

December 20, 2023

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

Via email to [aanderso@sos.ca.gov](mailto:aanderso@sos.ca.gov), [rdelucch@sos.ca.gov](mailto:rdelucch@sos.ca.gov)

Dear Secretary Weber:

The people signing below have these joint comments on California's proposed rules for election observers. <https://www.sos.ca.gov/application/files/8717/0180/1694/amended-proposed-regulation-text-12-5-23.pdf>

The December 5 revision made major improvements. Thank you for your work, which responded to many of our November 13 comments.<sup>1</sup>

We believe the rules still fall short of the all-embracing access provided in state law, "[2300\(a\)\(9\)\(A\)](#) "You have the right to ... observe the election process."

### **OBSERVERS' ACCESS**

**Election Law [2300\(a\)\(9\)\(A\)](#)** "You have the right to ask questions about election procedures and observe the election process."

#### **Comments:**

- The revised rules have been clarified to provide close enough observation for effective challenges. For effective observation of audits and recounts, observers need to be able to see voters' marks, tally marks, and the aggregation of tally sheets. 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." Proposed rule **20874(a)(13)** mentions "*video displays to magnify voting materials and closed-circuit video displays of election processes or activities.*" This is a valuable step. More steps needed are to be clear that webcams are allowed, not just closed-circuit, and that computer screens also need to be magnified for observers.
- 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.
- Manuals used by staff need to be available for observers. Training for those who run the system needs to be open to observers. Without manuals, and understanding the training, observers cannot know if the system is operating right, and observation can be a sham. Training materials must not include passwords or other secrets required for security. Passwords must be unique to each user, and provided separately to each.

### **NO INTERFERENCE WITH VOTERS**

**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

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<sup>1</sup> November comments by 10 people: <http://votewell.net/ob10commenters.pdf>

of the device does not result in a violation of Section 14221, 14224, 14291, 18370, 18502, 18540, 18541, or any other provision of this code.”

**Comments:**

- **Proposed rules 20873(m) and 20876(b)** refer to Election Law 2302, but force observers and officials to pursue all the bare references there. It would be helpful to put into this rule, at least the content of:
  - 14221 [stay out of voting booth area],
  - 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’]
- We appreciate that proposed rule **20875(c)** prohibits interfering with staff, covered in Election Law 18502.

Observers with good access can be your allies in knowing and sharing true information about how well elections run. Observers with poor access often doubt what they are not able to see.

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

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

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

Douglas W. Jones, Department of Computer Science, University of Iowa

Emily Levy, Executive Director, Scrutineers

Ray Lutz, Executive Director, CitizensOversight.org, creator of AuditEngine.org