



March 5, 2021

The Honorable Shirley Weber
Secretary of State of California
1500 11th Street, 6th Floor
Sacramento, CA 95814
Secretary.Weber@sos.ca.gov
Elections@sos.ca.gov

Via Electronic Mail

Re: Working Together to Implement Proposition 17 and End De Facto Disenfranchisement for California Voters Impacted by the Criminal Legal System

Dear Secretary Weber:

On behalf of ACLU of Northern California, Brennan Center for Justice, Anti-Recidivism Coalition, Initiate Justice, League of Women Voters of California, Mi Familia Vota, Vote Allies, Voting Rights Lab Action, and White People for Black Lives, we congratulate you on being appointed California’s Secretary of State. Given your impressive record as a champion for social justice and voting rights for people impacted by the criminal legal system, we are excited for the opportunity to partner with you in your new role to accomplish our shared goals of empowering and engaging underrepresented voters. As members of the Free the Vote coalition that advocated and organized support for the recent passage of Proposition 17, our organizations would also like to thank you for your leadership in restoring voting rights to Californians who have completed their prison sentences and, specifically, for your co-authorship of ACA 6 and endorsement of Proposition 17 while you were a member of the California Assembly.

We write to seek the assistance of the Secretary of State in ensuring robust implementation of Proposition 17. Although in recent years many states – like California – have rewritten their laws to expand voting rights for people with convictions, voters impacted by the criminal legal system often experience *de facto* disenfranchisement. Too often, confusion about the voting rights of people with

convictions leads eligible individuals to mistakenly believe that they are prohibited from participating in their own democracy.¹ Because structural discrimination still leads to the overrepresentation of Black and Brown Californians in our criminal legal system, *de facto* disenfranchisement acts as another form of voter suppression that unfairly robs communities of color of their political power.²

Through both the information they provide and the procedures they employ, public entities can dramatically affect whether voters impacted by the criminal legal system know their voting rights and are empowered to exercise them. Studies have shown that elections officials themselves sometimes do not understand basic eligibility rules for people with criminal convictions.³ Outdated voter registration practices, along with the need for additional innovation and oversight at certain state and local agencies, also create unnecessary barriers between voters with criminal records and the ballot box. We would therefore like to take this opportunity to share the following recommendations for how your office can take a strong role in helping California break down these barriers for incarcerated and convicted voters, as well as to offer our collective expertise as a resource to your administration as you oversee the statewide implementation of Proposition 17.

1. Ensure that All Voter Resources Managed by the Secretary of State and All Regulations Referencing Voter Eligibility Are Updated Immediately

We recognize and appreciate that your office has already taken some important steps to implement Proposition 17, including by updating the voter eligibility criteria listed in several essential informational resources that are available on the California Secretary of State website and in the California Online Voter Registration portal.⁴ We also appreciate that county elections officials have been informed that the language on voter registration cards “will be modified to remove being on parole for the conviction of a felony as a disqualifying factor to register to vote.”⁵

However, we are concerned that as of the date of this letter, there are still multiple places where your website incorrectly informs the public that adult U.S. citizens in California cannot vote if they are on

¹ See, e.g., THE GREENLINING INSTITUTE, COMMUNITY VOICES: BARRIERS TO VOTING FOR CALIFORNIA’S FORMERLY INCARCERATED (January 2015), available at greenlining.org/wp-content/uploads/2015/01/Community-Voices-Barriers-to-Voting-for-Californias-Formerly-Incarcerated-spreads.pdf (“More than 60 percent of our participants said they have been confused at some point about their eligibility to vote due to a criminal conviction.”); THE SENTENCING PROJECT, STUDIES OF VOTING BEHAVIOR AND FELONY DISENFRANCHISEMENT AMONG INDIVIDUALS IN THE CRIMINAL JUSTICE SYSTEM IN NEW YORK, CONNECTICUT, AND OHIO (2005), available at prisonpolicy.org/scans/sp/fd_studiesvotingbehavior.pdf.

² See, e.g., JUSTICE COUNCIL OF CALIFORNIA, DISPOSITION OF CRIMINAL CASES ACCORDING TO THE RACE AND ETHNICITY OF THE DEFENDANT (2018), available at courts.ca.gov/documents/lr-2019-JC-disposition-of-criminal-cases-race-ethnicity-pc1170_45.pdf; THE SENTENCING PROJECT, 6 MILLION LOST VOTERS (2016), available at sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf.

³ AMERICAN CIVIL LIBERTIES UNION & BRENNAN CENTER FOR JUSTICE, DE FACTO DISENFRANCHISEMENT (2008), available at aclu.org/sites/default/files/field_document/defactodisenfranchisement_report.pdf.

⁴ Specifically, we greatly appreciate that timely revisions were made to the eligibility information on the pages on the Secretary of State website entitled *Who Can Vote in California* and *Voting Rights: Persons with a Criminal History*, as well as to the *Restore Your Vote* tool, the *Voter Bill of Rights* webpage and online PDFs, the *Guide to Voting in California*, the *Guide to Voter Registration Drives*, and the *2021 Poll Worker Training Standards*.

⁵ ALEX PADILLA, SECRETARY OF STATE, COUNTY CLERK/REGISTRAR OF VOTERS MEMORANDUM #20256 (December 1, 2020).

parole.⁶ Similarly, the California Code of Regulations currently contain at least four sections with information that is incorrect after the passage of Proposition 17.⁷ Right now, each of these resources and regulations is another potential locus of misinformation and, ultimately, *de facto* disenfranchisement. We therefore ask that your office do a comprehensive and timely evaluation of all publications, guidance, rules, or public-facing resources within its control to ensure that any outdated voter eligibility information is updated or removed.

2. Ensure that All County Elections Officials Implement the Changes in Voter Eligibility Created by the Passage of Proposition 17

We thank your office for issuing County Clerk/Registrar of Voters (CC/ROV) Memorandum #21007 on January 15, 2021, outlining the legal changes created by Proposition 17 and highlighting related updates to certain Secretary of State resources. This was an essential first step to informing elections officials in all 58 counties of current voter eligibility requirements for California elections. We now ask that your office take the following additional steps to ensure that elections officials are fully implementing the expanded eligibility rules at a local level.

First, we ask that you work directly with elections offices in the counties which will hold local and/or special elections in 2021 to ensure that those offices revise all public-facing resources, voter registration materials and practices, staff and poll worker trainings, and ballot counting procedures sufficiently in advance of the elections being administered in those counties this year.⁸

Second, we ask that your office conduct quarterly surveys of county elections offices through 2021 in order to obtain details about each county's progress in implementing Proposition 17 and to track statewide compliance.

Third, we ask that your office recall from county elections offices all voter registration cards that contain outdated information regarding voter eligibility. While we recognize that county elections officials are not strictly required to replace existing materials that contain old eligibility rules, and while we appreciate that your office is currently updating and shipping new voter registration cards according to

⁶ For example, as of the date of this letter, we found outdated eligibility information in the following PDFs: *Quick Guide: California Voter Registration/ Pre-Registration Application*, *Election Observations – Rights and Responsibilities*, and *Elections Officers Digest*. Where translated versions of these PDFs were published, those translations also contained outdated information. We also found outdated information on the *Voter Bill of Rights* video and the *How to fill out a California Voter Registration Card (ASL)* video.

⁷ Cal. Code Regs. tit. 2, §§ 19055, 20050 (containing images of Affidavits of Registration); *id.* at § 19079 (regarding elections officials' duties to cancel the registration records of certain voters); *id.* at § 20993 (providing examples of records that may be sufficient to demonstrate a voter's ineligibility).

⁸ Elections are being held in several counties as soon this month. See sos.ca.gov/elections/upcoming-elections. Also, in the event of a recall election for Governor Gavin Newsom, we ask that your office ensure that all 58 county elections offices have fully implemented Proposition 17 sufficiently in advance of that election so as to empower people on parole exercise their right to vote in that election.

county requests,⁹ we nonetheless believe that your office has the authority to recall old forms and prevent county elections officials from requiring eligible voters on parole to incorrectly attest that they are *not* on parole in order to register to vote using affidavits supplied by the county.

3. Work with DMV to Ensure that People Getting CAL-IDs Upon Release from Prison Are Given an Opportunity to Register Pursuant to the New Motor Voter Program

Although Proposition 17 restores the right to vote to Californians on their release from prison, individuals on parole are still required to register or re-register before they can cast a ballot. Therefore, it is essential that the state make registration for newly restored voters as streamlined as possible. If implemented as intended, California's automated voter registration system will allow a significant number of people re-enfranchised by Proposition 17 to register easily. The California Department of Corrections and Rehabilitation (CDCR) and the Department of Motor Vehicles (DMV) are required to ensure that everyone meeting certain eligibility criteria be issued a California Identification Card (CAL-ID) on release from prison.¹⁰ California state ID applications submitted to the DMV through the CAL-ID program are covered transactions under the California New Motor Voter law.¹¹ Therefore, unless they decline, people leaving prison should be automatically registered to vote through their CAL-ID applications.¹² We request that your office work with CDCR and the DMV and facilitate implementation of this automated voter registration system for Californians being released from prison.

4. Designate the Division of Adult Parole Operations as a Voter Registration Agency and Ensure that Existing Voter Registration Agencies Provide Accurate Voter Eligibility Information

Providing automated voter registration to people on release from prison will go a long way to making the promise of Proposition 17 a reality. Unfortunately, fewer than 30 percent of people released from prison currently come home with a CAL-ID.¹³ Moreover, there are nearly 50,000 Californians already on parole who are now eligible to vote. Section 7 of the National Voter Registration Act (NVRA),¹⁴ which requires designated agencies to offer voter registration opportunities to applicants that do business with them, offers the perfect mechanism for providing newly-eligible Californians on parole with an opportunity to register. We therefore ask that your office designate the CDCR Division of Adult Parole Operations (DAPO) as a voter registration agency subject to Section 7 of the NVRA.¹⁵ The designation should make clear that the NVRA's requirements apply when a person on parole reports to a parole officer or changes their address. This will ensure that everyone on parole is offered an opportunity to register.

⁹ CC/ROV #20256, *supra* note 5.

¹⁰ Cal. Penal Code § 3007.05(a).

¹¹ Cal. Elec. Code § 2263(b). *See also* 52 U.S.C. § 20504, 20502.

¹² Cal. Elec. Code § 2265(a).

¹³ CHRISTIE THOMPSON, THE MARSHALL PROJECT, NO PHOTO ID, NO SERVICES: CORONAVIRUS POSES STEEP HURDLES AFTER PRISON, (May 26, 2020), *available at* themarshallproject.org/2020/05/26/no-photo-id-no-services-coronavirus-poses-steep-hurdles-after-prison (citing CDCR data from July – Dec. 2019).

¹⁴ 52 U.S.C. § 20506.

¹⁵ Cal. Elec. Code § 2402(a); 52 U.S.C. § 20506(a).

We also ask that you, as “the chief state elections official responsible for coordination of the state’s responsibilities” under the NVRA,¹⁶ ensure that all existing NVRA Section 7 voter registration agencies in California fully implement Proposition 17. We appreciate that your office has already updated the eligibility requirements listed in some of its NVRA resources, but we ask that you go further to empower newly-eligible voters by:

- Requiring county elections officials to recall outdated registration cards from and send updated registration cards to all voter registration agencies in their counties;
- Working with county elections officials to require the NVRA coordinators from all California voter registration agencies to attend a training on updated voter eligibility rules and duties under the NVRA; and
- Requiring NVRA coordinators at all California voter registration agencies to provide evidence that they have re-trained their own staff who may provide voter registration services under the new voter eligibility rules.¹⁷

5. Ensure that Conviction and Registration Reporting Systems Are Updated to Improve Accuracy and Facilitate Voter Engagement

Partnering with CDCR to register voters who are leaving prison or already on parole will notably improve access to democracy for Californians with convictions. At the same time, in order to more fully combat *de facto* disenfranchisement, it’s also essential that California’s state and local agencies adopt improvements to their existing systems for reporting and tracking of prison commitments for voter registration purposes.¹⁸ We ask that you take the following steps to ensure that your office, CDCR, county elections officials, and California’s court system are working together to promote civic engagement and to prevent the erroneous removal of eligible voters from registration rolls.

First, we request that your office work with CDCR to update the existing data sharing procedures in place between your agencies in order to reflect the passage of Proposition 17.¹⁹ Specifically, we ask that each month going forward CDCR send lists to your office clearly identifying²⁰ the following categories:

¹⁶ Cal. Elec. Code § 2402(a).

¹⁷ Cal. Elec. Code §§ 2404-06.

¹⁸ See, e.g., James M. Binnall & Lauren M. Davis, *Californians with a Felony Conviction are Now Eligible for Jury Service: How Would They Know?*, 32 Stan. L. & Pol’y Rev. Online, 11 (Aug. 2020), available at cdn.law.stanford.edu/wp-content/uploads/2020/08/32-Stan.-L.-Poly.-Rev.-Online-1-1.pdf (“Overall, studies of record-based voter restrictions highlight a stunning level of *de facto* disenfranchisement fueled by notification failures and active presentations of misinformation by government officials”).

¹⁹ We understand that there is currently a plan to discontinue the sharing of data about people on parole from CDCR to the Secretary of State. We ask that, instead, CDCR continue to share this information, but in a different manner and for a different purpose than prior to the passage of Proposition 17.

²⁰ The information transmitted from CDCR to your office should include a sufficient number of data points for each individual to allow elections officials to accurately match it with relevant voter records, as well as last known address and other available contact information.

- Everyone who is currently serving a state prison sentence, highlighting those who began serving their prison sentence during the preceding month;
- Everyone who is currently on parole, highlighting those who were released to parole during the preceding month; and
- Everyone who was discharged from parole during the preceding month.

Next, we ask that your office use the data obtained from CDCR about people who have been newly released to parole to send voter education and registration information to potential voters whose rights have now been restored on the completion of their prison sentence.²¹

We also ask that your office use the data obtained from CDCR about people who have been committed to state prison and those who have been released to parole to improve the accuracy and completeness of individual voter records in the VoteCal system and in the elections management systems of county elections officials. State law requires the clerk of each superior court to report prison commitments to the local elections office monthly and requires elections officials to cancel the registrations of individuals who are currently imprisoned for the conviction of a felony.²² Unfortunately, California advocates have observed that county elections officials sometimes receive and rely on over-inclusive lists from superior courts and cancel the registrations of eligible voters who have *not* been sentenced to state prison.²³

Your office can take the following actions to prevent these erroneous transactions from resulting in the disenfranchisement of California voters impacted by the criminal legal system.

- First, your office should issue regulations to require county elections officials to cross-reference prison commitment data received from superior courts with the VoteCal database before cancelling registrations and to require them to send notice to affected voters when they do cancel a registration based on evidence of a prison commitment.
- Second, your office should work with the Judicial Council of California to inform superior courts of current voter eligibility rules, update the standardized prison commitment reporting form, and require all superior courts to use that form.²⁴
- Third, your office should collaborate with both county elections officials and the Judicial Council to ensure that all 58 counties update their conviction reporting and registration cancellation systems in a timely manner.

²¹ We further ask that your office empower county elections officials to use parole data from CDCR and last known contact information from CDCR data, VoteCal records, and the county elections management system, as available, to conduct county-specific outreach to voters on parole.

²² Cal. Elec. Code § 2212.

²³ “[I]n L.A. County alone, more than 3,000 eligible voters were dropped in 2017.” SUZANNE POTTER, PUBLIC NEWS SERVICE, GROUPS CLAIM THOUSANDS IMPROPERLY REMOVED FROM CA VOTING ROLLS (April 6, 2018), *available at* publicnewsservice.org/index.php?/content/article/62096-1.

²⁴ See Letter from Secretary of State Alex Padilla to Judicial Council of California Administrative Director Martin Hoshino (March 2, 2017).

- Fourth, your office should update its internal policies and procedures for tracking notices received from superior courts related to voting rights modifications in order to improve transparency and statewide oversight.
- Finally, we ask that your office support the current provisions of SB 504 (Becker) that are consistent with the requests in this letter, including those which create improvements to how conviction data is reported to elections officials and used for registration cancellations and those which establish notice requirements to help prevent the disenfranchisement of eligible voters.²⁵

6. Engage in a Robust Civic Engagement Campaign in Partnership with Grassroots Organizations that Work with People Impacted by the Criminal Legal System

The organizations in our coalition are already engaged in several voter education campaigns affecting the felony disenfranchised community. Last year, ACLU affiliates, the League of Women Voters of California Education Fund, and other partners released the *Voting in California Jails Community Toolkit* to help educate the community about the right to vote from California’s jails.²⁶ This toolkit built on the *Let Me Vote* campaign, which provides public information and resources for voters with convictions. Similarly, Initiate Justice sends periodic information to their 35,000 members inside California prisons to help inform them of their rights – including their voting rights – once they are paroled. Our coalition members are also working with on-the-ground partners like Homeboy Industries, which serve many people on parole, to make sure their members know about their rights as well.

Grassroots and civil rights groups doing voter engagement in California, like ours, need support and clarity from your office to help ensure that all eligible voters with convictions are getting accurate and timely information. In addition to updating all of your office’s voter education materials, as described above, your office can support grassroots voter engagement efforts, first, by developing a grant program to provide funding directly to community organizations doing civic empowerment work with people impacted by the criminal legal system. Research indicates that voter outreach is most effective when it comes from trusted messengers such as organizations that are rooted in the local community.²⁷ Second, we request that your office create an advisory committee – comprised of representatives from organizations doing grassroots civic engagement, people directly impacted by the criminal legal system, and elections officials – to study effective voter engagement strategies for people with convictions. Third, we ask that your office – with the guidance of the advisory committee described above – develop a long-term voter engagement campaign directly aimed at closing the registration and turnout gap for eligible California voters with criminal records.

²⁵ SB 504, Cal. Leg. 2021–2022 Reg. Sess. (as introduced Feb. 17, 2021).

²⁶ Available at letmevoteca.org/toolkit.

²⁷ See, e.g., CENTER FOR SOCIAL INNOVATION & CALIFORNIA COMMON CAUSE, REACHING LOW-PROPENSITY VOTERS IN CALIFORNIA’S NOVEMBER 2020 ELECTIONS (August 2020), available at commoncause.org/california/wp-content/uploads/sites/29/2020/08/UCR-CSI-CCC-VoteByMail-Aug2020-Report.pdf.

With the passage of Proposition 17, California has a unique opportunity to engage tens of thousands of newly restored voters on parole, to prevent the *de facto* disenfranchisement of potentially tens of thousands of other eligible Californians impacted by the criminal legal system, and to build a more inclusive democracy for the future. The office of the California Secretary of State, under your leadership, can take quick and effective action to make sure that happens. We would greatly appreciate the opportunity to discuss the details of our requests with you at your earliest convenience. With special and local elections already starting, and a possible statewide gubernatorial recall election upcoming, we respectfully request that your office meet with us this month. We look forward to working with you to ensure that California's newly expanded democracy truly reaches everyone.

Sincerely,



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cc: Lisa Martin, Chief Deputy Secretary of State