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\* non-voting member

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# CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

**NEAL KELLEY, PRESIDENT**

Orange County Registrar of Voters  
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The Honorable Alex Padilla  
1500 11<sup>th</sup> Street  
Sacramento, CA 95814

Dear Secretary of State Padilla,

You have entered into your new office at the beginning of a time of great change in the way elections are run in California. As we prepare for what is sure to be an eventful 2016 election cycle, we are also preparing for the implementation of VoteCal, and with it same-day registration and pre-registration of 16 and 17 year olds. We are preparing for eventual phasing out of our now decade old voting systems, to be replaced by the rapidly developing technology of the last 10 years. We are preparing for the future of elections, currently being pioneered by alternative voting models in states like Colorado and Washington. We are preparing for all of these changes and more, and we realize they are going to come sooner rather than later.

As these changes occur over the next few years, leadership from your office will be vital. We at CACEO, who are on the front lines of election administration and have years of experience in the industry, want to work along side your office to make sure that elections in California are stable, accessible, fair and on the forefront of progress and innovation.

As such, with this letter we have sent you a packet that contains our highest priorities as well as policies, regulations and decisions of previous Secretaries of State related to the administration of elections. We believe that these items are critical, and we would like to work with your office to discuss and refine these areas together. Doing so will lead to a more stable elections process and the better service our voters deserve.

We look forward to working with you and your staff over the coming years.

Sincerely,

Neal Kelley  
President, CACEO  
Registrar of Voters  
Orange County

## **1. RECOMMENDATION: Expand Vote-by-Mail and Creation of Vote Centers**

### **Background**

The expanded use of vote-by-mail ballots, up to and including running elections exclusively with vote-by-mail ballots in lieu of polling places, has been an idea that has been floated by both elections officials and politicians, and that has been gaining traction in recent years. For the first time, the Legislature has approved all vote-by-mail elections as a pilot program in more populated urban counties, and Senator Hertzberg has introduced a bill that would send every voter a vote-by-mail ballot during statewide elections. But while we're excited about the prospect of adopting new processes that could help reduce our costs and increase turnout, we want to take these next steps with vote-by-mail ballots very methodically. A change as dramatic as the Hertzberg bill, should it pass, will require careful planning and creation of regulations to prevent unnecessary costs or disenfranchisement of voters. We want to work with your office on these changes as they develop to make sure that implementation runs smoothly.

## **2. RECOMMENDATION: Formalize Joint Secretary of State / CACEO Committee on "Future of Voting Options"**

### **Background**

While change has long been considered one of the only constants in the elections industry, the statement appears to be truer now than it ever has been. The impending implementation of VoteCal and same-day registration, the continued expansion of Vote-by-Mail, the need to replace our aging voting systems, new technology and the success of new and different systems in states like Colorado and Washington are leading to some major changes in how elections are going to be run in California in the future. We would like to partner up with your office to make sure that both of our organizations stay ahead of the curve. We're proposing a joint CACEO-SOS Committee on Future Voting Options to study future options for changing elections in California, such as the Colorado vote center model or expanded VBM, and to educate both the public and the Legislature on these changes. I have created this committee under CACEO and have appointed Joe Holland, Santa Barbara County and Bill Rousseau, Sonoma County, to co-chair this committee. We are hopeful that your office will participate jointly in this endeavor.

## **3. RECOMMENDATION: Review Secretary of State Conditions for Use of Voting Systems and Regulations Adopted Following SB360**

### **Background**

In December a series of regulations were added concerning the certification of voting systems relating to SB 360. These regulations, which don't go into effect until April 1<sup>st</sup>, came about very suddenly and without the usual public comment period which accompanies the implementation of such regulations. A few of our members submitted written comments, but we have not been able to find these or any other public comments published on the SOS website and none of the issues that were raised have been addressed or commented on. Because of this, we would like the opportunity to revisit these regulations with your office, as we do have some concerns that were not addressed due to the nature of their implementation.

## **4. RECOMMENDATION: Revisit Existing Recount Regulations to Ensure Voter Privacy and Eliminate Possible Voter Disenfranchisement**

### **Background**

We believe that current recount regulations set an incredibly dangerous precedent. Our gravest concern is with the definition of "relevant material", which is incredibly broad and includes material that is not actually relevant to a recount of ballots cast. Giving candidates access to these materials blurs the line between recounts and election contests and it threatens the voters' right to privacy. We've also found that it creates a disincentive for candidates to actually challenge cast ballots, the entire reason for a recount, and instead they are waiting for the review of ballots to finish so that they can challenge anything but the ballots, something

that should be reserved for an election contest and not a simple recount. We would like the definition of “relevant material” to be scaled down to solely what is actually relevant to a recount: ballots and paper audit trails for the contest in question. However, we are open to a healthy discussion about this important issue and are open to your suggestions. We also hope that you will be willing to open up the whole of the recount regulations for revision and changes, and that we can work with you and your office to make these regulations more realistically reflect our voting systems and make recounts less costly and time prohibitive.

## **5. RECOMMENDATION: Roll Out and Test VoteCal in 2016 and Implement Same-Day Registration in 2017**

### **Background**

As we understand it, it is possible that you will be seeking legislation to move up the implementation of same-day registration to occur simultaneously with the implementation of the VoteCal database. While we understand that same-day registration is a much anticipated tool to make the ballot more accessible and increase voter turnout, we’re cautious about implementing it so quickly. Major operational and procedural changes, such as VoteCal and same-day registration, are best implemented carefully and methodically, and in our experience rushed rollouts tend not to end very well (take HealthCare.gov, for example). The timetable laid out in the legislation as it stands allows for proper testing and adjustments to be made to VoteCal before putting it to the test with something like same-day registration. We all want VoteCal and same-day registration to succeed, but in order for that to happen we feel a methodical implementation is needed to avoid the mistakes and issues associated with a rushed rollout that can cause the public to lose their trust in us as elections officials.

## **6. RECOMMENDATION: Support County Reimbursement and Encourage SB90 Funding and Voting System Replacement Funding**

### **Background**

Counties are struggling to pay the costs of elections. With the suspension of state mandates the burden to continue providing services for voters has fallen squarely on the counties’ shoulders. We agree that it is important to continue to look for ways to expand voter participation but without the proper funding it becomes even more difficult to simply continue with existing programs, let alone expanding voter outreach efforts and encouraging greater turnout. In addition, as voting systems continue to age we feel that there should be funding from either the federal or state government to support new technology and replace aging systems.

## **SECOND LEVEL PRIORITIES**

### **1. Ballot Printing Regulations**

Under current regulations, ballot printers must obtain a confirmation letter from the vendor of the voting system for which they will print ballots in order to receive official certification from your office. While this letter does supply necessary assurances that the printers printed test ballots to correct specifications, it also puts the printers at the mercy of the voting system vendors. Vendors have been charging printers for their confirmation letters, which we don’t believe should be allowed to happen. We would like language to be added to Article 3 of Chapter 4 of Division 7 of Title 2 of the Code of Regulations to prevent voting system vendors from charging for or otherwise improperly withholding the confirmation letter from ballot printers who have printed test ballots to proper specifications.

### **2. General Conditions of Use of Single Voting Booths**

Some of our voting systems are only certified for the use of a single electronic voting booth at each polling place to serve as a Disabled Access Unit to keep the polls accessible. However, the Elections Code and the Code of Regulations offer very little guidance on the proper procedures for the use of these single voting

booths. Because this serves as large component of the voting systems of quite a few of the counties in California, we'd like the creation of a set of regulations to standardize the use of singular voting booths in polling places.

### **3. Consistency on when offices are open for E45 UOCAVA voters**

There is a need for consistency in when our offices should be open as elections deadlines approach, specifically as it relates to UOCAVA voters. The Elections Code is not entirely specific on this, leaving us to individually decide for our offices whether or not to stay open on weekends or rush deadlines. Uniform regulations on this would allow to be more prepared as elections officials and give the voters of California more consistent service from election to election. It is possible that a CCROV with guidance from the Secretary of State would suffice to provide clarity for counties.

### **4. Support of state LAAC and state VAAC**

We are encouraged to hear that these committees are becoming formalized and are receiving additional attention. It is important that these committees continue to have county representation, along with advocacy groups and Secretary of State staff.

## **REVIEW OF PREVIOUSLY ISSUED CCROVs**

Our committee has identified the following CCROVs in the hope that these can be reviewed for further discussion. While we feel that some need clarification we also feel that some may need to be rescinded based on new or additional information.

### **Ballots and Voting Systems**

- **09067 – Voting Systems: Administrative Approval Requirements**  
Requirements for voting system vendors getting approval for changes or modifications to voting systems in accordance with Elections Code section 19213 (now 19216). Outlines the documentation and testing which must be submitted to the Secretary of State before a voting system change is approved.
- **11045 – Voting Modernization Board: Selling Surplus Voting Equipment**  
Outlines that any proceeds gained from selling surplus voting equipment which were initially purchased with Voting Modernization Board funds must be returned to the VMB. Because counties matched a quarter of these funds, they may keep a quarter of the proceeds.
- **11111 – Voting Systems: Ballot Marking Software**  
States that any online ballot delivery system, such as one designed to help election officials comply with the federal MOVE Act, which features an option to mark the ballot on the computer before printing it is not permitted under California state law. Such a delivery system would fall under the definition of a “voting system”, and thus need to be federally certified and approved by the Secretary of State. Any system without this feature is okay to use.
- **12113 – Regulations: (1) Proposed California Ballot Manufacturer and Finisher Regulations; and (2) Proposed Revised Recount Regulations\***  
Announces proposed updates to regulations related to ballot manufacturers and finishers and regulations related to recounts.

### **Budget, Costs and HAVA Funds**

- **06093 – Allowable Expenses under “Section 301” Contracts**  
Provides an outline of the response of the EAC to a letter from the Secretary of State’s office in late 2005 concerning the permissible use of HAVA funds. States that cell phones, forklifts, motorized

vehicles and absentee voting equipment are not allowable expenses under Section 301 contracts, and that HAVA funds will not become discretionary until the entire state is HAVA certified.

- **06145 – Amendment of HAVA 301 Contracts to Cover Requested Expenses**  
Allows for the use of at least some 301 contract funds to purchase storage/warehousing, forklifts, cell phones and VVPAT retrofits. Also allows for the use of these funds to purchase/upgrade absentee voting equipment, so long as the county's voting system as a whole meets all of the HAVA Section 301 requirements.
- **06380 – Use of HAVA Title II Voting Equipment Funds after January 1, 2007**  
States that HAVA funds currently available to counties for the purchase of upgraded voting systems is not restricted to equipment that is fully accessible. This is due to an EAC decision which superseded a Secretary of State decision.
- **07037 – EAC Pre-Approval Needed for All Physical Plant Capital Expenditures**  
Informs counties that any use of HAVA funds for storage and/or warehousing costs, as approved in CCROV 06145, must be pre-approved by the EAC before reimbursement can be received.
- **08012 – Use of HAVA funds – County Security Measures, Electronic Poll Books (Electronic Rosters) and Poll Worker Assistive Devices**  
States that the EAC has approved costs for added security of voting systems pursuant to a 2007 decertification/recertification order as allowable expenses under HAVA funds. It also states that the EAC has not approved costs related to electronic poll books or poll worker assistive devices.
- **08295 – Administrative: Election Assistance Commission (EAC) Guidance on Use of HAVA Funds**  
Allows for the use of HAVA funds for replacing voting systems previously purchased with HAVA funds. Also allows for the use of HAVA funds on a one-time basis for poll worker training when implementing a new voting system. Other training and voter education activities are allowable under certain conditions.
- **11046 – Election Procedures: State Budget Mandate Suspensions**  
Outlines the effects of budget mandate suspensions on elections-related mandates that were part of the 2011 state budget.

## **Election Day**

- **06383 – No Results Made Public Until Polls Closed**  
Reminder of Elections Code sections regarding closing the polls and reporting of results to both the public and the Secretary of State's office, specifically when results can or have to be announced.
- **07080 – Guidelines For Use of Electronic Poll Books**  
Gives guidelines for the use of electronic poll books and outlines when the use of electronic poll books is subject to voting system certification. Electronic poll books that do not electronically interface with any part of the voting system do not need to be certified, but the Secretary of State urges extra training, security and contingency planning when they are used.
- **08303 – November General: Cameras At Polling Places**  
Outlines laws which may be directly or indirectly related to the use of cameras in the polling place. While the Secretary of State seems to generally prohibit the use of cameras in the polling place, it acknowledges that there are some exceptions so long as the use of the camera does not interfere with voting, intimidate or persuade any voters or compromise the secrecy of any ballots.
- **08306 – November General: Approved Alternative Procedures**  
Outlines the alternative balloting procedures approved by the Secretary of State for the 2008 November General Election.
- **10282 – November General: Natural Disaster/Emergency Procedures**  
Outlines actions that can legally be taken by elections officials in the case of an emergency or disaster situation on or shortly before Election Day.

- **12144 – Presidential Primary Election: Electioneering**  
Defines “Electioneering” and outlines the sections of the Elections Code relevant to it and how it should be prevented/dealt with. Includes a small FAQ from the Voter Fraud Protection Handbook.
- **12145 – Presidential Primary Election: Approved Alternative Procedures**  
Outlines the alternative balloting procedures approved by the Secretary of State for the 2012 June Primary Election.

## Recounts

- **08331 – Recounts: Proposed Regulations**  
Outlines proposal of recount regulations to be adopted pursuant to section 15601 of the Elections Code.
- **12113 – Regulations: (1) Proposed California Ballot Manufacturer and Finisher Regulations; and (2) Proposed Revised Recount Regulations\***  
Announces proposed updates to regulations related to ballot manufacturers and finishers and regulations related to recounts.
- **12179 – Regulations: Approved Revised Recount Regulations**  
Announces a technical change to the recount regulations, correcting a draft error in the definition of “interested party”.

## Voter Registration

- **08301 – Voter Registration: Permanent Residence**  
States that voters who have recently left their foreclosed home, or otherwise moved from their home to a temporary residence not intended to be used permanently, can continue to use their previous address for the purpose of voting. Includes an FAQ and the relevant sections of the Elections Code.
- **10179 – Voter Registration: Use of Mobile Electronic Devices**  
States that, under current state law, mobile electronic devices which allow voter registration in which voters sign with their finger are not allowed. Highlights the parts of the law that prohibit this and outlines the dangers that finger captured signatures might hold, particularly to vote-by-mail voters.

\*CCROV 12113 in both “Ballots and Voting Systems” and “Recounts” categories