

June 16, 2023

The Honorable Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, CA 95814

Via email to aanderso@sos.ca.gov, rdelucch@sos.ca.gov

Dear Secretary Weber:

The people signing below have these joint comments on California's proposed rules for election observers. <https://admin.cdn.sos.ca.gov/regulations/proposed/elections/updte-prop-text-of-regs.pdf>

The stated goal in 2 CCR § 20871 of “uniform requirements and procedures” is valuable, especially to give equal protection and avoid disparate treatment across the state. A few specific sections undermine this goal and should be changed.

Another goal these rules can achieve is to build public confidence by ensuring enough access so observers can see, and tell others about, how well election processing is done. Confidence has been low for a long time. In 2019 only 27% of voters were “very confident” that “results of elections are counted fully and reported accurately.”¹ We think good access for observers can start to raise this.

We would appreciate a chance to meet with the staff while these rules are being finalized, to answer any questions and discuss ways to make observation better, for election workers and observers.

OBSERVERS' ACCESS AND QUESTIONS

Election Law 2300(a)(9)(A) “You have the right to ask questions about election procedures and observe the election process.”

Comments:

- **Proposed rule 20873** lists many steps in the election process as open to observation. It needs to add preparation and conduct of ballot mailings—even when done on contractors' premises, transporting & opening the incoming mail bags & drop box bags—which are crucial first steps to control the number of ballots, cure mailing, curing, reviewing provisional ballots, audits including preparation such as the random draw, and recounts. Listing some steps and not others will lead to some staff inconsistently applying the law, and improperly limiting access in those steps. Few or no observers will regularly come to most steps, but the right of citizens to inform themselves and others by occasional visits to each step is a valuable tool in education and outreach.
- In order for observation to be accessible for observers with disabilities, each step needs to be webcast or otherwise accessible. To protect election officials from false accusations about what happened, it would help to authorize recording of the camera feeds.
- In audits and recounts, observers need to be able to see voters' marks, tally marks, and the aggregation of tally sheets. With observers from parties, nonpartisan candidates and the public, there can easily be too many observers to crowd behind the workers. Overhead cameras can accommodate the needed numbers, and letting a few observers at a time rotate behind the staff, to assure themselves that the cameras are accurate, is a reasonable solution.

¹ Knight Foundation. (2020). The Untold Story of American Non-Voters. (p. 11). <https://the100million.org/>

- Election processing lasts for many weeks. A requirement to post online the anticipated schedule, updated as needed, would help transparency, especially for voters of limited means who need to adapt to intermittent work schedules.
- **Proposed rule 20872(k)** refers to 20783, which does not exist, so it is not possible to comment. If it meant to refer to 20873, it is even more important that 20873 be complete.
- **Proposed rule 20874(f)** allows staff to give observers a “warning” without even saying which rule(s) are being violated, then eviction, and also allows eviction without warning. This seems to encourage staff to limit a right under California law without due process. There should always be a warning of which rules are being violated, and the warning can be followed immediately by eviction if the observer does not start following the rule. The wording should be, “...warning to that observer of which rule(s) they are violating. However, if an election observer continues to not comply with the observation rules...”

Election Law 2300(a)(9)(B) says, “You have the right to ask questions of the precinct board and elections officials regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. However, if persistent questioning disrupts the execution of their duties, the precinct board or elections officials may discontinue responding to questions.”

Comments:

- **Proposed rule 20873(h)** and **(i)** need to implement this part of the law and require answers.
- The law lets officials stop answering if one or a few people ask too many questions, and it would be better for public understanding and respect for the process to provide in the rule that “...officials may discontinue responding to questions from the disruptive questioner(s)”.
- It would also be better for public understanding to include in the rule that officials will answer written questions within two weeks.

CAMERAS

Election Law 2302 says, “A voter or any other person shall not be prohibited from using an electronic device, including a smartphone, tablet, or other handheld device, at a polling place provided that the use of the device does not result in a violation of Section

14221 [stay out of voting booth area],
 14224 [alone in voting booth & quick],
 14291 [voter not show ballot],
 18370 [no electioneering within 100’],
 18502 [not interfere with officer or voters],
 18540 [not intimidate voters],
 18541 [not “record a voter entering or exiting a polling place”, nor speak to or show info to voters within 100’],
 or any other provision of this code.”

Comments:

- **Proposed rule 20874(i)** removes this broad right to use electronic devices: “To ensure the safety and security of election workers and to prevent interference with the conduct of the elections process, the county elections official may restrict the size and **type** of items the election observer can bring into the location where observation is taking place.”

- This is non-uniform and excessive, yet still incomplete. They only need to “...restrict large items (over 18 inches) and dangerous items, and shall forbid recording of voters entering or exiting a polling place as well as voters’ signatures and voters marking ballots.” The word “**type**” would let officials restrict cameras, cell phones, binoculars, etc, even though these are necessary for effective observation and to avoid mis- and dis-information. A legal size clipboard is 16.5” long.

NUMBERS

Election Law 15004(c) says, “The county elections official may limit the total number of representatives employed pursuant to subdivision (b) in attendance [nonparty] to no more than 10 by a manner in which each interested bona fide association of citizens or media organization has an equal opportunity to participate. Any representatives employed and in attendance pursuant to subdivision (a) [2 per party] shall not be subject to the limit specified in this subdivision.”

Comments:

- **Proposed rules 20874(a)(2) and (4) and (g)** let counties limit observers based on size of the space. This is not consistent with the right to observe in state law. Webcams need to be available with space for a few observers to rotate in person, or the space needs to accommodate at least two per party, plus ten, and only when that much space is available may staff limit observers to available space.

CHALLENGES

Election Law 15104(d) says, “...observers shall be allowed sufficiently close access to enable them to observe the vote by mail ballot return envelopes and the signatures thereon and challenge whether those individuals handling vote by mail ballots are following established procedures, including all of the following:

- (1) Verifying signatures on the vote by mail ballot return envelopes by comparing them to voter registration information.
- (2) Duplicating accurately damaged or defective ballots.
- (3) Securing vote by mail ballots to prevent tampering with them before they are counted on election day.”

Comments:

- **Proposed rule 20873(b)** says, “...Observers shall be allowed sufficiently close access to enable them to **observe** the vote-by-mail identification envelopes, and the signatures and dates thereon.”
- This could involve too distant a view of signatures to challenge them, and ignores the right of close access to ballot duplication and locks and seals.
- The rule in **20873(c)(2)** needs to say “Observers shall be allowed sufficiently close access to ~~may~~ challenge whether those individuals handling vote-by-mail ballots are following established procedures, including all of the following” which covers signatures, ballot duplication and ballot locks and seals.
- **Proposed rule 20873(c)(3)(B)** says “The elections official shall have the discretion to halt challenges if multiple challenges are being made by the same person or group, and those challenges are disrupting the processing of the vote-by-mail identification envelopes.”

- At most the official could “...halt challenges from a person or group if ~~multiple~~ four or more unjustified challenges...” Unrelated challengers still have their legal right to challenge. The proposed wording allows denial-of-service attacks where one person could do two disruptive challenges, to halt challenges for everyone if an elections official chose to.

We hope these comments help provide the “uniform requirements and procedures” which will give equal protection and avoid differential treatment across California.

A new paper from the Alliance for Securing Democracy and Election Reformers Network comments that in 2020, South Korea livestreamed "the close of voting and the storing of the voted ballots; the preparation and beginning of counting; the counting process as it was progressing; and the close of the vote counting... South Korea’s efforts to expand election observation opportunities for its 2020 elections made it easier for its courts, experts, and the broader public to counter and dispel false election narratives."²

Sincerely,

Note: All affiliations are for reference only and do not constitute an endorsement

Paul Burke - Admin@VoteWell.net, California voter, poll worker in California, West Virginia, and Bosnia

Wendi Lederman - Board Member, Democratic Progressive Caucus of Broward

Ray Lutz - CitizensOversight.org

Celeste Landry - member of State Audit Working Group; California election poll worker in the 1980s.

Emily Levy, Executive Director, Scrutineers.org

John L. McCarthy, retired computer scientist, Lawrence Berkeley National Laboratory

Dorothy Fadiman, OSCAR nominated Filmmaker

Mary Scheib, California voter

Janet Maker, California voter

Lynn Turner Surum, Volunteer, Scrutineers.org

Dale Axelrod, Sonoma County Democratic Party, Chair – Outreach, Advocacy, & Legislation Committee

Luther Weeks, Executive Director, Connecticut Citizen Election Audit

Reed Davis, California voter

Tim White, member of State Audit Working Group

National Voting Rights Task Force, NVRTF.org, Signed by Jim Soper, Co-Chair

² Alliance for Securing Democracy and Election Reformers Network, "Lessons from Other Democracies," 6/14/2023. <https://securingdemocracy.gmfus.org/election-lessons/>