stays up to date. California's elections officials and policymakers can take steps to improve the equity of our state's voter registration systems and close voter registration gaps, including by improving the Motor Voter registration system, increasing the compliance of public assistance and disability services offices with their voter registration duties, removing barriers to registration for people with convictions and people under conservatorship, and ensuring that registration rules do not prevent new and infrequent voters from accessing the ballot box.

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<sup>1</sup> California Secretary of State, 15 Day Report of Registration (Oct. 19, 2020), available at <https://elections.cdn.sos.ca.gov/ror/15day-gen-2020/historical-reg-stats.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> For example, see U.S. Census, Voting and Registration in the Election of November 2018 (Tables 4b, 4c, 6, and 7), available at <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html>.

<sup>4</sup> See, e.g., Terry Ao Minnis and Niyati Shah, Human Rights Magazine Vol. 45 No. 1, Voter Registration in Today's Democracy: Barriers and Opportunities (February 9, 2020), available at [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/voting-rights/-use-it-or-lose-it---the-problem-of-purges-from-the-registration/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/-use-it-or-lose-it---the-problem-of-purges-from-the-registration/).

A. Close Registration Gaps for Underrepresented Voters and Keep Registration Rolls Current by Maintaining and Building on Best Practices for the Motor Voter Program

One of the most significant ways that California has been able to increase its overall voter registration rate in recent years is by implementing automatic voter registration (AVR) at the California DMV. Since launched at DMV in April 2018, this AVR initiative has resulted in nearly 12 million new or updated voter registrations.<sup>5</sup> This AVR system is often referred to as the New Motor Voter (NMV) Program because it builds upon the “Motor Voter” duties which the DMV has had under the National Voter Registration Act (NVRA) for nearly three decades.<sup>6</sup> The NVRA and the NMV Program make it easier for eligible voters to register or update their registration when completing a driver’s license and state identification card transaction. By improving the accuracy of millions of voters’ mailing addresses and reducing reliance on in-person same-day voter registration, the NVRA and the NMV Program played a crucial role last year in increasing access to vote-by-mail and helped ensure that voters did not have to choose between their health and their right to vote during the coronavirus pandemic.

However, challenges with the implementation of these programs have sometimes diminished their effectiveness,<sup>7</sup> and DMV’s failures to fully comply with the requirements of the NVRA has resulted in litigation against both DMV and the Secretary of State’s office.<sup>8</sup> Currently the DMV and your office are under a settlement agreement that requires data tracking, staff training, system monitoring, and error reporting requirements. These requirements have helped to dramatically improve the success of the Motor Voter system, but these requirements will sunset with the expiration of the term of that agreement.<sup>9</sup> Further, outdated policies, poor resource management, and imprudent programming decisions within the Motor Voter system continue to result in voter registrations from DMV mail transitions taking weeks to reach elections officials, as well as voter registrations being rejected entirely when applications are submitted without satisfactory payment of DMV administrative fees. That’s why this year ACLU Affiliates in California will be co-sponsoring a bill, authored by Assemblymember Marc Berman, to codify the NVRA best practices currently required by the settlement agreement described above and to improve clarity, accountability, and transparency with the NMV Program. We ask that you join us in supporting this bill and we invite your office to reach out to us with any questions.

B. Increase Voter Registration Opportunities for Californians Applying for Benefits by Improving Compliance with Registration Duties of Public Assistance and Disability Services Offices

To close participation gaps, voter registration must be made meaningfully available through existing points of contact with underrepresented people. For this reason, the NVRA and the California Elections

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<sup>5</sup> Secretary of State, DMV New Motor Voter Registration Transactions Monthly and Yearly Totals by Category, April 2018 to Present, available at <https://www.sos.ca.gov/elections/voter-registration/nvra/reports>.

<sup>6</sup> Cal. Elec. Code §§ 2260 *et seq.*; 52 U.S.C. § 20504.

<sup>7</sup> See, e.g., Sophia Bollag, ASSOCIATED PRESS, “California DMV May Have Botched 23,000 Voter Registrations” (Sept. 5, 2018), available at <https://apnews.com/article/e11e80006f42436f81b70ae09a43d820>.

<sup>8</sup> See, e.g., *League of Women Voters, et al. v. Kelly*, No. 17-cv-02665-LB, 2017 WL 4354909 (N.D. Cal. Sept. 29, 2017).

<sup>9</sup> The parties entered into the settlement agreement on January 11, 2018 and it was set to expire on December 31, 2020. Before the agreement expired, the court approved a stipulated order requiring the parties to continue complying with the settlement agreement until further notice and issued a briefing schedule for plaintiffs to file a motion to enforce the agreement. The parties expect the court to hear the motion to enforce sometime in March 2021. Until then, the settlement agreement is in effect.

Code require public assistance and disability services offices that are designated as “voter registration agencies” to provide the opportunity to register to vote to Californians who apply for benefits through their offices.<sup>10</sup>

Seeking to ensure that these opportunities are widely available across the broad range of public assistance and disability services offices that low-income and disabled Californians may interact with, we have pushed for the Secretary of State to designate additional government entities as voter registration agencies,<sup>11</sup> and we believe that more designations must be made in order to fully reach the eligible voters that the NVRA is designed to protect and empower. Through years of investigation and advocacy, we have also discovered that there is dramatic inconsistency in California’s voter registration agencies’ level of compliance with their duties under federal and state elections law, with an alarming number of agencies neglecting their voter registration obligations entirely. We implore your office to commit to a more active, structured, and resourced approach to monitoring voter registration practices at these agencies and providing appropriate and timely remedial assistance to agencies that are failing to fully provide the required registration services. As part of this commitment, we ask that your office agree to meet with us, along with other advocates and stakeholders, to further discuss our findings and recommendations regarding voter registration agencies and to allow us to develop solutions collaboratively.

C. Prevent Disenfranchisement of People Impacted by the Criminal Legal System and People Under Conservatorship by Improving State and County Voter Registration Forms, Reporting Systems, and Materials

Widespread misinformation and bias about people impacted by the criminal legal system and about people placed under conservatorship means that these groups of Californians are often among the most vulnerable when it comes to preserving and exercising their rights to register and vote during an election. Although the California Constitution and state law legally disenfranchise people with criminal convictions only if they are currently serving a prison sentence<sup>12</sup> and disenfranchise people under conservatorship only if they are currently unable to communicate a desire to participate in the voting process, with or without reasonable accommodations,<sup>13</sup> confusion over this area of the law likely results in the *de facto* disenfranchisement of tens of thousands of Californians. We can and must do better to protect the voting rights of these individuals.

As part of the Free the Vote Coalition that helped pass Proposition 17 this past November, ACLU Affiliates in California sincerely thank you for your co-authorship of ACA 6—the legislative vehicle which placed Proposition 17 on the ballot—as well as for being a consistent champion of voting rights for people impacted by the criminal legal system during your time in the legislature. To ensure that people on parole, along with all other eligible voters with convictions, are fully empowered to participate in future elections, we ask that your office now commit to overseeing a robust statewide implementation process for Proposition 17, including by immediately updating all voter registration forms and education

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<sup>10</sup> 52 U.S.C. § 20506; Cal. Elec. Code §§ 2240 *et seq.*

<sup>11</sup> *See, e.g.,* ACLU of Northern California, “Civil Rights Groups Prevail in Lawsuit to Require Secretary of State to Improve Voter Registration Opportunities” (April 3, 2019), available at <https://www.aclunc.org/news/civil-rights-groups-prevail-lawsuit-require-secretary-state-improve-voter-registration>.

<sup>12</sup> Cal. Const. Art. II Sec. 4; Cal. Elec. Code § 2101.

<sup>13</sup> Cal. Const. Art. II Sec. 4; Cal. Elec. Code § 2208.

materials your office creates, by working with county elections officials, voter registration agencies, courts, and state and local criminal legal agencies to ensure that their voter eligibility and registration information is updated, and by engaging in a wide-reaching public education campaign about voting with a criminal record. We and other members of the Free the Vote Coalition will follow up with your office in the coming weeks to discuss Proposition 17 implementation and look forward to continuing our work with you on this important issue.

Separately, we also ask that your office commit to investigating and improving statewide practices related to voter registration and voter access for people under conservatorship. Current law provides that when a county superior court finds that an otherwise eligible voter who is placed under conservatorship is not capable of communicating a desire to vote, the court should report the finding to elections officials, who in turn cancels the relevant voter's registration.<sup>14</sup> Through investigation and advocacy, however, we have learned that the statewide landscape of voting rights for people under conservatorship is truly chaotic, marked by a lack of state oversight and a dramatic variation in both compliance and record-keeping across counties. We will follow up with your office to discuss additional findings in this area, as well as recommendations for improvement.

D. Ensure that New and Infrequent Voters Have Meaningful Access to the Ballot Box by Overseeing Robust Statewide Implementation of Same-Day Voter Registration and Preventing Aggressive Purges Over Voter Rolls

One of the best ways to ensure that voter registration functions as a tool for voter engagement, rather than as a barrier to participation, is to develop reliable and accessible systems for keeping voter rolls current. In addition to expanding opportunities for voters to register or update their registration through public agencies as described above, we can also keep voter rolls current—and make voter participation more accessible—by ensuring that counties statewide are fully implementing same-day voter registration. Same-day registration is an essential safeguard to ensure that first-time voters and infrequent voters—who are more likely to be geographically mobile, lower-income citizens, young voters, and voters of color—are not turned away at the moment of highest interest. As part of a broader implementation program, we ask that your office update relevant sections of the California Code of Regulations to reflect last year's expansion of same-day registration to all voting locations throughout the state.<sup>15</sup>

Finally, elections officials must also ensure that pursuing the goal of maintaining clean voter rolls does not result in overly zealous and discriminatory purges of infrequent voters from registration rolls. Studies have shown that aggressive voter roll purges have the potential to disproportionately harm voters of color and low-income voters,<sup>16</sup> undermining California's goal of creating a more fair and inclusive democracy. ACLU Affiliates in California look forward to working with your office to expand access to voter

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<sup>14</sup> Cal. Elec. Code §§ 2208-09. The law also mandates other procedural requirements that are intended to prevent disenfranchisement from becoming the default when a court orders a conservatorship and to create paths to re-enfranchisement for people who regain their ability to express a desire to vote. *Id.*

<sup>15</sup> Cal. Elec. Code § 2170; 2 CCR § 20023.

<sup>16</sup> See, e.g., Danielle Root and Liz Kennedy, "Voter Purges Prevent Eligible Americans from Voting," *Center for American Progress* (January 4, 2018), available at <https://www.americanprogress.org/issues/democracy/reports/2018/01/04/444536/voter-purges-prevent-eligible-americans-voting/>.

registration opportunities and to protect underrepresented voters from improper removal from registration rolls.

## **2. California Must Become A Truly Multilingual Democracy**

*“I know of people who wanted to vote but couldn’t because they did not know the language. They did not know how to vote. They had to go and seek help, because they were motivated in voting. But it was difficult, and it shouldn’t be.”*

- San Diego County resident

All communities, regardless of their ability to speak English proficiently, deserve fair access to engage in our democracy. For that goal to be realized, language barriers to voting must be eliminated. Language assistance in California is particularly critical: California is home to 6.8 million individuals over 5 years old who are limited-English proficient.<sup>17</sup> California’s fastest growing populations—Latinos and Asian-Americans—are the least likely to vote and the most likely to have limited English proficiency.<sup>18</sup> While there are several reasons and obstacles contributing to low turnout at the polls, for many voters, the lack of adequate or any language assistance is a significant factor. Section 203 of the federal Voting Rights Act (Section 203) and California Elections Code Section 14201 (Section 14201) address this voting barrier by requiring language resources for certain communities. However, gaps remain that leave many Californians without the services they need to fully exercise their vote. Policymakers can take steps to ensure better accessibility, including by providing more robust language access services, creating a process for citizens and community organizations to seek in-language services when a specific language is not covered, and collecting data to understand the scope of language access needs more fully.

### **A. Support an Expansion to Language Access Services Provided Under Section 14201 and Adopt a More Inclusive Definition of “Language Minority”**

*“It is the intent of the Legislature that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made on a statewide basis to minimize obstacles to voting by citizens who lack sufficient skill in English to vote without assistance.” (Cal. Elec. Code § 14201).*

Federal and state law require elections officials to provide certain services to voters who are members of a language minority when, among other things, the language minority group is large enough in the jurisdiction to reach a certain threshold. We urge your office to consider two recommendations related to these statutes that would make voting more accessible to language minorities.

First, we request that your office consider supporting an expansion of the services that counties covered under Section 14201 must provide to language minority groups that is more consistent with federal law.

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<sup>17</sup> Asian Americans Advancing Justice – California, “Voices of Democracy: The State of Language Access in California’s November 2016 Elections” (2017), available at [https://www.advancingjustice-alc.org/wp-content/uploads/2017/05/05042017\\_AJ\\_State\\_of\\_Language\\_Report\\_DIGITAL\\_FINAL.pdf](https://www.advancingjustice-alc.org/wp-content/uploads/2017/05/05042017_AJ_State_of_Language_Report_DIGITAL_FINAL.pdf).

<sup>18</sup> *Id.*

When a language minority group meets the federal threshold under Section 203<sup>19</sup> and triggers coverage, voters receive robust language access services and all information provided in English, including ballots, must also be provided in the minority language.<sup>20</sup> Section 14201, for its part, has a less restrictive threshold<sup>21</sup> that results in more covered language minority communities, but the statute does not require that these communities receive a full array of services. The statute requires covered jurisdictions to provide “facsimile copies of the ballot.”<sup>22</sup> A facsimile ballot is a translated version of the ballot but is not a “voteable” ballot (i.e., it is not a document on which the voter can directly cast their vote).<sup>23</sup> Covered jurisdictions have the option, but are not required, to provide translated voteable ballots.<sup>24</sup> As more counties continue to modernize their voting equipment, we urge counties to provide votable ballots to language communities covered by Section 14201 and for your office to consider supporting any efforts to require voteable ballots in different languages. We also urge your office to support efforts to require the translation of all election materials for languages covered by Section 14201.

Second, we request that your office adopt an inclusive definition of “language minority” when making Section 14201 coverage determinations. We strongly urge that you interpret “language minority” to mean voting age residents who speak any language other than English at home and lack sufficient skills in English to vote without assistance. In the past, this office has superimposed a restrictive definition of “language minority” derived from Section 203.<sup>25</sup> For example, in 2016 the coverage determination analysis was limited to only seven languages that the Census Bureau determined should be covered somewhere in California under Section 203 and many communities, including those who speak Middle Eastern and African languages, were excluded. The Section 203 definition of a “language minority” is

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<sup>19</sup> Under Section 203, languages are covered when at least 5% or 10,000 of the citizens of voting age in at least one county are members of that language minority and are limited-English proficient, and that language minority has an illiteracy rate higher than the national average. 52 U.S.C.A. § 10503 (b)(2).

<sup>20</sup> Section 203 of the VRA states that a jurisdiction subject to the section is required to provide all election material, including “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process...in the language of the applicable minority group as well as in the English language.” (52 U.S.C.A. § 10503 (c)). Information provided in English must be available in the minority language “so that all citizens will have an effective opportunity to register, learn the details of the elections, and cast a free and effective ballot.” (Department of Justice, Civil Rights Division, Voting Section. “Legal Requirements: About Language Minority Voting Rights” Accessed on Oct. 2, 2020, available at: <https://www.justice.gov/crt/about-language-minority-voting-rights#legalreq>.)

<sup>21</sup> The statute requires the Secretary of State to determine that facsimile ballots are to be provided when “the number of residents of voting age in each county and precinct who are members of a single language minority, and who lack sufficient skills in English to vote without assistance” “equals 3 percent or more of the voting-age residents of a particular county or precinct.” Elec. Code § 14201(b)(1). If these conditions are satisfied, “the Secretary of State shall find a need to provide” facsimile ballots. *Id.*

<sup>22</sup> Cal. Elec. Code § 14201(a).

<sup>23</sup> “A facsimile copy of the ballot available for voters to use in casting a private ballot shall be sufficiently distinct in appearance from a regular ballot to prevent voters from attempting to vote on the facsimile copy.” Elec. Code § 14201(a).

<sup>24</sup> *See* Elec. Code § 14201(g)(2). Jurisdictions covered by the California statute must also provide other language services, including providing a facsimile ballot to a vote by mail voter who is registered in a covered precinct and has requested a facsimile ballot (*see* Elec. Code § 13400(a)); posting signs at the polling place informing voters of the availability of facsimile ballots (*see* Elec. Code § 14201(c)(3)); posting on the county’s website at least 14 days before an election a list of all polling places where facsimile ballots will be available and the languages in which they will be available (*see* Elec. Code § 14201(d)); and requiring poll workers, in polling places where facsimile copies of the ballot are necessary, to be trained on the purpose and proper handling of the facsimile copies of the ballot. *See* Elec. Code § 14201(c)(1).

<sup>25</sup> Section 203’s definition of “language minority” is based on ethnicity. Section 203 states: “For purposes of this section, the term ‘language minorities’ or ‘language minority group’ means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.” 52 U.S.C.A. § 10503.

not part of the California statute, and while a California court has said this office has the discretion to use the federal definition,<sup>26</sup> we strongly urge you to adopt a definition that more accurately reflects the diversity of languages in our State and that is inclusive of the many communities who need voting assistance.

#### B. Establish a Process for Californians to Request Language Access Services

The American Community Survey (ACS), the data set used to determine coverage under both Section 203 and Section 14201, does not always accurately capture the size or existence of some communities. The consequences are significant: there are communities of eligible voters across California who, according to ACS, are either too small or “non-existent” to meet the thresholds and obtain language services under the Secretary of State’s mandatory language determinations. Two such examples are the Somali-speaking community in San Diego County and the Arabic-speaking community in Fresno County. These large communities are not adequately represented by the ACS and as such have been shut out from receiving language access services.

The Elections Code allows individuals and organizations to ask for coverage when a language does not meet the coverage threshold. Elections officials have the discretion to cover more languages than the minimum required based on the threshold calculations. Specifically, Section 14201(b)(1) requires the Secretary of State to provide elections materials in other languages “if interested citizens or organizations provide the Secretary of State with information that gives the Secretary of State sufficient reason to believe a need for the furnishing of facsimile ballots ... and ballot instructions.” However, the Elections Code does not provide further details about how community members or organizations can provide that information, the type of information that should be provided, or the standard by which the Secretary of State will review that information. We urge your office to establish a clear process for community members and organizations to request services as well as a standard of review for considering those requests.

#### C. Enhance Opportunities to Register a Language Preference

While millions of California voters have limited English proficiency, only a subset of these voters have registered a language preference. The consequence of this lack of data is that those voters who do not have a language preference on file do not receive in-language notifications or language assistance in the mail, even if they live in a covered precinct, unless they ask for assistance. To ensure that voters who need language services receive them, we ask that your office take steps to collect this data from voters, including by sending short in-language mailers asking voters to register a preference, making it easier for voters to register a preference on the Secretary of State’s website, and working with counties to ensure that they too are taking steps to solicit language preference information. We also ask that you make aggregate data about language access available on the Secretary of State’s website.

### ***3. Lessons from the November 2020 Election on How to Make Voting More Accessible***

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<sup>26</sup> *Asian Americans Advancing Justice-Los Angeles v. Padilla*, 41 Cal. App. 5th 850, 875 (2019).



The COVID-19 pandemic created new challenges to the administration of elections and forced elections officials and legislators to come up with creative solutions to address these challenges. Several of the measures that officials took to ensure that voters' experiences were safe and accessible were successful, and we recommend that these measures be improved and continued. These measures include increasing opportunities for in-person voting, sending all active registered voters a vote-by-mail ballot, increasing the availability of drop boxes, ensuring that all valid ballots are counted by improving signature matching and notice and cure procedures, expanding Remote Accessible Vote-by-Mail (RAVBM), and technology upgrades. As such, we urge your office to sponsor or support legislative or regulatory proposals that make these measures permanent.

#### A. Provide More Opportunities for Early In-person Voting

We strongly support expanding the number of days voters can cast a ballot in person.<sup>27</sup> Currently, more than half of California's voters live in a Voter's Choice Act (VCA) county and can vote at any vote center in their county up to 10 days before Election Day. For the November 2020 election, all counties, not just VCA counties, were encouraged to provide as many early voting options as possible. Providing early voting days expands Californians' opportunity to vote and eliminates the pressure to take time off work or to find the time during a busy workday. It also ensures that voters who need certain language and disability access services can receive them during a time that is most convenient for them. Finally, expanding the number of voting days provides eligible voters a greater opportunity to register to vote in person or update their registration.

#### B. Mail Every Registered Voter a Ballot

We support efforts to mail every active registered voter a ballot combined with other efforts to ensure voting is accessible. While receiving a ballot by mail is not always an option for people who are unhoused or transient, and while Black, Latinx, and Native American voters have historically been less likely vote-by-mail,<sup>28</sup> overall vote-by-mail usage is increasing in California. Mailing every active registered voter a ballot while still providing in-person voting options increases the likelihood that registered voters will participate in elections. Further, requiring that all counties provide a postage-paid postcard that voters may return to request a mail ballot in a language other than English or for the purpose of requesting a mail ballot in an accessible format will make this process more inclusive and accessible. Any efforts to expand vote-by-mail must also be combined with other common-sense measures, some of them discussed below, including providing funding for education and outreach so Californians are aware of

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<sup>27</sup> We also support expanding the operating hours of early in-person vote centers.

<sup>28</sup> "The California Voter Experience: Vote-by-Mail vs. the Polls, Issue Brief #1," Mindy S. Romero, July 2016, available at: [bit.ly/CVEIssueBrief1](http://bit.ly/CVEIssueBrief1); "The California Voter Experience: Why African-American Voters Choose to Vote at the Polls or Vote-by-Mail, Issue Brief #2," Mindy S. Romero, September 2016, available at: [bit.ly/CVEIssueBrief2](http://bit.ly/CVEIssueBrief2); "The California Voter Experience Study: A Statewide Survey of Voter Perspectives on Vote-by-Mail and Vote Centers," Mindy S. Romero, September 2017, available at: [bit.ly/CVEIssueBrief3](http://bit.ly/CVEIssueBrief3); California Civic Engagement Project (CCEP), "Issue Brief #1 Disparities in California's Vote-by-Mail Use Changing Demographic Composition: 2002-2012," Mindy S. Romero, March 2014, available at: [bit.ly/CCEPIssueBrief1](http://bit.ly/CCEPIssueBrief1); CCEP, "Issue Brief #2: California's Uncounted Vote-By-Mail Ballots: Identifying Variation in County Processing," Mindy S. Romero, September 2014, available at: [bit.ly/CCEPIssueBrief2](http://bit.ly/CCEPIssueBrief2).

their voting options, lowering the rejection rate of valid mail and provisional ballots, and ensuring that counties have the technology necessary to allow voters who want to vote in person to cast a live ballot.

#### C. Increase the Availability of Ballot Drop Boxes

Because the use of mail ballots is trending upwards, increasing the number and the early availability of ballot drop boxes will help maximize the opportunities for voters to participate in the electoral process. This is especially true if every registered voter receives a ballot in the mail. We support efforts to increase the availability ballot drop boxes throughout all California and not just in VCA counties.

#### D. Adopt Permanent Regulations About Signature Match and Notice and Cure Procedures

Last summer we worked with voting rights advocates to urge former Secretary of State Alex Padilla to adopt emergency regulations regarding notice and cure procedures for provisional ballots and signature matching to ensure that valid mail and provisional ballots are not rejected through this process. Ballot rejections from signature matching have disproportionately negatively affected Asian-American voters, voters with disabilities, and older voters. We worked closely with Secretary Padilla's staff and were able to ensure the inclusion of most of our recommendations into emergency regulations. Those emergency regulations, however, are set to expire in June 2021, and we urge you to now propose regulations and support any legislation to make these best practices permanent.

The legislature is considering two vote-by-mail bills, AB 37 and SB 29, that if passed further enhance the need for permanent regulations. SB 29 is an urgency bill to send all active registered voters vote-by-mail ballots for elections conducted in 2021. Because many voters do not know that they need to surrender the ballot they received in the mail if they want to cast a live ballot in person and because several counties do not have the necessary technology to determine if a voter has already cast a ballot over the mail, if SB 29 passes, there is the potential for an uptick in the number of provisional ballots as well as ballots casted via the mail that will be subject to signature matching procedures. Voters whose valid provisional ballots are rejected for signature or other technical reasons will need notice of this rejection and an opportunity to cure their ballots. For this reason, it is imperative that your office immediately adopt permanent signature matching and notice and cure regulations to ensure that all valid ballots are counted.

#### E. Expand Remote Accessible Vote-by-Mail (RAVBM)

Beginning in January 2020, all county elections offices were required to offer a RAVBM to voters in their respective counties. RAVBM allows voters to electronically request and obtain a ballot from their county elections office, that the voter can then mark at home using their own assistive device or software. Once marked electronically, the ballot must then be printed and dropped off or mailed to the county election office. Initially, RAVBM was limited to voters with disabilities and military and overseas voters.<sup>29</sup> However, for the November 2020 election, RAVBM was opened to all registered California

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<sup>29</sup> See Assem. Bill 2252, 2015-2016 Reg. Sess., ch. July 22, 2016.

voters.<sup>30</sup> Early reports from elections officials have indicated that this expanded RAVBM model was a success—a significantly greater number of voters used the RAVBM system in November than in March and elections offices had the technology and staff needed to effectively manage this increased use of the RAVBM option.<sup>31</sup>

The availability of RAVBM as a supplement to California’s other vote-by-mail and in-person voting options expands the power of voters to: complete their ballots independently using the assistive technology that makes voting most accessible for them, if needed; ensure that their selections are completed privately without potential exposure to a poll worker; and obtain a printable and returnable ballot in instances when receiving a standard vote-by-mail ballot through USPS or going to a voting location are not feasible options. The accessibility created through the RAVBM option can provide benefits not only for voters with disabilities or voters who are overseas, but also for many other California voters who—for a broad range of reasons—may need or prefer to vote using a ballot they can print and mail from home. Particularly as California and the world are continuing to fight the spread of COVID-19 through physical distancing, advocates and officials should expand options for voters to cast their ballots remotely and accessibly. We ask that your office support an extension of the policy allowing all California voters to use RAVBM in future elections; work with county elections officials across the state to provide resources, training, and support to enable them to further improve the operation of their RAVBM processes; and fund and oversee a public education campaign to inform voters that RAVBM is among the options available to them.

F. Ensure that Counties Have Funding to Update Technology and Conduct Voter Education and Outreach

Counties throughout the state have varying levels of technology available to process voters at polling locations. Some non-VCA counties do not currently have the technology necessary to verify whether a voter who received a mail ballot already cast a ballot. While we support expanding vote by mail, we also recognize that in some counties this may result in an uptick in provisional ballots. The provisional verification process creates voter confusion and, even if not warranted, feeds into lack of trust in the election process and concerns about votes not being counted. For these reasons, we urge your office to support efforts to provide counties with funding for technology upgrades and to conduct voter education and outreach about voting options so that all voters have the option to cast a live ballot.

We saw this issue come up during the November 2020 election. In Kern and Imperial counties, for example, many voters were unaware that they had to surrender their vote-by-mail ballots if they wanted to vote in person because poll workers could not cancel vote-by-mail ballots or confirm someone had not already voted. These voters were forced to either cast a provisional ballot or go to their elections office to cast a live ballot. This resulted in voter confusion, and we received a number of calls from concerned voters. This problem could have been avoided in part with better education about mail ballots and altogether if poll workers had the ability to cancel vote-by-mail ballots at polling locations. We look forward to working with your office to discuss this issue further.

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<sup>30</sup> Secretary of State, Remote Accessible Vote-By-Mail (RAVBM), last accessed Jan. 29, 2021, available at <https://www.sos.ca.gov/elections/voting-resources/remote-accessible-vote-mail>.

<sup>31</sup> For example, at a December 18, 2020, meeting of the Sacramento Voter Education and Outreach Advisory Committee, Sacramento Registrar of Voters Courtney Bailey shared that approximately 300 voters in that county used RAVBM in November 2020, compared to only 4 during a previous election.

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We believe that policy advancement in these areas will make elections more accessible and increase voter turnout across California.

We respectfully ask for a meeting with you and your legislative deputies to introduce ourselves and to discuss the above items. Please do not hesitate to contact us with any questions or if there is any other way we can be of assistance. We look forward to collaborating with you and your staff.

Sincerely,



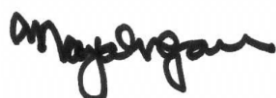
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