



Northern
California

April 14, 2021

Via Electronic Mail

Alameda County Board of Supervisors
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Re: Request for Public Hearing Regarding the November 2020 Election and General Election Administration Issues

Dear Honorable Board of Supervisors:

On behalf of the ACLU Foundation of Northern California (“ACLU”), I write to request that the Alameda County Board of Supervisors (“Board”) hold a public hearing on the administration of the November 2020 election by the Alameda County Registrar of Voters (“ROV” or “Registrar”). The problems that arose during the past election require the Board’s full attention and, if left unaddressed, promise to plague future elections as well.

While the ACLU commends the ROV for conducting an election that experienced a record number of early ballot returns amidst unprecedented challenges due to the COVID 19 pandemic, the Registrar’s administration of the November 2020 election was nonetheless marked by significant failings. In particular, the ROV:

- Failed to provide key language access services to limited-English proficient voters as required under California Elections Code § 14201;
- Failed to install necessary ballot drop boxes by the deadline imposed under Elections Code § 1602 and also failed to provide sufficient information as to if and when delayed drop boxes would become accessible to voters; and
- Failed to properly train and prepare poll and hotline workers, which resulted in a significant number of Alameda County residents receiving incorrect information and, in some instances, not having their votes counted.

These and other issues are set forth in greater detail in the letter we sent to the Registrar, with a copy to the Board, on November 12, 2020. (*See Attachment 1*).¹ That correspondence further demonstrates how the ROV failed to take necessary and required precautions that would have ensured every Alameda County voter had a full opportunity to exercise their right to vote.

The ACLU, together with county residents and several other civil rights, good government, and local community-based organizations, have grown increasingly concerned over how the ROV prepares for and conducts elections. Our concern stems not only from the outlined incidents, but also from the Registrar’s lack of accountability, tendency to shift blame, and repeated attempts to downplay fundamental problems.

For example, leading up to Election Day at the Mills College Accessible Voting Location—a site that served primarily Black and Brown voters— inadequately-trained poll workers incorrectly instructed over 100 voters that printouts from touchscreen ballot marking devices were “receipts” that could be taken home. In reality, however, these printouts constituted unprocessed official ballots that needed to remain onsite in order to be counted. The Registrar has sought to deflect responsibility for this error to the poll workers involved and minimize the problem by claiming it was limited to “only one” voting location. However, ACLU and our partners are still unable to determine whether this issue arose at other voting locations because the Registrar has not responded to document requests with any records demonstrating that the issue was limited to Mills College. Further, regardless of whether the issue occurred at other voting locations, the Registrar must take responsibility for every poll worker it hires and places in contact with voters. In the absence of any meaningful accountability by the Registrar, the Board must now step in to assure the public that disenfranchising voters at even one location in Alameda County is one too many and that having over 100 votes go uncounted is serious and unacceptable.

We strongly believe that a public hearing is a critical next step to obtain public comment from Alameda County residents, understand areas for improvements, and ensure corrective actions are taken prior to the next election—whether that be a special election, likely recall election, or the 2022 gubernatorial and midterm election. Importantly, we also ask for this hearing in order to restore public confidence in the Registrar’s ability to administer future elections.

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¹ In the November 12 letter, we requested that the Registrar provide the Board with a presentation regarding the ROV’s operation of the November 2020 election, including successes and failures. The Registrar has yet to meaningfully respond to this request.

Respectfully,



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ATTACHMENT 1

*November 12, 2020 Election Advocates Letter
to the Alameda County Registrar of Voters*



November 12, 2020

Mr. Tim Dupuis
Alameda County Registrar of Voters
1225 Fallon Street, Room G-1
Oakland, CA 94612

Re: Alameda County Registrar of Voters' Failures in the Administration of the November 2020 General Election

Dear Registrar Dupuis:

On behalf of the undersigned organizations, we write to express concerns over the operations of the Alameda County Registrar of Voters (“ROV” or “Registrar”), specifically as they relate to how the Registrar prepares for and conducts elections. While we commend the Registrar for conducting an election that experienced a record number of early ballot returns,¹ it is evident to the undersigned that the Registrar failed to take necessary and required precautions to ensure that every Alameda County voter had an opportunity to exercise their right to vote. Indeed, “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

The issues detailed below were compiled based on our own investigations, reports from advocates and voters, and our own experience trying to coordinate and troubleshoot issues with your office. We believe that your office failed to adequately prepare for the November 2020 general election by failing to install the required drop boxes in a timely manner, adequately train elections staff, and provide multilingual notices on all English-language mailers sent to voters who did not have a language preference on file. We also know that your office failed to comply with specific language access requirements throughout all your in-person accessible voting locations (“AVLs”), did not respond in a timely manner when poll workers and poll observers identified problems at AVLs, and provided erroneous instructions to voters using touchscreen ballot marking devices (“BMDs”) at Mills College, 5000 MacArthur Blvd., Oakland, CA (Precinct No. 000084) (“Mills College”). We are concerned this latter issue may have been more widespread and are continuing to investigate other locations. Post-Election Day, the ROV has

¹ J.R. Stone, “Election 2020: Alameda County sees record number of early ballot returns, according to registrar,” KGO-TV ABC 7 (Nov. 2, 2020), available at <https://abc7news.com/2020-election-early-voting-alameda-county-record/7596961/>.

not updated its website with all Ranked Choice Voting (“RCV”) results, which is a failure to be transparent and provide accurate results to the public.

Many of the undersigned organizations work on voting rights statewide and are alarmed by the many issues and degree of severity we identified in Alameda County. Some of these issues are not unique to this election and advocates have long been concerned about your office’s lack of preparedness and transparency regarding how Alameda County prepares for elections. As such, we provide specific recommendations on what your office must do to better serve Alameda County voters.

Pre-Election Day Issues

Alameda County failed to timely install ballot drop boxes

For the November 2020 election, Alameda County opted to conduct a consolidated polling place model² under Elections Code Section 1602. The County was required to have at least one ballot drop box for every 15,000 registered voters “beginning not less than 28 days before the day of the election.” Elec. Code § 1602 (c)(1)-(2). Accordingly, Alameda County was required to have 63 ballot drop box locations available to voters starting October 6, 2020.³

Yet, Alameda County failed to install the required ballot drop boxes by the deadline. This meant that many voters had to wait days or weeks past the deadline to have access to this critical ballot return method. On October 7, your office announced that the County was still in the process of installing ballot drop boxes and was not yet in possession of an additional 38 ballot drop boxes needed to meet the requirements.⁴ As of October 12, there were no ballot drop boxes in West Oakland.⁵ Also, it was not until the week of October 12 that the last four ballot drop boxes intended for the City of Berkeley were installed.⁶ On October 15, the City of Hayward reported that “Hayward and adjacent unincorporated areas ha[d] experienced a delay in the placement of ballot drop boxes from the Alameda County Registrar of Voters—but most are now in place.”⁷ On October 28 and 29, your office reported installing three more drop boxes, weeks after the October 6th deadline.⁸

² California Secretary of State, “County Method of Conducting Election Survey – August 2020 Results.” Accessed on Nov. 9, 2020. Available at: <https://elections.cdn.sos.ca.gov/statewide-elections/2020-general/county-survey-august.pdf>.

³ Cal. Elec. Code § 12223.

⁴ Hernandez, Jodi, “Alameda County Voters Wait on Critical Materials Needed to Cast Their Ballot,” *NBC Bay Area* (Oct. 7, 2020). Available at: <https://www.nbcbayarea.com/news/politics/alameda-county-voters-wait-on-critical-materials-needed-to-cast-their-ballots/2376964/>.

⁵ Lin, Sarah Belle (@SarahBelleLin). “Six election drop boxes are available in Oakland: three in Downtown area, one in East Oakland, one in the hills, and one in Deep East Oakland. But the voting needs of West Oakland and the East/Deep East neighborhoods south of 35th Ave. to 90th Ave. still aren’t being served.” Oct. 12, 2020, 10:41 a.m. Available at: <https://twitter.com/SarahBelleLin/status/1315709147363467264>.

⁶ Teller, Eden, “Heads up, Berkeley voters: You now have 6 ballot boxes to choose from,” *Berkeleyside* (Oct. 15, 2020). Available at: <https://www.berkeleyside.com/2020/10/15/berkeley-ballot-box-locations>.

⁷ City of Hayward, Press Release (Oct. 15, 2020). Available at: <https://www.hayward-ca.gov/discover/news/oct20/most-ballot-drop-boxes-now-place-after-installation-delays>.

⁸ Alameda County Registrar of Voters (@ACVOTE), “2 new Dropboxes installed yesterday! /Dolores Bengston Aquatic Center/ 4455 Black Avenue, Pleasanton, CA 94566 / Pleasanton Sports Complex / 5800 Parkside Dr,

Alameda County not only failed to provide this crucial service in a timely manner but did so brazenly in light of the hard-fought protections that were put in place for the November 2020 election. Under Election Code Section 1604(a)(1), Alameda County could have requested an adjustment or partial waiver from the Secretary of State regarding the “operational duration” of ballot drop-off locations. Yet, instead of requesting a waiver, Alameda County simply violated Sections 1602 and 1604.

This deficiency in the administration of the November 2020 election was significant. The election occurred in the middle of a pandemic and drop boxes played a more critical role than ever before. Many voters were apprehensive about mailing back their ballots and preferred to deposit their ballots in a ballot drop box. Thousands of Alameda County voters were left without their preferred option to safely return their ballot in their neighborhood. The lack of ballot drop boxes meant that voters had to wait for their ballot drop box to be installed or travel further to find another drop box location, which is particularly difficult for many residents considering reduced public transportation options. Further, the installation delays led to voter confusion about whether and when the advertised drop box in their neighborhood would be available.

For future elections, we highly recommend that your office order the required equipment in a timely manner and abide by deadlines. If future issues are unavoidable, we recommend that your office communicate with the public when there’s an issue, in all required federal and state languages, and explain the steps your office is taking to remedy the issue, as well as a timeline. Further, we urge that your office ensure that issues are not localized to certain communities and deploy resources to address geographic gaps in services, such as by setting up staffed ballot drop-off stations.

Alameda County inadequately trained its poll workers

We believe that your office failed to properly train and prepare its elections staff, including poll and hotline workers. We received reports from voters and poll monitors that some poll workers, including precinct captains, were not familiar with “facsimile” ballots and were confused when poll monitors asked to see them. For example, when asked to locate the facsimile ballots that are required by law to be posted in Korean, Cambodian/Khmer, Punjabi, Burmese, Hindi, Laotian, Mien, Mongolian, and Telugu, a poll worker showed a poll monitor copies of the voter information guide in Vietnamese, Tagalog, Chinese, and Spanish. We know poll monitors also observed poll worker confusion about facsimile ballots in 2018. As detailed below, we also received reports that poll workers at Mills College did not receive proper training or instructions on how to process ballots from BMDs.

Alameda County voters rely on information and instructions provided by poll and hotline workers. When the Registrar fails to properly train and prepare its staff, it also fails the voters who rely on the staff for assistance. We recognize that with COVID-19, many of the typical poll

Pleasanton, CA 94588.” Oct. 28, 2020, 10:31 AM. Available at: <https://twitter.com/ACVOTE/status/1321504755730927616>; Alameda County Registrar of Voters (@ACVOTE), “New Dropbox installed in @Fremont_CA /Niles Library / 150 I St Fremont, CA 94536.” Oct. 29, 2020, 9:15 AM. Available at: <https://twitter.com/ACVOTE/status/1321848096326733825>.

and hotline workers, who tend to be older and thus more susceptible to the virus, likely were not able to or felt comfortable working the polls this election season. This meant that your office likely had to train new poll and hotline workers. However, this is no excuse for the failures we observed and voters experienced during the November 2020 election. Regardless of tenure, Alameda County should have trained and prepared all its workers to correctly perform their duties on Election Day. This training should have included training on the laws, rules, and regulations that poll workers and voters need to follow, including training on specific voting equipment and procedures. For future elections, the Registrar should invest in improving and strengthening its training for workers and solicit input and advice from voting rights advocates on the effectiveness of that training.

Issues in the Early Vote Period and on Election Day

Alameda County failed to comply with Section 14201 language access requirements

Alameda County is home to many limited-English proficient (“LEP”) residents. According to the American Community Survey, there are 278,469 LEP residents in the County, or about 17% of the total population.⁹ The need for language access services in the election process is real and imperative, particularly for LEP voters who decide to vote in person in order to access translated voting materials. Yet, for at least two-and-a-half days of early voting, your office failed to fully provide all the language services Alameda County voters need and are entitled to.

California Elections Code Section 14201 (“Section 14201”) requires that for covered jurisdictions the county (1) provide voters facsimile ballots in certain languages; (2) conspicuously post a copy of the facsimiles; and (3) properly train poll workers regarding the purpose and proper handling of facsimile ballots so that poll workers will be prepared to inform voters of their existence. *See* Elec. Code § 14201(a)-(c)(1). Alameda County has nine Section 14201 languages: Korean, Cambodian/Khmer, Punjabi, Burmese, Hindi, Laotian, Mien, Mongolian, and Telugu. For this November 2020 general election, your office fell short of minimizing obstacles for Alameda County’s LEP voters by failing to (1) conspicuously post facsimile ballots; (2) provide loose leaf copies; and, (3) sufficiently train poll workers regarding the use and purpose of facsimile ballots. These failures were widespread across Alameda County’s 100 AVLs. As a result, the voting experiences of thousands of LEP voters may have been jeopardized.

Your office was first notified of these failures on Saturday, October 31st, during the first day of early voting at AVLs, when non-partisan poll monitors with Asian Americans Advancing Justice – Asian Law Caucus (“AAAJ-ALC”) reported that conspicuously posted facsimile ballots were missing from at least twenty-nine AVLs. AAAJ-ALC poll monitors attempted to remedy these issues at AVLs but poll workers reported that they were not instructed to conspicuously post facsimile ballots. Instead, poll workers were informed that offering ballots on demand was

⁹ U.S. Census Bureau. ACS 5 Year Estimates – Public Use Microdata Sample (2018). Available at: <https://data.census.gov/mdat/#/search?ds=ACSPUMS5Y2018&cv=ENG&rv=ucgid&wt=PWGTP&g=7950000US0600101,0600102,0600103,0600104,0600105,0600106,0600107,0600108,0600109,0600110>

sufficient. It was not. Alarming, some poll workers did not understand what facsimile ballots were.

AAAJ-ALC called your office repeatedly on October 31 to report specific AVLs that were missing posted facsimile ballots. ROV hotline staff told AAAJ-ALC that they would follow up with the specific locations that AAAJ-ALC identified but were unwilling to address the systemic failure across AVLs. AAAJ-ALC staff noted that the exact same issue—a lack of posted facsimile ballots—was occurring across many locations and suggested that there was a systemic problem, hoping to work collaboratively for a solution. Hotline staff refused to engage with the possibility that there was a systemic problem and instructed AAAJ-ALC staff to call in each specific incident of missing facsimile ballots.

On November 1st, the second day of early voting, AAAJ-ALC and the American Civil Liberties Union of Northern California (“ACLU-NC”), and at one point private counsel for AAAJ-ALC and ACLU-NC, repeatedly contacted your office via email and over the phone in hopes of quickly remedying this issue. At no point did we receive a response from your office regarding our concerns that there was a systemic failure to post facsimile ballots. AAAJ-ALC and ACLU-NC also deployed staff on November 1st to 12 AVLs¹⁰ to determine if the County was still out of compliance with Section 14201. Not only did the issues persist but some poll workers still did not know what a facsimile ballot was. It was also greatly concerning that on separate occasions staff from the Alameda County voter hotline told AAAJ-ALC and ACLU-NC staff that it was not necessary to post facsimile ballots at each voting location because there were signs posted that told voters about the facsimile ballots or because ballots could be printed on demand.

When polls opened on the morning of November 2nd, the issues persisted.¹¹ It was not until early midday on the third and final day of early voting that we finally received a response from Alameda County Counsel and worked with County Counsel to resolve the issue.

While this matter was resolved in a way that was satisfactory enough to avoid litigation, your office’s failure to properly train poll workers exposes a deficiency in how your office runs elections; refusal to take swift action to ensure compliance with state law demonstrates a disregard for the rights of Alameda County’s LEP voters; and, unresponsive posture towards organizations that advocate on behalf of voters points to a concerning lack of transparency.

We strongly urge your office to ensure compliance of all language access requirements under state and federal law. We also request that your office meet with voting and language access

¹⁰ AAAJ-ALC and ACLU-NC staff visited the following Alameda County AVLs: No. 000081 - Oakland Arena – 7000 Coliseum Way, Oakland, CA; No. 000082 - Ascend School – 3709 E. 12th Street, Oakland, CA; No. 000075 - Think College Now Gym – 2825 International Blvd., Oakland, CA; No. 000064 - New Beginnings Church -1428 61st Ave., Oakland, CA; No. 000048 – Life West College – 25001 Industrial Blvd., Hayward, CA; No. 000049 – Chabot College – 25555 Hesperian Blvd., Hayward, CA; No. 000044 - Cal State East Bay New Univ Union # 2 – 25800 Carlos Bee Blvd., Hayward, CA; No. 000047 -Downtown Hayward Public Library – 888 C Street, Hayward, CA; No. 000046 – Southland Mall – 1 Southland Mall Drive, Hayward, CA; No. 000067 – YMCA of the East Bay – 2350 Broadway, Oakland, CA; No. 000061 – Lakeside Park Garden Center – 666 Bellevue Ave., Oakland, CA.

¹¹ AAAJ-ALC staff visited the following Alameda County AVLs: No. 000068 – West Oakland Middle School – 991 14th St. Oakland, CA; No. 000070 – Prescott School – 920 Campbell St. Oakland, CA; No. 000059 – Golden State Warriors – 1011 Broadway Oakland, CA.

advocates, such as AAAJ-ALC and ACLU-NC, regarding how to best serve LEP voters in Alameda County.

Alameda County's grave training errors deprived some residents of their right to vote

In the days immediately following the November 2020 general election, we received reports that individuals who voted in person at Mills College, and potentially at other voting locations in Alameda County, were given incorrect information about how to cast their ballots using BMDs. We believe that at least 100-200 voters have been improperly denied their right to have their ballots counted.¹²

The Mills College AVL was open to voters beginning October 31st, until polls closed on Tuesday, November 3rd. As with other AVLs in the County, the Mills College location provided voters who wished to vote in person with two ballot options: hand marking a pre-printed ballot or using a BMD to electronically mark a ballot. The BMDs used in Alameda County do not electronically store or transmit voters' selections. Instead, they produce a single-page printout that has a human-readable list of the voters' choices, as well as QR codes. These printouts are the voters' official, unprocessed ballots, and they should be retained by poll workers so that they can be included in the official count and canvass.

However, due to inadequate training and inaccurate information they repeatedly received from your office, Mills College poll workers incorrectly told voters who cast their ballots using BMDs between Saturday and about mid-day Tuesday that the printouts from the machine were "receipts" that the voters should take with them, rather than official ballots that they should deposit in the ballot box. By the time these poll workers began employing the correct practice on Tuesday, about 100 to 200 voters had already been affected. In general, voters who cast their ballots at the Mills College were disproportionately Black, and many of the voters who had been actively encouraged by poll workers to use the BMDs were disabled or elderly. After the voting location added additional BMDs on Tuesday morning, more voters began choosing that option for marking and casting their ballot.

a. This error was caused by inadequate training by the ROV

We spoke with two poll workers who served as "clerks" at the Mills College AVL ("Two Poll Workers"). The Two Poll Workers expressed that the training they received inadequately prepared them for their duties. At no point during their training were they informed that the printouts from the BMDs were official ballots that should be deposited in a ballot box before the voter leaves the AVL. One of the poll workers was a standby poll worker and was only notified by your office that they were needed to work the polls a few days before Saturday, October 31st. It is our understanding that the poll worker who served in the role of captain at the Mills College AVL was also a standby poll worker who was called on at the last minute.

¹² "Obviously included within the right to choose [representatives], secured by the Constitution, is *the right of qualified voters within a state to cast their ballots and have them counted.*" *United States v. Classic*, 313 U.S. 299, 315 (1941) (emphasis added). It is similarly "unquestionable that *the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box.*" *United States v. Mosley*, 238 U.S. 383, 386 (1915) (emphasis added).

After receiving notice that they had been selected to work at the Mills College AVL, the Two Poll Workers received access to an online training program that consisted of a click-through presentation with images of the ROV's "Election Worker Guide" document, followed by a handful of quiz questions. The training contained some references to logistical information related to the BMDs but did not include information explaining that the BMD printouts were official ballots that should be retained at the polling place. After completing the online training, your office did not send any follow up information to the poll workers.

On Saturday morning when poll workers arrived at the Mills College AVL, their inadequate training was coupled with initial hours of chaos and lack of clarity about roles and procedures.¹³ Unwittingly, that lack of clarity persisted until Election Day when the Two Poll Workers learned that part of their role was to make sure that BMD users deposited their unprocessed ballot printouts in the ballot box before leaving the AVL. In fact, the first time a voter used a BMD on Saturday, these poll workers were told by the judges – poll workers whom they understood to have more training and authority than they themselves had – that the printouts were receipts, not ballots.

Although the poll workers who served in the roles of captain or judge had allegedly received more training than the other poll workers, it was clear to the Two Poll Workers that captains and judges had also been inadequately prepared for their jobs. Between Saturday and Tuesday, more than one judge referred to the unprocessed ballots produced by the BMDs as "receipts" and even claimed, incorrectly, that the BMD was electronically tallying votes that would be downloaded from its hard drive at the end of each day. One of the Two Poll Workers said that they became increasingly skeptical about the judges' training after they didn't see such a download happening when the AVL closed after each day of early voting, as well as after observing an increasing number of other errors and inconsistencies in operation of the AVL.

As multiple questions and points of confusion came up between Saturday and Tuesday, the Two Poll Workers attempted to reference the ROV's "Election Worker Guide" for answers. However, they did not have easy access to the guide and were forced to download the over 100-page document to their phones. Our organizations have obtained and reviewed a copy of the guide. This guide, which your office appears to have relied on as its core poll worker training resource, does not clearly indicate that the printouts from the BMDs are official ballots that poll workers should instruct voters to deposit into the ballot box before leaving the polling place and doesn't associate the terms "touchscreen voter" with "printed voted ballot" until page 73 of the 110-page document.

¹³ The Two Poll Workers described a chaotic morning: there was no roll call for the volunteer poll workers who showed up and it was unclear who was in charge. Only one of the judges at the Mills College location indicated that they had any prior experience serving as a poll worker in Alameda County, but that individual shared that the county polling place procedures had recently changed and so were no longer familiar to them. Poll workers didn't know what jobs they would be doing in the polling place until shortly before opening on the first day when all the poll workers were asked to volunteer to work at specific stations. The Two Poll Workers were ultimately placed at the ballot trolley station for all four days of in-person voting at Mills College.

b. This error lasted several days due to the inaccurate guidance from the Alameda County hotline

Poll workers also received insufficient and largely inaccurate advice from your office's poll worker support hotline. When the Two Poll Workers initially inquired about the BMD printouts, they were told by the judges that their site captain had called the hotline on Saturday and was told by the hotline staff that they were "receipts."

Late Tuesday morning, the site captain, together with the Two Poll Workers, once again called the ROV support hotline regarding an unrelated issue.¹⁴ During that call, the hotline staff reiterated that the printouts from the BMDs were "receipts" but also told the captain that the BMDs did not store voters' ballots electronically. The contradictory information provided during the call only deepened the poll workers' anxiety that their site had been inadvertently turning away voters' official ballots. After again being incorrectly advised the BMD printout was a "receipt," and after failing to find an answer in the "Election Worker Guide," the Two Poll Workers began doing their own research about the BMDs at their site, including by calling the manufacturer, referencing the website of another county where the same devices are used, and searching the Secretary of State's website.

By this point, the Two Poll Workers became convinced that the printouts were official ballots and called the ROV hotline on their own. This call was the first time they finally heard a representative from your office say that the printout from the BMDs was not a receipt and was, in fact, a ballot. However, when the poll workers asked what protocol they should follow and what was being done regarding voters who erroneously took their ballots home, the hotline staff simply said that your office was handling the situation and that the poll workers should "sit on their hands."

c. The error was exacerbated by the ROV's failure to rectify issue

It took multiple calls to the hotline to finally get a correct answer about the BMD printouts and, even then, the Two Poll Workers told us no one from your office visited their site or followed up about the issue. Your office also misinformed a member of the public about the issue. When a voter called your office on Tuesday afternoon and said that they had brought a printout home with them that said "official ballot" at the top, the hotline staff correctly said they could drop the printout off at any voting location and it would be counted. The hotline staff further stated that your office was actively contacting all affected voters with this information. However, another hotline staff member shortly thereafter informed the Two Poll Workers that your office was, in fact, not contacting voters and that the other hotline staff should not have informed the other caller that this was happening.

¹⁴ The Two Poll Workers called the hotline after a voter asked the poll workers what information the QR codes on their BMD printout contained. The poll workers did not know the answer, so they and the voter tested the QR codes using their cellphones. Upon their surprise and concern at finding that one of the QR codes led to a non-election related YouTube video, the poll workers and the voter approached the site captain and the group called the ROV support hotline together. The hotline staff who responded to the call did not know why the QR code led to a YouTube video.

The ROV must take immediate action to determine how many voters were affected by this error across Alameda County¹⁵ and notify affected voters about the mistake as well as provide information about any potential remedies.¹⁶

Post-Election: Lack of Transparency Surrounding Ranked Choice Voting Results

Although the election canvassing period is underway, your office has also failed to publicly release and update all Ranked-Choice Voting (“RCV”) results. For example, your website *only* provides the total number of RCV votes for first-choice and instructs the public to “please contact the Registrar Voters Office for complete RCV results.”¹⁷ In effect, the public does not have complete and accurate information about how Alameda County voters voted in RCV jurisdictions. We request that your office immediately update the RCV numbers as soon as possible.

Requests for Actions to be Taken

We remain concerned that many Alameda County voters will be disenfranchised in upcoming elections unless your office takes immediate steps and adopts necessary reforms to address the issues we outline above. Specifically, we request that you:

1. Immediately, but no later than November 17, 2020, contact every voter who voted in-person at Mills College using a BMD, and ask that they notify your office if they took home their marked ballot as a “receipt.”
2. For Mills College voters who still have their BMD-marked, unprocessed ballot, ask those voters to return their ballot to your office as soon as possible, but no later than the end of the canvassing period, so that it can be counted.
3. Investigate to determine whether other Alameda County AVLs received improper instructions on how to process BMD-marked ballots and, if so, also contact those impacted voters.
4. Take all available steps available under the law to process and count all ballots returned by Mills College voters or other Alameda County voters who were erroneously instructed to “take home” their BMD-marked ballots as receipts.
5. Update your training for poll workers and hotline workers and allow advocates to review and comment on the training materials before they are implemented.
6. Update your policies, procedures, and trainings to be fully compliant with State and Federal language access laws.

¹⁵ It is our understanding that your office maintains records of how many and which voters checked into each AVL, the time they checked in, whether those voters selected to use a pre-printed paper ballot or a BMD, and the number of ballots ultimately collected from each polling location.

¹⁶ It is well-established that, because there can be no do-over and no redress once an election has passed, the denial of the right to vote constitutes irreparable harm. *See, e.g., League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (the denial of the right to vote is “irreparable harm”); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (“A restriction on the fundamental right to vote . . . constitutes irreparable injury.”)

¹⁷ Office Election Site of Alameda County, General Election (Unofficial - Post Election Update #5), November 3, 2020. Available at: <https://www.acgov.org/rovresults/241/indexA.htm>.

7. Update your website's total number of RCV votes to include *all* votes, not just first-choice votes.
8. Schedule quarterly meetings with advocates to keep lines of communication open and transparent.
9. Provide the Alameda County Board of Supervisors with a presentation regarding the Registrar's operation of the November 2020 election, including successes and failures.

Conclusion

The Registrar should immediately adopt our recommendations to improve its operations and, at a minimum, immediately notify Mills College voters who voted using BMDs and request that they submit their completed ballots to your office before the end of the canvassing period. We also request a prompt response to this letter by **November 19, 2020**. If you have any questions, please do not hesitate to reach out to us.

/s/Jessamyn Sabbag



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cc: California Secretary of State, Alex Padilla
Alameda County Board of Supervisors
Alameda County Counsel
Oakland City Council Members
Oakland City Mayor, Libby Schaaf
Assemblymember Rob Bonta, District 18
Senator Nancy Skinner, District 9
Congresswoman Barbara Lee, District 13