

Modernizing Elections.

Expanding Participation.

Report and Recommendations for the Presidential Commission on Election Administration

August 29, 2013



Modernizing Elections. Expanding Participation.

August 29, 2013

To the Presidential Commission on Election Administration:

On behalf of the Future of California Elections (FOCE), I want to thank those of you who were able to join us in San Francisco earlier this month for a listening session on election policy in California and its potential lessons for reforms nationwide.

This document is intended as a summary of FOCE's work on key issues in the field of election policy and is being shared with the Commission with the expectation that it will be included with other materials the Commission uses in preparation of its final report.

FOCE was created in late 2011 with the support of The James Irvine Foundation and the commitment of a small group of election officials, civil rights advocates and good government groups. The mission of FOCE and its members is to identify common ground on reforms that both expand participation and promote effective and well-functioning elections within the State of California.

In particular, the members have committed to applying a set a mutually agreed-upon principles to a variety of efforts in California, including online voter registration, improving the state voter information guide, expanding access for all, including voters with disabilities and those with limited English proficiency, and identifying opportunities to expand voters' options for casting a ballot on or before Election Day. In addition, our member election officials are leaders on innovative and important projects on topics as varied as contingency planning, access for voters with disabilities, providing language assistance, and voting technology.

The collaboration has already yielded numerous achievements. In 2012, FOCE members were key partners in the effective implementation of online voter registration and successfully advocated for passage of Same Day Voter Registration. FOCE has worked closely with the Secretary of State to improve the content and usability of the state Voter Information Guide and to implement the National Voter Registration Act (NVRA) including the Secretary's designation of the state's new Health Benefit Exchange as a voter registration agency. The efforts of FOCE members in NVRA implementation are expected to result in significant increases in voter registration.

We believe that many aspects of our experience will benefit the Commission in its efforts to identify best practices and process for election officials nationwide. Thank you for taking the time to join us and for the opportunity to share this report.

Sincerely yours,

Doug Chapin, Director



Modernizing Elections. Expanding Participation.

PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION LISTENING SESSION – AUGUST 6, 2013 PARTICIPANTS

From the Future of California Elections:

- Orson Aguilar, Executive Director Greenlining Institute
- Kim Alexander, President & Founder California Voter Foundation
- Melissa Breach, Executive Director League of Women Voters California
- Amanda Brown, National Political Director Rock the Vote
- Caroline Bruister, Program Director and Outreach Specialist California Forward
- Doug Chapin, Director Future of California Elections
- Cathy Darling Allen, County Clerk Registrar of Voters Shasta County; and President California Association of Clerks and Election Officials (CACEO)
- Kathay Feng, Executive Director California Common Cause
- Astrid Garcia, Deputy Director Future of California Elections
- Rosalind Gold, Senior Director of Policy, Research and Advocacy National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund
- Neal Kelley, Registrar of Voters Orange County
- Deanna Kitamura, Senior Staff Attorney Asian Americans Advancing Justice Los Angeles
- Jill LaVine, Registrar of Voters Sacramento County
- Raul Macias, Voting Rights Attorney American Civil Liberties Union of San Diego and Imperial Counties (ACLU)
- Fred Nisen, Attorney Disability Rights California
- Steven Ochoa, National Redistricting Coordinator Mexican American Legal Defense and Educational Fund (MALDEF)
- Gail Pellerin, County Clerk/Registrar of Voters Santa Cruz County
- Michelle Romero Policy Director Greenlining Institute
- Emily Rusch, Executive Director CALPIRG
- Trudy Schafer, Senior Director for Program League of Women Voters California
- Lori Shellenberger, Voting Rights Director ACLU of California
- Hillary Sklar, Attorney Disability Rights California
- Heather Smith, President Rock the Vote
- Pamela Smith, President Verified Voting Foundation
- Jaime Young, Program Coordinator Polling Places, Precinct Operations, Voting Equipment and Accessibility - Santa Cruz County

From the Presidential Commission on Election Administration:

- Robert Bauer, Co-Chair
- Benjamin Ginsberg, Co-Chair
- Michele Coleman Mayes, Commissioner
- Trey Grayson, Commissioner
- Tammy Patrick, Commissioner
- Larry Lomax, Commissioner
- Nate Persily, Senior Research Director

Commission Guests:

- Bruce Cain, Professor of Political Science Stanford University
- Rick Hasen, Professor of Law and Political Science University of California, Irvine
- John Fortier, Democracy Project Director Bipartisan Policy Center

From The James Irvine Foundation:

- Jim Canales, President and CEO
- Connie Galambos Malloy, California Democracy Senior Program Officer
- Catherine Hazelton, California Democracy Senior Program Officer

Future of California Elections members unable to attend

- Efrain Escobedo , Governmental & Legislative Affairs Manager Los Angeles County Registrar-Recorder/County Clerk
- Eugene Lee, Voting Rights Project Director Asian Americans Advancing Justice Los Angeles
- Dean Logan, Registrar-Recorder/County Clerk Los Angeles County
- Arturo Vargas, Executive Director National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund
- Thomas Saenz, President and General Counsel Mexican American Legal Defense and Educational Fund
- Jim Mayer, President and CEO California Forward

OPENING SESSION

- Welcome by Jim Canales, The James Irvine Foundation
- > Brief overview of FOCE approach Doug Chapin, Director Future of California Elections

KEY DOCUMENT:

GUIDING PRINCIPLES

The Future of California Elections (FOCE) is a collaboration between election officials, civil rights organizations and election reform advocates who come together to examine and address the unique challenges facing the State of California's election system.

The group is committed to the following Guiding Principles:

The policies and practices that govern California's elections – and the institutions and individuals responsible for administering them - should:

- 1. Encourage full participation by all eligible citizens
- 2. Ensure and protect equal access to participation regardless of age, race, language, income, education, disability or location
- 3. Ensure that every eligible citizen can easily register to vote and that voter registration rolls are accurate and up-to-date
- 4. Provide citizens with information about registration and voting including information on candidates, ballot issues and voting instructions in a variety of formats, including disability accessible formats, and languages so that every voter can make informed voting choices and cast a meaningful and valid ballot
- 5. Provide each voter with flexibility regarding options for casting a ballot
- 6. Protect voters from intimidation and deception and ensure enforcement and compliance with all applicable laws protecting voters' rights and the integrity of the voting process
- 7. Reflect the highest standards of transparency, accuracy and security and provide all citizens with justifiable confidence in election systems including voting technology and their outcomes
- 8. Provide outreach and education to California's youth about the electoral process and the value of civic participation in order to foster a spirit of lifelong participation in all voters
- 9. Guarantee that state and local governments provide resources in proportion to election administration requirements while holding election officials accountable for efficient and effective use of those funds
- 10. Commit to seeking improvements of all kinds from small fixes to big and fundamental changes that make California's elections work for the voters of today and tomorrow

PANEL ONE: Contingency Planning

- > Jill LaVine, Sacramento County
- Pam Smith, Verified Voting Foundation

KEY DOCUMENTS:

Table of contents, Sacramento County contingency planning binder [FOCE Document 1]

In elections you plan for the known, but it is the "what if's" that will keep you awake. Daily news reports events that have the potential to disrupt an election. Sacramento County has put together a Security and Emergency Action binder. While the emergency could be a natural disaster, it could also be a local power outage. This binder contains procedures, contact information, maps and election information to assist the management staff to take the necessary actions for the election to proceed.

California Secretary of State May 2012 memo regarding Emergency Situations that May Affect Elections in California [FOCE Document 2]

Excerpts from "Counting Votes" report by Verified Voting Foundation [FOCE Document 3]

We rated states using such machines for some or all of their voters on how well they could manage equipment breakdowns or similar contingencies in their polling places in "Counting Votes 2012: A State by State Look at Election Preparedness" (http://countingvotes.org). The map provided illustrates how well those states' laws or regulations address those specific challenges.

RECOMMENDATIONS:

- 1. State and local election offices should maintain documents and procedures for coping with a wide variety of contingencies including natural disasters and attacks or disruptions at the polls;
- 2. State laws and technology should be configured to allow voting flexibility in the event of a contingency while still preserving the security and auditability of the system and individual ballots.

Recommendation 1: Planning Documents and Procedures

Sacramento County Registrar Jill LaVine maintains a binder containing one of the nation's most detailed planning documents in the event of natural or man-made contingencies affecting elections in her county. The document not only includes contact information for election and other county employees but also for anyone else –state officials, vendors and even the media – who may be pressed into action in the event of a disruption on Election Day. The binder also includes a map showing the distribution of polling locations, materials and employees, which could be necessary in the event of a problem affecting one area of the county (including any problem separating the northern and southern portion of the county at the Sacramento River line).¹

Sacramento has also established procedures for managing ballots in the event that all or part of the county's equipment is unavailable or inoperable. The county has entered into memoranda of understanding (MOU) with neighboring counties using similar voting equipment to allow Sacramento to bring ballots to their locations for processing and counting (and offer the same service to those counties on a reciprocal basis should the need arise).

¹ Sacramento County, Document 1.

The county also operates under state laws that address emergency situations, including those which offer some flexibility to localities in the event of a contingency as well as others that require action by the Governor to alter the parameters of Election Day.²

Recommendation 2: Procedures to Protect Technology and Ballots

Verified Voting Foundation reports that California is one of just three states (Indiana and Ohio are the others) that rates "excellent" on polling place contingency plans based on the following standards:

States that use direct recording electronic (DRE) voting machines (whether or not equipped with a voter verified paper audit trail (VVPATs)) as a primary voting system on Election Day should: (1) require immediate repair or replacement of machines in the event of machine failure; (2) require emergency paper ballots to be available at the polling place; (3) require emergency ballots to be distributed in the event that any voting machine fails, or (4) in the event of long lines resulting from either machine failure or an insufficient allocation of machines in the precinct to serve the volume of voters expeditiously; and (5) in developing procedures for emergency paper ballots, states should also require that emergency paper ballots be treated as regular ballots (rather than absentee or provisional ballots, which are subject to scrutiny before being counted).³

The report credits California for procedures on all five standards, as detailed below:

Having procedures in place for machine repair or replacement in the event of failures

California has procedures for the repair or replacement of voting machines in the event of malfunction. The only two counties in California that deploy DRE voting systems as the primary voting system are San Mateo and Orange counties. Under the order of the Secretary of State, machines must be repaired or replaced upon malfunction. Both San Mateo and Orange counties confirmed that they have contingency plans in the event of machine failure, and an optical scan county also confirmed the same. Orange County reported that "[w]e usually have six to eight booths per polling place" and for the general election in November, "if you have two or three down, and lines, obviously we'll shift to paper pretty quick." In addition, according to the Secretary of State's office, "if a machine malfunctions during Election Day . . . rules adopted by the Secretary of State require the voting machine to be taken out of service, sequestered, and 100% of all votes cast on that machine must be manually tallied."

Having paper ballots available at every polling place

San Mateo and Orange counties are governed by a California statute that requires election officials to provide paper ballots at the polling place, and entitles voters to a paper ballot upon machine failure, or simply upon request, "regardless of the availability of the direct recording electronic voting system, as long as supplies remain available."

The statute requires each polling place to have paper ballots in the amount of at least 10% of registered voters in the polling place for the statewide general election. Election officials in Orange County reported that the county indicates that "[w]e have a ton of paper out there in case of issues that may arise."

In addition, California Elections Code "requires elections officials to deliver, within 2 hours, additional ballots to any precinct where an eligible voter is unable to vote due to an insufficient number of ballots. While waiting, the voter has the option of casting a vote immediately using procedures that are subject to approval by the Secretary of State." Allowable methods include the use of provisional, absentee and sample ballots, reasonable facsimiles thereof, "[b]allots from neighboring precincts, provided the ballot types are identical," emergency or test ballots containing all of the candidates and questions on the

² CA Secretary of State, Document 2.

³ Counting Votes, http://countingvotes.org/sites/default/files/CountingVotes2012_Final_August2012.pdf, p. 11.

regular ballots for that precinct, and "[a] blank piece of paper upon which the names of all of the candidates and titles of ballots measures are printed, along with corresponding areas to allow voters to select their choices." San Mateo County reported that it would be prepared to use a wide variety of ballots for emergency purposes, including printing more paper ballots (in-house), and using any or all of the other types of ballots listed above.

Allowing emergency paper ballots to be deployed when any machine malfunctions

As noted above, California voters are not only entitled to vote on a paper ballot if any machine fails, they are entitled to vote on a paper ballot even if all of the machines are working, simply by requesting one.

Making sure emergency paper ballots are available at the polling place in the event of long lines
California requires emergency paper ballots to be kept at the polling place and allows paper ballots to be
used at any time. As noted above, emergency paper ballots may be provided upon a voter's request,
regardless of whether the direct recording electronic voting system is working, as long as sufficient
supplies are available for the duration of the election. While we do not endorse a blanket "paper or
plastic" option — meaning giving every voter the option to vote on machines or paper regardless of
whether there are long lines — we do endorse the fact that election officials will be able to provide
voters with paper ballots in the event of long lines, when voters might otherwise be forced to forego
voting altogether.

Treating emergency ballots as regular ballots, not subject to additional scrutinyAlthough provisional ballots may be used as emergency ballots, if they are used "by an otherwise qualified voter [they] shall be counted as a regular ballot" without additional scrutiny. 4

Additional documents of interest:

- Sacramento County emergency preparedness check list [FOCE Document 4]
- California Secretary of State Uniform Vote Counting Standards [FOCE Document 5]
- Verified Voting, Changes Ahead: A Look at Voting System Testing and Certification https://www.verifiedvoting.org/wp-content/uploads/2013/07/ChangesAhead-ALookAtVotingSystemTestingCertification.pdf
 While jurisdictions could theoretically improve on the voting systems they currently have in place, the ability to obtain new systems depends not only on available funding but also on limitations of the marketplace. Our informal report illustrates many of the challenges facing jurisdictions that need new voting systems.
- California Voter Foundation Policy Brief, "Modernizing California's Voting Technology: A Look Back, A Look Ahead http://www.calvoter.org/issues/votingtech/pub/CVF voting tech policy brief.pdf
- Verified Voting "Verifier Map" http://verifiedvoting.org/verifier/
 The type of voting system in use can make a significant difference in the wait times voters experience at the polls. Where a machine interface is required (as for approximately 1/3 of voters nationwide), the number of voters able to vote at the same time is necessarily limited by how many machines are available. Verified Voting collects data on what voting systems are in use in all jurisdictions nationwide. The Verifier provides a snapshot for all states; details for each county or town for each state can be examined as well.

⁴ Counting Votes, http://countingvotes.org/sites/default/files/CountingVotes2012 Final August2012.pdf, pp. 36-37 (internal citations omitted)

PANEL TWO: Access for Voters Not Yet Fully Proficient in English and Voters with Disabilities

- ➤ Michelle Romero, Greenlining Institute
- ➤ Deanna Kitamura, Asian Americans Advancing Justice Los Angeles
- > Rosalind Gold, National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund
- ➤ Hillary Sklar/Fred Nisen, Disability Rights California
- Gail Pellerin, Santa Cruz County

KEY DOCUMENTS:

California Common Cause, Recommendations for Language Access [FOCE Document 6]

For nearly two decades, California election officials have been dealing with the need to provide language assistance to certain voters. This document describes best practices associated with those efforts.

Greenlining Institute, Recommendations from Listening Sessions and Materials on Plain Language [FOCE Documents 7, 8 and 9]

Greenlining conducted community listening sessions with various voters on the usability of election materials and generated numerous recommendations for election officials. One of these found that effective communication with voters requires use of clear language in all materials designed to help individuals navigate the voting process. These materials describe the "plain language" approach and illustrate how application of such concepts can improve election materials.

Asian Americans Advancing Justice's Voices of Democracy: Asian Americans and Language Access During the 2012 Elections [FOCE Document 10]

Many Asian American voters face language barriers and rely on written and oral language assistance provided under Section 203 of the Voting Rights Act to exercise their fundamental right to vote. Suggested policies and practices to ensure the availability of language assistance, such as strategic planning involving the community, can be found in this report.

NALEO Educational Fund, Recommendations to Enhance Access to California's Electoral Process for Latinos and all Californians [FOCE Document 11]

Latinos are poised to become California's largest population group, and the memorandum provided by the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund) highlights the Latino community's need for basic information about the electoral process, and the importance of sound language assistance programs. The memorandum also describes the "best practices" of several California jurisdictions in providing voter education, outreach and language assistance to Latinos.

Disability Rights California Report: Voters with Disabilities Accessibility Barriers and Best Practices [FOCE DOCUMENT 12]

In spite of federal and state laws that protect the voting rights of individuals with disabilities, barriers to exercising the right to an accessible, independent and private ballot continue to exist for voters with disabilities. Disability Rights California's report discusses current barriers that cause disenfranchisement of many people with disabilities and best processes to mitigate and eliminate these barriers.

Santa Cruz Registrar of Voters Presentation and State Guidelines [FOCE DOCUMENTS 13 and 14]
Santa Cruz County summarized its experience with providing accessible polling places and meeting the needs of voters with disabilities. After settling a lawsuit with the Attorney General in 2007, Santa Cruz County achieved 97% compliance of finding the most accessible and available polling sites after the November 2010 election. Santa Cruz County has developed a number of best practices to ensure all

voters have access to voting regardless of disability. Significant challenges continue to exist, especially when facilities built by the state and local government fail to meet the access laws outlined in ADA and Title 24. The County also provided an excerpt from state guidelines on voting accessibility advisory committees in place in Santa Cruz and elsewhere.

RECOMMENDATIONS:

- 1. Reach out to communities with voters with limited English proficiency and voters with disabilities in an effort to integrate (or, in the language of many FOCE members, "bake in") flexibility for all voters rather than make accommodations to "regular" procedures
- 2. Understand that access is predicated not just on documents and procedures but also relies on well-trained and knowledgeable poll workers
- 3. Written materials printed or online need to feature plain language in every language

Recommendation 1: Outreach to Affected Communities

California is one of the most diverse states in the nation, which requires election officials to establish flexible procedures that serve a wide range of voters, including voters with limited English proficiency as well as those with disabilities. Several FOCE members have stressed the need to involve such communities directly in election planning:

California Common Cause notes:

Today, several California counties schedule regular meetings (usually quarterly) to involve community leaders in shared problem solving, open communication about plans, and to encourage collaboration on specific projects. In the early days, the interactions with registrars and community leaders were often less congenial, and sometimes adversarial, because they centered on community leaders delivering reports of problems on Election Day (or before). In some counties, such as Los Angeles, the community meetings have grown to include groups representing voters with disabilities, those concerned with election integrity, those representing different parties, and groups engaged in poll watching, voter assistance, voter registration, or recruiting poll workers. The regular meetings have helped to increase trust, open channels of communications, and in many instances, identify solutions to address problems that have helped avoid or resolve litigation.⁵

The National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund reports:

In order to ensure that election officials develop effective strategies for reaching, educating, and serving Latino voters, they must work closely with community groups and other stakeholders who are familiar with the Latino community and knowledgeable about the needs of Latino voters. One of the best practices for structuring this relationship is the creation of an entity which includes both election officials and community group members. While these entities can address issues related to community members in general, they should have some mechanism (such as a specialized committee or working group) which focuses primarily on language-minority accessibility issues.

Three of the most effective groups of this nature are convened by Los Angeles County (the Community Voter Outreach Committee), the City of Los Angeles (the LA Votes Committee), and Orange County (the Community Election Working group). These groups hold regular meetings which bring together election administration staff with "hands on" responsibility for various matters with a diverse group of

⁵ California Common Cause, Document 6.

community representatives. These groups address a broad range of issues. Community members provide input on pollworker recruitment, training and deployment strategies.

Members provide suggestions to election administration staff on approaches to translating materials, and may assist with reviewing actual translations. The groups work together on voter education and outreach plans. Group meetings also provide a venue to "troubleshoot" problems which may arise during election administration, and to reach practical and cost-effective solutions. In addition, these groups promote collaboration between community organizations, and assist them in utilizing their resources effectively through enhanced coordination of activities and sharing of information.

In addition, the on-going dialogue established by meetings of election official/community partnership groups lay the foundation for effective mechanisms to quickly identify and resolve problems which may occur on Election Day. The City of Los Angeles has established a hotline that community groups can use on Election Day to report problems at polling sites (the City also has a hotline that enables pollworkers to report problems, which allows the City to deploy staff to a particular polling site, if necessary). Thus, on Election Day, jurisdictions can quickly learn if there are any systematic or jurisdiction-wide issues that develop, and can also expeditiously respond to isolated problems as may be needed. This greatly enhances the voting experience of Latinos and all voters within the jurisdiction.⁶

According to Asian Americans Advancing Justice - Los Angeles:

Successful implementation of language assistance begins with pre-election planning. It is important that election officials work with community members to ensure that their plan works for the local community. Community members can provide guidance on precincts to target for bilingual poll worker placement and participate in community advisory committees. Community advisory committees are a good method to get community members to review the quality of translated election materials, formulate voter education and outreach plans, and work with officials to troubleshoot issues leading up to and following the elections⁷.

Disability Rights California had similar observations with regard to outreach to voters with disabilities:

There are currently two formal opportunities for Election Officials to work in partnership with the disability community. The Secretary of State hosts a Voting Accessibility Advisory Committee (VAAC) comprised of county election officials and disability rights advocates such as Disability Rights California and others. Historically, the VAAC has been used to foster discussion about voting barriers, to identify solutions, and to monitor progress.

In this spirit, the Secretary has encouraged County Election Officials to host VAACs at the local level. Disability Rights California participates on a number of county VAACs. However, it should be noted that, as a general rule, the VAACs are not operational in many counties.

We know that VAACs have been mutually beneficial to Election Officials and to the disability community. Successes include providing technical assistance to the Secretary of State for the 2010 Polling Place Accessibility Guidelines and to County Election Officials for their poll worker trainings and poll site accessibility compliance.

More can and should be done by California to monitor County adoption of VAACs as well as progress achieved to identify and address barriers to voting faced by voters with disabilities.⁸

-

⁶ NALEO Educational Fund, Document 11, pp. 9-10.

⁷ Asian Americans Advancing Justice - Los Angeles, Document 10, pp. 6-7.

⁸ Disability Rights California, Document 12, p. 7.

Santa Cruz County Registrar Gail Pellerin shared the state's guidelines on the composition and mission of the VAACs:

Committee Functions:

- a. Assisting and advising county elections officials in outreach programs to organizations of elderly individuals and people with disabilities.
- b. Advising county elections officials on the placement of voting equipment, recognition of barriers to participation by elderly voters and voters with disabilities, and mechanisms to eliminate or mitigate the impact of these barriers to accessibility.
- c. Assisting county elections officials in surveying polling place accessibility in compliance with these quidelines.
- d. Evaluating an inaccessible polling place or voting area to:
 - Determine that an inaccessible polling place, with the use of temporary modifying equipment or measures, can be modified to permit its use by elderly voters and voters with disabilities.
 - ii. Determine that the polling place is not accessible, and cannot be modified, regardless of the application of temporary equipment or measures.
- e. Assisting and advising county elections officials in training of precinct workers relative to accessibility of elderly voters or precinct officials with disabilities.
- f. Assisting in the recruitment of elderly voters or precinct officials with disabilities.
- g. Undertaking other activities relative to accessibility of the voting process.

Committee Composition:

- 1. Committees in counties with as many as 50,000 registered voters shall have a minimum of 3 members.
- 2. Committees in counties with more than 50,000 and as many as 500,000 registered voters shall have a minimum of 5 members.
- 3. Committees in counties with more than 500,000 and as many as 1,000,000 registered voters shall have a minimum of 7 members.
- 4. Committees in counties with more than 1,000,000 registered voters shall have a minimum of 9 members.
- 5. Existing county boards or committees that meet the representational requirements of (1), (2), (3) or (4) above, as appropriate, may assume the functions of the Voting Accessibility Advisory Committee.

Inaccessible Sites:

When an accessible polling place cannot be located, county elections officials may attempt to modify an inaccessible polling site for use on Election Day by applying temporary measures to provide accessible features or to minimize physical barriers at that polling place. Equipment or measures used to modify areas of a polling place may be placed at arrival points, on the paths of travel, at entryways, or within a voting area.⁹

Recommendation 2: Focus on Training Poll Workers on Language Assistance and Disability Needs

One key theme that emerges in the discussion of ensuring access for all voters is the vital role that poll workers play in the process. Consequently, several FOCE members have noted the importance of training in helping these individuals serve all voters.

Asian Americans Advancing Justice - Los Angeles reports on the results of a recent monitoring effort that found over one-third (35%) of poll workers waited for voters needing language assistance to approach them and that 43% of polling places observed had bilingual poll workers without a badge or other material identifying them as such. Moreover, 23% of precincts were missing at least one Asian language-speaking bilingual poll worker. The group recommends that poll workers be identified to voters as having language skills, that such poll workers be trained to be more proactive in offering assistance to voters who may need it, and that election officials maintain sufficient reserve poll monitors to send to poll sites when poll workers are missing.¹⁰

NALEO Educational Fund notes that such programs are already in place in some California jurisdictions:

With respect to bilingual pollworker recruitment, training and deployment, the City of Los Angeles utilizes several practices that help it carry out its language assistance program for Latinos. First, the City has staff members with the appropriate language and cultural competency skills that are responsible for recruitment and training activities. The City translates its recruitment materials into the languages of the communities it needs to provide pollworkers for, and uses Census data to map out the areas in the city where there is a high need for bilingual pollworkers. The County of Los Angeles works to make its pollworker training more accessible by supplementing its in-person training with YouTube videos. ¹¹

Common Cause notes that all poll workers, and not just multi-lingual ones, should be trained to assist voters with language needs:

Often, because of limited availability of bilingual poll workers or other reasons, a voter who has a language assistance need may arrive at a poll site where no one speaks his or her language. Well-trained poll workers who are prepared to serve and who care about the voters' dignity and right to vote, can use a variety of printed translated materials and hand gestures to assist the voter. All poll workers, not just the bilingual poll workers should be trained to be ready and willing to serve all voters. All poll workers should also be trained about the value of the bilingual poll worker as a member of the team. 12

⁹ State Guidelines, Document 14.

 $^{^{\}rm 10}$ Asian Americans Advancing Justice - Los Angeles , Document 10, pp. 11-12.

 $^{^{\}rm 11}$ NALEO Educational Fund, Document 11, p. 8.

¹² California Common Cause, Document 6, p. 2.

Disability Rights California makes the same observation about assistance for voters with disabilities, who they say often feel invisible in the voting process:

Poll workers need more extensive training on the importance of accessible voting systems and how to use it to cast a ballot secretly and independently. We have observed several poll worker trainings. While all counties train poll workers on how to set up an accessible voting machine, some also tell them that they will not be used much, which does not give them incentive to learn. They need to understand that they are just as important as a paper ballot.

In some counties, poll workers do not receive training on how to cast a ballot using an accessible voting system. This is problematic because, if a voter with a disability is trying to cast their vote using an accessible voting machine for the first time and has questions about how it works, there is nobody to ask. The reason often given by counties for the lack of training is that it is too complicated. This is precisely the reason to train poll workers, so they can explain it to voters on Election Day so that voters with disabilities do not end up disenfranchised.¹³

Santa Cruz County has identified as a best practice – and now offers - training for poll workers about sensitivity to voters with language and disability needs – and offers hands-on training lab for such workers to learn how to operate all equipment that they or voters will need to use on Election Day. ¹⁴ In addition, Santa Cruz County asks every voter at every polling place to choose a paper or touchscreen ballot. As a result, thousands of voters use the touchscreen in Santa Cruz County.

Recommendation 3: Use "Plain Language" in all Written Materials

The Greenlining Institute reports that a major takeaway from its listening sessions with voters across the state has found that voters of all kinds – but especially voters with language needs – want written voter materials (whether printed or online) to feature clearer "plain language" about voting and elections.

Such efforts can and should include:

- Adopting plain language guidelines from the Plain Language Action and Information Network (PLAIN) http://www.plainlanguage.gov/
- Requiring staff training on plain language standards for those involved in producing material for the voter guide
- Using visuals and icons throughout the guide to help voters easily reference and/or comprehend important and/or complex material. While all voters can benefit from this given our increasingly visual culture, voters with certain disabilities and limited English [proficient] voters would benefit tremendously from the additional cues.¹⁵

The important point to keep in mind is that "plain language" can be used regardless of the language used – the goal throughout should be to ensure that as many voters as possible can use written materials to answer questions and navigate the voting process.

The group recognizes that ethnic media can play an important role in this process. California Common Cause observes:

One of the challenges of translation is figuring out how to use terms that will be familiar to the target language group. In some languages, this is made even more challenging because of the existence of

¹³ Disability Rights California, Document 12, pp. 13-14.

¹⁴ Santa Cruz County, Document 13, slide 4.

¹⁵ Greenling Institute, Document 7.

multiple dialects (for Chinese and South Asian languages), or the use on non-alphabetic characters (eg: Chinese, Korean, Japanese, Khmer, South Asian languages, and Thai). Setting up early conversations with multiple media outlets to develop a glossary of commonly used terms can help ensure that the terms that are used by elections officials will synchronize with what these populations may be hearing/reading through the media. ¹⁶

Asian Americans Advancing Justice - Los Angeles emphasizes the importance of consulting with the community when translating election materials and transliterating candidate names (phonetically transcribing names into Asian script). The group also notes that media sources have often confronted and resolved translation or transliteration issues that can post problems for election officials. Just as importantly, the group advocates for proper display of the translated materials. In the group's poll monitoring project, it found that 45% of the precincts monitored had missing or poorly displayed materials.¹⁷

In addition, NALEO Educational Fund highlights the role that the media can play in making voting information accessible to language minority communities:

[M]any Latinos who are not fully engaged in the political process rely heavily on Spanish-language media for information about elections and politics, and election officials should establish and strengthen partnerships with those media outlets as part of their outreach efforts. In California, Spanish-language media have aired public service announcements on voting and registration provided by election jurisdictions. These outlets also have provided "earned media" opportunities for election officials, by featuring them in news stories or on public affairs programming.¹⁸

Additional documents of interest:

- Asian Americans Advancing Justice Los Angeles, A Guide to Ensure Language Assistance During Elections and Section 203 Infographic [FOCE Documents 15 and 16]
- Los Angeles County Poll Monitoring Plan Materials [FOCE Documents 17 and 18]
- Santa Cruz Polling Place Accessibility Plan [FOCE Document 19]
- State Accessibility Guidelines and Checklist [FOCE Documents 20 and 21]

¹⁶ California Common Cause, Document 6.

 $^{^{\}rm 17}$ Asian Americans Advancing Justice - Los Angeles, Document 10, pp. 6, 11, 25.

¹⁸ NALEO Educational Fund, Document 11, p. 7.

PANEL THREE: Voter Registration

- ➤ Lori Shellenberger, ACLU California Voting Rights Project
- ➤ Heather Smith, Rock The Vote
- Emily Rusch, CALPIRG
- Kathay Feng, California Common Cause
- Cathy Darling Allen, Shasta County

KEY DOCUMENTS:

ACLU of California Voting Rights Project, Online Voter Registration and the National Voter Registration Act [FOCE Document 22]

The intersection between Section 7 of the National Voter Registration Act (NVRA) and effective election administration should not be underestimated. A comprehensive state implementation plan is a cost-effective way to build a modernized, statewide infrastructure, whereby: every eligible voter is given the opportunity to register to vote whenever they interact with government, the accuracy of voter rolls are improved, and provisional voting is reduced. This report describes these efforts, including the state's designation of the Health Benefit Exchange as an NVRA agency; incorporation of online voter registration into online applications for government services; and the state's cooperative approach to NVRA implementation.

Remarks by Rock The Vote [FOCE DOCUMENT23]

Rock the Vote describes the benefits of online voter registration (OVR) and details the technical work necessary to make OVR work in California and other jurisdictions.

California Common Cause, Recommendations for Online Voter Registration Implementation [FOCE Document 24]

California enacted an OVR requirement in 2011. This document describes the steps taken to implement that requirement and extracts some best practices for other states' efforts to put OVR into place.

RECOMMENDATIONS:

- 1. Online voter registration (OVR) can benefit voters and election officials alike by streamlining the process of registering to vote or updating voter records
- 2. OVR requires cooperation and commitment by a wide variety of players in order to implement successfully
- 3. Comprehensive, thoughtful NVRA state implementation plans are a cost-effective way to build a modernized, statewide infrastructure for effective and accurate voter registration whereby every eligible voter is given the opportunity to register to vote or update their voter registration information whenever they interact with government.

Recommendation 1: OVR Can Benefit Voters and Election Officials Alike

Rock the Vote – which worked with numerous FOCE partners in collaboration with the Secretary of State on the 2012 implementation of the state's OVR portal – has the following observation about the benefits of OVR:

It has been well documented that our current paper-based voter registration process is timely, expensive, and error-prone. In particular, the interpreting of handwriting from paper forms, the costs and typos associated with data-entry, and the inevitable deluge of forms that come at the deadline to register just

as an elections office is at its busiest preparing for Election Day, create a recipe for incomplete and/or inaccurate voter rolls which in turn significantly and negatively impacts the Election Day experience.

Implementing an online voter registration system offers a solution:

- Improving the ACCURACY of the voter files by eliminating any errors and typos from data entry of the handwritten paper registration forms as the user types his/her information, double checks it, and submits it to the state as well as typos from data-entry in the elections office.
- **Reducing COSTS for elections offices** by eliminating data-entry of these forms, freeing up valuable and limited resources for elections offices. ¹⁹

The resulting portal generated a strong influx of new voters across many different communities. Rock the Vote reports that

Statewide in 2012, according to the Secretary of State's office, 60% of all registrations in the state came in online proving easy adoption of this new system by voters. This was especially true for young voters as 46% of the registrants were under the age of 30, and 68% of those ages 25-29 who registered to vote did so online. Initial analysis of these registrants has also found that:

- Online registrants turned out to vote at significantly higher levels than non-online registrants 78% versus 70.2%. (UC Davis Center for Regional Change; The California Civic Engagement Project, March 2013)
- Younger online registrants voted at rates close to those of the rest of the electorate, which is a huge increase from the traditional 10-point gap. (UC Davis Center for Regional Change; The California Civic Engagement Project, March 2013)
- For Latinas/os and Whites, significant majorities of online registrants came from the low and middle- income areas. Among Asian American online registrants, a near majority also lived in these lower-income census tracts. "This strongly suggests that online registration is not simply being used by affluent, already likely voters, but rather that it was less affluent eligible voters who most took advantage of opportunity to register online." (UC Berkeley Center for Latino Policy Research, March 2013)

CALPIRG sees similar results among students:

Online voter registration was particularly utilized by young voters, many of whom were registering to vote for the first time. Young voters between the ages of 18-24 comprised 30 percent of all online registrants in the state. The total number of youth registrants in the fall of 2012 increased nearly 14 percent over 2008.²⁰

The utilization of online voter registration by young people was made possible in part through the efforts of many campuses to make online registration easily available to students. CALPIRG's New Voters' Project worked closely with the administration and student leadership at dozens of college campuses. More than 27,000 students registered to vote by clicking on our CaliforniaStudentVote.org tool, powered by Rock the Vote, to access registration.

Rock the Vote, Document 23, — citing Pew registration research at
 http://www.pewstates.org/research/featured-collections/upgrading-voter-registration-85899376407
 http://regionalchange.ucdavis.edu/projects/ccep-policy-briefs/UCDavis CCEP Brief
 http://creatured-collections/upgrading-voter-registration-85899376407
 <a href="http://creatured-collections/upgrading-voter-

Recommendation 2: OVR Implementation Requires Cooperation and Commitment From Many Sources

California implemented its OVR portal in September 2012, about a year after the state legislature enacted legislation to require it. Many FOCE members have worked on implementation and can share lessons about the way to make it work.

California Common Cause has the following list of suggestions based on the 2012 experience:

- 1. Convene an implementation task force. This may include state and local election staff, Department of Motor (DMV) vehicles staff, and relevant election organizations. This group should set out to at least communicate regularly about goals for certain phases to be completed, identify the problems that the group can work together on, look for opportunities to share resources, and set up problem-solving meetings to move forward on specific issues.
- 2. The sooner that "tech can talk to tech," the better. This was true when DMV and SOS staff talked about how to set up a system to resolve the verification issues. There may be some issues that the technology staff are able to more quickly resolve. (In this case, tech staff concluded that real-time verification, as opposed to a batch system, was their preferred option to verification).
- 3. Identify issues that arise that are unique to online voter registration, focus on resolving these. For instance, with paper registrations, the forms must be received at the close of business on the voter registration deadline day. Typically, this is 5:00 or 6:00 pm. With online voter registrations, the question arises whether someone should be allowed to submit their registration forms as late as 11:59 pm of the same day. Whatever the resolution of this question, it is also necessary to consider how to digitally "time and date stamp" each registrant.

Additional questions to consider include: how to manage online registrants who cannot be validated or who do not have an electronic signature on file, how to develop protocols for election officials (local or state) to pursue or receive missing information, how to treat first time registrants with regard to Help America Vote Act requirements, how to provide a user-friendly experience for registrants that also accommodates disability or language needs.²¹

Rock the Vote has its own set of observations:

The online voter registration user-facing interface is what voters will encounter. Make it simple to use and learn from, or use, the tools that others have built.

- 1. Don't recreate the wheel Leverage the technology expertise and tools that have proven track records, and create data standards at the outset. There are open source codes and models developed by Rock the Vote and others that have been tested and can be used by any state at little to no cost. This is an additional cost savings, plus it leverages the expertise of those that are frontend, user interface experts, and have product tested the tools for years. As an added benefit, using common systems can create standards tools and data format protocols for how registration data is sent to a state's backend system.
- **2.** Make the state user interface user-friendly. With the widespread adoption of smart phones amongst youth, Latinos, and in lower-income communities, these users (who are the most likely to be unregistered) are accessing the Internet from a phone not a personal computer. The online voter

²¹ California Common Cause, Document 24.

registration interface should be mobile friendly. It should also use best practices for user experience design to ensure the most number of people who start the registration form online complete and submit it.

Technology alone doesn't register voters. If you build an online voter registration interface on a Secretary of State website, suddenly those that didn't know they had to registered by a certain date - or at all - don't go searching for the website. It is critical to engage third-party community organizations and NVRA agencies in the planning at the outset, to ensure they are promoting and using the online system most effectively.

- **1. Engage a wide array of constituency organizations in the implementation process,** not just so they promote the online voter registration site, but so you are sure the site meets the needs of their communities, especially students and those with language and disability considerations.
- 2. Collaborate with third-party organizations to promote the registration opportunities to their audiences and drive new registrants to the state online voter registration system. From Universities and Colleges to community groups and non-profits, there are numerous institutions that interact with unregistered voters and have a mission, interest, or even legal obligation to offer registration to their audience. This promotion is critical and can be built into the state's online voter registration system in simple ways.

Rock the Vote tested different models for integrating outside parties' online interfaces/tools with the State's voter registration system online in Nevada, Washington, Oregon, and California in 2012. The basic recommendation from these tests is simple:

a. Each state should build a simple application programming interface (API) that allows outside groups to collect the data needed for voter registration and send it to the state's online system for processing the registration application.

For example, when registering for class or updating an address for a student ID card at college, the online portal could offer the student the chance to register to vote. If the student clicks 'yes' then (s)he is asked to provide any additional information needed for registration that has not already been entered, and that data is sent as a batch to the state's voter registration system through the API.

Another example, an organization like Rock the Vote could collect registration data through its online portal, then send the data to the state for processing. This streamlines third-party registration efforts, where they no longer handle forms but instead just collect information and send it to the states, via the API, for processing.

b. In some cases, if the agency, institution or organization is not able to change their online portals to add these additional questions and capture all the needed registration data, then a second option should also be available: a webpage where any user who started their form outside of the state website lands, their information is pre-populated with anything they previously entered and they are given the chance to fill in any remaining questions, double check, and submit. If this option is used, research has shown higher completion rates when the user completes as much information as possible on the original website and does not have to re-key any information a second time on the state website.

These are technologically simple and inexpensive solutions that could lead to the promotion and increased use of the online registration programs by potential voters through the efforts of outside partners.²²

Recommendation 3: Comprehensive, thoughtful NVRA state implementation plans are a cost-effective way to build a modernized, statewide infrastructure for effective and accurate voter registration whereby every eligible voter is given the opportunity to register to vote or update their voter registration information whenever they interact with government.

ACLU of California discussed its work with the State of California and noted the key points that could be of value elsewhere. In particular, states can:

- Incorporate online registration into online applications for government services.
- Create a seamless voter registration process that transfers data to the voter registration form that the applicant has already entered into the online application.
- Designate additional government agencies, such as tax assessment agencies or the new health benefit exchanges as NVRA agencies.
- Develop and share best practices for effective NVRA implementation, including language and disability access issues.
- Pass legislation to clarify NVRA responsibilities in the state and increase accountability.²³

²² Rock the Vote, Document 23.

²³ ACLU of California Voting Rights Project, Document 22.

PANEL FOUR: Vote-by-Mail

- ➤ Kim Alexander, California Voter Foundation
- Gail Pellerin, Santa Cruz County

KEY DOCUMENTS:

Presentation by California Voter Foundation [FOCE Document 25]

Voting by mail has grown increasingly popular in recent years due to changes in state law that allow Californians to vote by mail for any reason and sign up to be permanent vote-by-mail (VBM) voters. But with the increase in VBM ballots has come an increase in VBM ballot errors. California's vote-by-mail error rate is one of the highest in the nation, primarily due to ballots arriving too late to count or because of signature comparison problems. To reduce the error rate and get more ballots to count, a number of legal, administrative and educational strategies need to be pursued, such as changing California law to allow ballots postmarked by Election Day to be counted. The federal government can help by helping to pay the costs of postage for balloting and ensuring the USPS' services are not further eroded. CVF also recommends allowing email addresses to be designated as for "administrative purposes" only so that overseas vote-by-mail voters who must use their email address to facilitate voting but wish to protect their privacy, such as those serving in the military, are not deterred from voting.

Presentation by Santa Cruz County [FOCE Document 26]

In Santa Cruz County, like many counties in the State of California, more voters choose to vote by mail than vote at the polls. Best Practices have been developed to ensure uniform vote count guidelines, signature checking standards, and providing voters with information in plain language. Despite efforts to educate voters, many ballots do not get counted because they are received too late, ballot envelopes are not signed, or someone other than the voter signed the ballot envelope. Moreover, as more voters vote by mail, there is an increasing need for an efficient postal system to deliver ballots in a timely fashion. Ideally, the federal government would pay the postage for voters to return their ballots through the mail.

RECOMMENDATIONS

- 1. As the number of voters using vote-by-mail (VBM) ballots increases, election jurisdictions need to examine how different factors, such as postal delivery, signature comparison and voter error affect the rate of successfully-cast ballots
- 2. Give voters more time to cast ballots and improve balloting instructions and voter education are promising avenues for improving VBM success rates

Recommendation 1: Jurisdictions Should Examine Factors Affecting Vote-by-Mail Ballots

In California, the popularity of VBM has increased to the point that more than half of votes cast in the 2012 election were cast on VBM ballots and 43% of all voters were registered as permanent VBM voters.²⁴

While not all VBM ballots come in by mail (state law allows voters to drop off voted ballots at any polling place in their jurisdiction) the sheer number of ballots cast by mail raises key issues for election officials.

First, not all VBM ballots that are sent out are returned. The California Voter Foundation (CVF) reports that roughly 2.5 million of the 9.3 million VBM ballots mailed out for the 2012 general were never returned.²⁵

²⁴ California Voter Foundation, Document 25.

Second, not every ballot that is returned is successfully counted. Some ballots come in too late; Santa Cruz County reports that about 60% of its unsuccessful VBM ballots simply arrived too late to count.²⁶ CVF cited data from 18 counties across California which found that late 2012 ballots came disproportionately from younger (18-29) voters – almost half despite the fact that these voters represent only about 13% of the VBM voters in the 18-county analysis.²⁷

Other ballots cannot be counted because of signature issues; Santa Cruz found that about one-third of its unsuccessful VBM ballots either lacked a signature or could not be matched to a signature on file with the office. ²⁸

Recommendation 2: Providing More Time and Better Materials Can Improve VBM Success Rates

With the support of county registrars, California is considering legislation that will allow VBM ballots to count if they are postmarked by Election Day and received within 3 days of the election. ²⁹ Santa Cruz reports that about 40% of unsuccessful VBM ballots in 2012 would have counted under this provision. ³⁰

FOCE members are also collaborating to identify ways to improve the VBM experience. CVF is working with several California counties to identify root causes for individual VBM problems and will then help registrars and others standardize and improve materials and ballots so that voters will have a better idea of how to cast a VBM ballot that is both timely and successfully counted.³¹

Additional materials:

• Santa Cruz Vote by Mail Instructions and Envelope [FOCE Documents 27 and 28]

²⁵ California Voter Foundation, Document 25.

²⁶ Santa Cruz County, Document 26.

²⁷ California Voter Foundation, Document 25.

²⁸ Santa Cruz County, Document 26.

²⁹ SB 29 (Correa) - http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB29

³⁰ Santa Cruz County, Document 26.

³¹ California Voter Foundation, Document 25.

PANEL FIVE: Provisional Ballots

Neal Kelley, Orange County

KEY DOCUMENT:

Presentation by Orange County [FOCE Document 29]

This presentation describes the growth and change in provisional balloting in the county since 2004, and highlights a procedural change intended to improve the process for voters and poll workers alike.

RECOMMENDATION:

1. Election officials should review and revise their provisional balloting procedures to reflect the changing nature of provisional ballots

Recommendation 1: Streamlining Provisional Balloting Procedures Can Help Avoid Bottlenecks at the Polls

Like other states with growing VBM usage, California is seeing an uptick in the number of provisional ballots cast by voters who received a VBM ballot but then do not surrender them at the polls.

Orange County Registrar Neal Kelley reports that for the first time in 2012, VBM-related provisional ballots - as opposed to those given to voters who do not appear on the voter list - represented a majority of those cast after growing from about one-fourth in 2004 and one-third in 2008.³²

With this growth, the County recognized that its existing procedures – where provisional voters were treated differently depending on the reason for their ballot – was too cumbersome and time-consuming. Consequently, Orange County tested a streamlined process that applies to all provisional voters (instead of separate procedures depending on the type of ballot cast) in early 2012 and implemented it for the 2012 general election. The County reports that

- 1. Poll workers rated the change as their highest-rated improvement;
- 2. The reduction in provisional processing time improved overall ballot processing; and
- 3. The average provisional voter saved 4-8 minutes in casting their ballot.³³

-

³² Orange County, Document 29.

³³ Orange County, Document 29.

CONCLUSION

Once again, the members of The Future of California Elections appreciate the opportunity to share these observations with the Commission. We believe that our collective work to link advocates and election officials in an effort to find common ground on a variety of issues – both to expand participation and ensure a well-functioning voting process - is a promising model for progress on election administration reforms across the nation.

We stand ready to assist the Commission in any way we can with identification and discussion of further issues under the executive order, as well as implementation in California of any recommendations made as a result of your deliberations.