



June 2, 2020

The Honorable Marc Berman
California State Capitol, Room 6011
Sacramento, CA 95814

Re: Assembly Bill 860 - Letter of Concern

Dear Assembly Member Berman:

The California Voter Foundation and Verified Voting are writing to express technological and security concerns about your bill, AB 860, which requires all counties to mail every registered voter a vote-by-mail ballot for the November 3 Presidential Election. We appreciate all the hard work and negotiations that have gone into crafting both AB 860 and its companion bill, SB 423 and hope these comments help strengthen your proposal as well as planning for November.

- Provisional voting and VoteCal

While we support the plan to mail every registered voter a ballot during this uncertain time, doing so may also result in widespread use of provisional voting in order to keep voters who received a mailed ballot from being able to cast an additional ballot.

Counties could minimize the need for provisional ballots if they have access to real-time connectivity from voting sites to VoteCal, California's statewide voter registration database, and can verify the voter's mailed ballot has not already been received *and* also cancel that ballot to prevent double-voting.

During the March Primary, VoteCal was inaccessible for periods during the morning and evening to several counties on Election Day, dramatically slowing down the voting process during those times. Los Angeles County's technical issues, including problems syncing county voter data with VoteCal, contributed to long lines and hours-long wait times in some locations. If *all* counties will be depending on VoteCal for November to verify whether ballots have already been cast, it is imperative that this database be load- and stress-tested well in advance to ensure it can handle the amount of traffic that may occur when potentially thousands of voting sites across the state attempt to access the database in real time.

- Secretary of State's voter lookup tools

Another asset voters rely on is the Secretary of State's web site. A companion bill, SB 423, would, if enacted, allow counties to consolidate polling places and require ballot drop boxes be made available. Voters rely on the Secretary of State's web site to find their polling place, especially if it has moved, and ballot drop-off locations. But on March 3rd these lookup tools were unavailable for periods of time when the Secretary of State's web site experienced intermittent outages throughout the day. According to a tweet posted by the Secretary of State's office, "this was due to higher than normal traffic. Staff has worked to increase capacity and the site is up now. There is no evidence of malicious activity".

Such outages could again raise fears that the state's election site has been hacked. We need to have a public accounting of these problems and ensure the registration database and state web site are robust enough to handle the increased traffic they are likely to experience before and on November 3.

- Remote Accessible Vote-by-Mail

AB 860 also requires counties to permit any November 2020 general election voter to cast a remote accessible vote-by-mail ballot (RAVBM). This voting method, in which a voter requests their ballot by phone or email and is sent a link where it can be downloaded, is still relatively new in some jurisdictions, having only been required to be made available by all counties as of this year. RAVBM is designed to give voters with disabilities a way to mark their ballot using their at-home assistive device (especially important in a vote-by-mail election setting), as well as to get military and overseas voters their ballots more quickly.

California implements RAVBM with a number of security guardrails in place, including testing, certification and standards preventing online marking and transmission of votes. California also conducts signature checking and requires that a voter who wishes to use the system make a request to do so. No system is entirely risk-free, despite these mitigations. Because some RAVBM systems encode the voter's choices in non-human-readable codes on the voters' marked ballots which voters cannot verify, RAVBM ballots would benefit from additional targeted auditing.

Enabling use of RAVBM to ensure no voter falls through the cracks due to a lost or late arriving VBM ballot or for other reasons particularly in the last week prior to Election Day can likely be achieved without over-taxing elections offices' resources, but broad expansion to any voter during the entire voting period increases both burden and risks.

To ensure that this system is available to the voters it was designed to serve and election offices are not overwhelmed by potentially hundreds or thousands of voters attempting to use it and needing assistance, we recommend that the Secretary of State be asked to provide guidance to counties to help identify circumstances for which use of RAVBM can ensure no voter is left behind during these times of pandemic, and any resources needed for increased processing of such ballots. The Secretary should also provide support for any targeted audit that may be needed to help ensure RAVBM ballots are counted as cast.

- Election Day external ballot drop-off locations

Lastly, we strongly recommend that you amend your bill to require every county to have at least one external ballot drop-off location available on Election Day during voting hours (7 am - 8 pm). This need not be a freestanding drop box; it could simply be two credentialed election staffers at a walk-up or drive-up location where voters can return their ballots safely and securely. Every election tens of thousands of ballots are rejected and late arrival is a leading reason for rejection. Even a longer grace period, as your bill provides, would not address the problem of ballots that are postmarked too late to count.

A study CVF and the California Civic Engagement Project are conducting of rejected ballots in three counties found that in the June and November 2018 elections, 99 percent of the ballots rejected in Sacramento County due to lateness were *postmarked* after Election Day. We need to be encouraging voters to mail ballots *before* Election Day and return them *in person* on Election Day. An exterior ballot drop-off location will enable them to do so, without having to enter an enclosed space, to avoid potential exposure to the coronavirus.

Thank you for considering these issues, we are happy to discuss them further and can be reached at 916-441-2494 or kimalex@calvoter.org.

Sincerely,

Kim Alexander, President & Founder
California Voter Foundation

Pamela Smith, Senior Advisor
Verified Voting

Marian K. Schneider, President
Verified Voting

Cc: The Honorable Governor Gavin Newsom, California Governor
The Honorable Alex Padilla, California Secretary of State
The Honorable Tom Umberg, Committee Chair, Senate Elections and Constitutional Amendments
Joe Holland, Santa Barbara County Clerk-Recorder-Assessor, Registrar of Voters and President, California Association of Clerks and Elections Officials (CACEO)
Brandi Orth, Fresno County Clerk/Registrar of Voters and Vice President, CACEO