

November 13, 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/election-observation-regulations-proposed-t-ext.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 appreciate that the office accepted some comments from last June,² including giving a reason for each warning to observers, citing the observers allowed by ELEC 15004, observation of VBM ballots, and letting non-burdensome questioners continue even if a burdensome one is stopped. The other comments remain.

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 require 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,

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

² June comments by 15 people: <http://votewell.net/caobs.pdf>

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.

- 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.
- All manuals must be available for observers. All training for those who run the system must be available to observers if requested at least 90 days before the election or 10 days before the training, whichever is later. Training materials must not include passwords or other secrets required for security. Passwords must be unique to each user, and provided separately to each.
 - Otherwise, how can the observers possibly know when the system is being operated properly?
- Display screens of election equipment, including scanners and computers, must be projected to be readable by observers.
 - Watching someone at a computer screen, where the head and shoulders block the screen, is not a meaningful way to “observe the election process.”

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(k)** needs to implement this part of the law and require answers.
- It would be better for public understanding to include in the rule that officials will answer written questions within two weeks, instead of nominally requiring answers, with no deadline.
- Rules for observers should include a requirement to be civil, and prohibition on trying to intimidate, threaten or bully election workers or others. Citing the law or rules does not qualify as intimidation.

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)** let counties limit observers based on size of the space. This is not consistent with the right to observe in state law. It will undermine “uniform requirements and procedures,” and create disparate treatment across the state. 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 20872(m)** says, “Sufficiently close” shall mean the distance determined by the elections official that enables an observer to observe the complete processing of vote-by-mail ballots and vote-by-mail identification envelopes...”
- This could involve too distant a view of signatures to challenge them, and ignores the right of close access to locks and seals, and is not uniform across counties.

- The rule in **20872(m)** needs to say ““Sufficiently close” shall mean the distance ~~determined by the elections official~~ that enables an observer to observe and challenge the complete processing...”
- **Proposed rule 20879(c)** says “The elections official shall have the discretion to halt challenges from a person or group 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. ”
- Handling challenges is a duty, like all others, and officials need to take the time to handle all these duties. A uniform process could be “...if four or more unjustified ~~multiple~~ challenges are being made by the same person or group...”.

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

A 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.”³

Sincerely,

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

Paul Burke - California voter, poll worker in California, West Virginia, and Bosnia

Jim Soper - National Voting Rights Task Force

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John L. McCarthy - California voter and retired computer scientist, Lawrence Berkeley National Laboratory

Daniel H. Wolf - CEO, Democracy Counts, Inc.

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³ Alliance for Securing Democracy and Election Reformers Network, "Lessons from Other Democracies," 6/14/2023. <https://securingdemocracy.gmfus.org/election-lessons/>