



June 15, 2018

The Honorable Henry Stern
Chair, Senate Elections and Constitutional Amendments Committee
State Capitol, Room 3070
Sacramento, CA 95814

Cc: The Honorable Bill Quirk and Members of the Senate Elections and Constitutional Amendments Committee

RE: AB 2125 (Quirk) – Oppose Unless Amended

Dear Chairman Stern:

It is with great reluctance but even greater necessity that the organizations and individuals listed below strongly oppose AB 2125 in its current form to institute risk-limiting audits of election results, unless amended to satisfactorily address the below three issues, or to instead amend the bill to be a bill having the Secretary of State create a task force to study risk-limiting audits as described below.

We all agree that robust risk-limiting post-election audits could be an improvement over California 1% manual tallies for verifying voting totals. However, as it stands, the bill would in fact enshrine into law rules that could undermine the proper performance of the audits and erode voters' confidence that vote totals are being correctly verified. Without rigorous audits, the integrity of our elections will be compromised.

For several months our coalition has engaged with the author and sponsor, and we're pleased with the improvements made to the original bill. Unfortunately, a number of the most important improvements we requested haven't been incorporated into the bill, and some additions we didn't request have made some aspects worse than before.

Professor Philip B. Stark, Associate Dean of Mathematical and Physical Sciences at the University of California Berkeley and the inventor of risk-limiting audits, said he opposes AB 2125 as currently drafted because it could allow audits that aren't actually genuine risk-limiting audits. We agree.

The three reasons we oppose AB 2125 unless amended are:

1) AB 2125 does not require the use of voter-verified paper ballots.

Genuine risk-limiting audits must manually inspect an appropriately drawn statistical random sample of the original, voter-verifiable paper ballots (and not, for instance, electronic versions of ballots, digital images of ballots, or printouts from digital cast-vote records). Digital images, re-printed ballots, and other any computer data can be modified by hackers or others and are not a reliable record of voter intent and therefore cannot be allowed to be used for post-election audits.

We appreciate that the author removed the express inclusion of “ballot images” that was in an earlier version of the bill. However, the current version does not specifically bar the use of digital images or re-printed ballots for the determination of voter intent. Though one could argue that “ballot” includes only paper ballots or voter-verifiable paper audit trails, the current definition of “ballot” doesn’t make this clear enough and could theoretically allow using ballot images or printouts of ballot images.

One way to address this concern is to add the following definition for this article:

15366(e) “Ballot” means original, voter-verifiable paper ballots, including voter-marked paper ballots whether marked manually or via a ballot marking device or system, and where direct recording electronic (DRE) voting systems are used, the voter-verifiable paper audit trail (VVPAT). It does not mean electronic versions of ballots, digital images of the ballots, or paper printouts of ballot images or of digital cast-vote records.

2) AB 2125 does not require risk-limiting audits to properly take into account all validly cast ballots.

Genuine risk-limiting audits require taking into account all validly cast ballots using appropriate statistical sampling to ensure that the final election outcomes are correct. Unfortunately, there is nothing in the bill now that would prevent regulations from excluding provisionally cast ballots or vote-by-mail ballots that were not tabulated as of some date, leaving the validity of the overall audit and vote certification in doubt.

Professor Stark has sent the author and sponsor several different methods by which this could be accomplished through regulation. But the requirement to include all validly cast ballots must be encoded in the law. One way to address this concern is to replace the last sentence of 15367(a)(3) with language recommended by Professor Stark:

The Secretary of State shall define in regulations how all ballots, including provisional ballots and vote-by-mail ballots whose status has not yet been resolved, shall be taken into account in the audit to ensure that if a full manual tally of the votes on all validly cast ballots would show an electoral outcome that differs from the reported outcome, there is at most a five percent chance that the audit will not require such a tally.

3) The public must be able to verify that the audit was conducted properly, not merely “observe” it.

The latest amendments to the bill added 15367(b)(2)(G) that the Secretary of State shall “Establish procedures and requirements to ensure the audit process is observable by the public.” Unfortunately, being able to observe the audit isn’t enough. The public must be able to verify that the risk-limiting audit was properly conducted.

In particular, the public must be able to confirm that the audit was not stopped prematurely. This requires, among other things, election officials to publicly disclose the algorithms used to select the

sample and to calculate the risk, to provide public opportunity to observe the selection of the “seed” for the random sample, to provide public opportunity to verify that the correct ballots were inspected during the audit, and to provide public opportunity to observe the voters’ marks on the ballots that were inspected by the audit to ensure that the audit inputs were correct.

One way to address this concern is to amend 15367(b)(2)(G) to:

Establish procedures and requirements to ensure the audit process is observable and verifiable by the public, including but not limited to disclosing the algorithms used to select samples and to calculate the risk, providing public opportunity to verify that the correct ballots were inspected during the audit, and providing public opportunity to observe the voters’ marks on the ballots that were inspected by the audit to ensure that the audit inputs were correct.

Options to Remove Opposition

These and other issues in the bill are big enough that the best solution may be to amend the current bill to instead have the Secretary of State set up a task force to study implementation of risk-limiting audits, made up equally of representatives of county elections officials and representatives of election integrity organizations, good government organizations, and statistical experts in the area of risk-limiting audits. This would give the best chance to pass a bill next year that has all the necessary details worked out to best protect the integrity of our elections. We could support the bill if amended to do so.

Otherwise, we strongly oppose AB 2125 and respectfully request your “NO” vote, unless the above three issues are sufficiently addressed so that California institutes genuine risk-limiting audits, rather than passing a law that could allow for a fatally flawed audit process that puts the integrity of our elections at risk.

RESPECTFULLY,

California Clean Money Campaign
California Voter Foundation
Indivisible East Bay
Money Out Voters In (MOVI)
Verified Voting
Voting Rights Task Force

Kammi Foote, *Inyo County Clerk/Recorder & Registrar of Voters*
Professor Philip B. Stark, *Associate Dean of Mathematical and Physical Sciences at the University of California Berkeley*

Kim Alexander, *President & Founder, California Voter Foundation*
Melanie Bryson, *Co-lead, Voter Rights and Election Integrity, Indivisible East Bay*
Trent Lange, *President and Executive Director, California Clean Money Campaign*
Pamela Smith, *Senior Advisor, Verified Voting*
Jim Soper, *Co-Chair, Voting Rights Task Force*
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