January 24, 2022

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

Via email to aanderso@sos.ca.gov , rbathla@sos.ca.gov

Dear Secretary Weber:

Thank you for the latest chance to comment on California's proposed rules for counting votes.
https://admin.cdn.sos.ca.gov/regulations/proposed/elections/petition-processing/permament-text-of-proposed-regs.pdf

These rules are important to ensure that normal human variations do not disenfranchise voters, as long as it is possible to discern the voter's intent.

The people signing below have these joint comments.

Sincerely,

Note: All affiliations are for reference only and do not constitute an endorsement

Paul Burke   [VoteWell.ne](http://VoteWell.net) t
John McCarthy, Berkeley CA, retired computer scientist
Ray Lutz, San Diego County CA, Executive Director, CitizensOversight.org
Harvie Branscomb, San Diego CA electionquality.com
Greg Taber, Riverside CA
Debra Kattler, San Mateo CA, Group Leader, Indivisible SF Peninsula & CA-14
Lauren Ackert, Long Beach, CA
Emily Levy, San Francisco CA, Executive Director, Scrutineers.org
Carl Carter, Co-Chair National Voting Rights Task Force, [NVRTF.or](http://NVRTF.org) g

Comments on California Ballot Counting Rules

Below are comments on the Ballot Counting Rules posted for public comment, through 1/24/2022, at https://www.sos.ca.gov/administration/regulations/proposed-regulations

Title 2, Div. 7, Ch. 8.3, Article 8. UNIFORM VOTE COUNTING STANDARDS	Proposed additions underlined and deletions ~~lined out.~~	Reasons for Changes
20980. Purpose of This Article The purpose of this article is to provide standards to define the circumstances under which "marking" of a ballot constitutes a vote and when a vote will or will not count for each category of voting system certified and in use in California. **20981. Definitions** As used in this Article, the following words have the following meanings:		
(a) A "blank ballot" is a ballot on which the voter has made no marks in any voting position target, or one which has been marked with an unreadable marker, or one which has been consistently marked outside of the "read" area of the ballot scanner.	(a) A "blank ballot" is a ballot on which the voter has made no marks in any voting position target, or one which has been marked with an unreadable marker~~, or one which has been consistently marked outside of the "read" area of the ballot scanner.~~	There is no definition of "read" area, and it does not mean "voting position target" which is defined.
(b)　　　"Candidate" means a person who is seeking nomination or election to a specified office and who either has met the legal requirements to have their name printed on the ballot or is eligible to have their name written in on the ballot and counted as the voter's choice for the contest. (c)　　　A "damaged ballot" is a ballot that has been torn, bent, or otherwise mutilated or rendered unreadable such that it cannot be processed by the ballot tabulating equipment designed for use with the ballot.		
(d) A "duplicated ballot" is a ballot which is a true copy of the originally cast ballot. It is created when damage, improper marking or some other action/defect prevents the original ballot from being read by a ballot tabulating machine and is used to properly process and count the votes originally cast by the voter. A duplicated ballot also is necessary for a ballot cast using a remote accessible vote-by-mail ballot.	(d) A "duplicated ballot" is a ballot which ~~is~~ has a true copy of the voter intent from the originally cast ballot. It is created when damage, improper marking or some other action/defect prevents the original ballot from being read by a ballot tabulating machine and is used to properly process and count the votes originally cast by the voter. A ~~duplicated ballot also is necessary for a~~ ballot cast using a remote accessible vote-by-mail ballot may need to be duplicated by photocopying onto paper of a weight and size compatible with the scanners. All duplications are by teams of two, not both members of the same party.	A "true copy" would replicate the damage, improper marking or defect. A duplicated ballot is a true version of the *voter intent* on the originally cast ballot. Duplicating RAVBM is not needed if voter used a paper weight and size compatible with the scanner, and if not, the minimal step is to photocopy, which is allowed by ELEC 15210.

Title 2, Div. 7, Ch. 8.3, Article 8. UNIFORM VOTE COUNTING STANDARDS	Proposed additions underlined and deletions lined out.	Reasons for Changes

(e) A "listed candidate" is a candidate whose name appears on the ballot at the time the voter received the ballot, as opposed to a write-in candidate.		
(f) A "measure" is a ballot proposition, which appears on a ballot and requires voter action in order to enact or reject a proposed law.	(f) A "measure" is a ballot proposition, which appears on a ballot and requires voter action in order to enact or reject a proposed law or decide a recall question.	Need to cover recalls

(g) An "overvote" occurs when a voter marks more than the maximum number of voting position targets allowed in the contest.	(g) An "overvote" occurs when a voter marks more than the maximum number of voting position targets allowed in the contest. A mark for a write-in with a blank or unqualified name or who is also marked as a listed candidate, shall not count toward determining an overvote.	ELEC 15342 says "count a vote for the office if the intent of the voter can be determined," In the underlined situations, intent is clear. Overvotes with nonblank write-in may need adjudication, but are few.
(h) "Personal information" shall have the meaning set forth in Elections Code section 14287. (i) An "undervote" occurs when a voter marks less than the maximum number of voting position targets allowed in a contest. (j) A "voting position target" refers to that area of the ballot adjacent to each candidate or measure, or that area of the ballot, specifically designated to record the voter's choice for that contest. The term applies to all types of voting position targets on ballots, regardless of what form they may take, including, but not limited to, rectangle, oval, circle, square, hole punch, cross punch, slotting and open arrow. **20982. General Vote Counting Standards** The following general standards shall apply in the counting of all ballots and votes, regardless of the voting system used, for both the initial count and for any recount. (a) A ballot that is not marked as provided by law must be segregated and counted in the manner directed by the elections official. Any ballot that contains personal information, or that is torn, bent, or mutilated shall be segregated as directed by the elections official and a duplicate ballot shall be prepared pursuant to Elections Code section 15210. A ballot that contains marks or markings not related to an indication of the vote choice for a contest and that are not personal information shall be counted. Duplication is not required unless the ballot contains personal information, or the condition of the ballot or markings on the ballot interfere with the ability of the vote tabulation equipment to tally the ballot. (b) A vote for any candidate or ballot measure shall not be rejected solely because the voter failed to follow instructions for marking the ballot. If, for any reason, it is impossible to determine the choice of the voter for any candidate or ballot measure, the vote for that candidate or ballot measure shall be considered void.		

Title 2, Div. 7, Ch. 8.3, Article 8. UNIFORM VOTE COUNTING STANDARDS	Proposed additions underlined and deletions lined out.	Reasons for Changes

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(c) A mark is considered valid when it is clear that it represents the voter's choice and is the technique consistently used by the voter to indicate their selections.	(c) A mark is considered valid when it is clear that it represents the voter's choice and is the technique consistently used by the voter to indicate their selections.	No reason to suppress votes of voter who starts by carefully filling ovals, then becomes impatient and uses X or checkmarks.
(1) Such marks may include, but are not limited to, properly filled-in voting position targets, checkmarks, X's, circles, completed arrows, or any other clear indication of the voter's choice, such as the word "yes" next to a candidate's name or a voting position target for a ballot measure. (2) Conversely, a mark crossed out by the voter, or the word "no" next to a candidate's name or a voting position target for a ballot measure shall not be considered to be a valid vote but will, instead, be deemed an indication that the voter did not choose to cast a vote for that candidate or measure.		

(d) In determining the validity of a partially filled-in voting position target, the consistency of a voter's marks on the entire ballot shall be taken into consideration. A "hesitation mark" such as a dot in the voting position target shall not be considered a valid mark unless it is demonstrated that the voter consistently marked their ballot in such a manner.	(d) In determining the validity of a partially filled-in voting position target, the consistency of a voter's marks on the entire ballot shall be taken into consideration. A "hesitation mark" such as a dot in the voting position target shall not be considered a valid mark if there are darker marks on the same contest. unless it is demonstrated that the voter consistently marked their ballot in such a manner. Such dots shall be included in Logic & Accuracy Tests and SOS equipment tests.	No reason to suppress votes of voter who starts with careful marks, then becomes impatient and uses light dots, or vice versa. Such dots may be nonvote hesitation marks, nonvote stray marks or valid vote light marks; the only assignment of voter motive that matters is between voter intent and voter nonintent.
(e) If a contest is marked with more choices than there are offices to be filled or measures that may prevail, the vote shall not be counted for that contest, but shall be counted in all other contests in which there is no overvote and the voter's choice can be clearly determined.	(e) If a contest is marked with more choices than there are offices to be filled or measures that may prevail, no the vote shall not be counted for that contest, but votes shall be counted in all other contests in which there is no overvote and the voter's choice can be clearly determined. A mark for a writein with a blank or unqualified name, or a write-in name which matches a marked listed candidate, is not an overvote.	As long as there is no ambiguity, votes can be counted. It should not be an overvote when voter marks the voting position target for a candidate and also marks the write-in voting position target and writes in the same candidate, as if for emphasis. No reason to suppress a vote for a real candidate if a non-candidate is written in

Title 2, Div. 7, Ch. 8.3, Article 8. UNIFORM VOTE COUNTING STANDARDS	Proposed additions <u>underlined</u> and deletions ~~lined out.~~	Reasons for Changes

(f)   If a contest is marked with fewer choices than there are offices to be filled or measures that may prevail, the vote choice(s) for all otherwise properly marked candidates or measures shall be counted.
(g)   Write-in votes shall be counted pursuant to the provisions established in Elections Code sections 14420, 15342 and 15342.5.

20983. Optical Scan Voting Systems
(a) When optical scan technology is used to count the votes on a ballot, the provisions of this section shall apply. (b) The following standards shall be used to determine whether there is a clear indication on the ballot that the voter has made a definite choice. The examples used in this section refer to the "voting position target" as defined in Section 20981. The same principles demonstrated in the examples below shall apply to all types of voting position targets on optical scan ballots, regardless of what form they may take (e.g., rectangle, oval, circle, square, open arrow).
(c) A voter's choice shall be considered a valid vote if the voter:

	Proposed additions	Reasons for Changes
(1) Indicates their vote choice by consistently filling inside the entire voting position target. (2) Indicates their vote choice by consistently filling in less than the entire voting position target for all vote choices on the ballot and the ballot is processed in a manner consistent with the use procedures provided and approved for the voting system used in the county. (3) Indicates their vote choice by consistently placing a distinctive mark, such as (X) or (√) or (←), inside the associated voting position target for a candidate choice or ballot measure. (4) Indicates their vote choice by consistently placing a distinctive mark, such as (X) or (√) or (←), in the corresponding space directly above, below or beside the associated voting position target for a candidate or ballot measure.	(1) Indicates their vote choice by ~~consistently~~ filling inside the entire voting position target. (2) Indicates their vote choice by ~~consistently~~ filling in less than the entire voting position target ~~for all vote choices on the ballot and the ballot is processed in a manner consistent with the use procedures provided and approved for the voting system used in the county.~~ (3) Indicates their vote choice by ~~consistently~~ placing a distinctive mark, such as (X) or (√) or (←), inside the associated voting position target for a candidate choice or ballot measure. (4) Indicates their vote choice by ~~consistently~~ placing a distinctive mark, such as (X) or (√) or (←), in the corresponding space directly above, below or beside the associated voting position target for a candidate or ballot measure.	No reason to suppress votes of voter who starts with careful marks, then becomes impatient and uses light dots, or vice versa

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(5) Marks their vote choices by encircling the entire voting position target for a candidate or ballot measure, or the candidate's name or Yes/No option for a measure.	(5) Marks their vote choices by encircling the entire voting position target for a candidate or ballot measure, or the candidate's name or Yes/No option for a measure. <u>Such a marking style shall be included in Logic & Accuracy Tests and SOS equipment tests.</u>	Circles are common enough that we cannot let voting systems ignore such votes.
(6) Indicates a voting error correction by using correction tape, strikeover, white-out or generic written note of instruction and marks another vote choice for the same contest on the ballot.	(6) Indicates a voting error correction by <u>putting a line through an unfavored candidate's entire name or issue choice,</u> ~~using correction tape, strikeover, whiteout or generic written note of instruction~~ and marks another vote choice for the same contest on the ballot. <u>Such a marking style shall be included in Logic & Accuracy Tests and SOS equipment tests.</u>	Corrections are common enough that we need a rule for voters to make corrections and for voting systems to recognize such corrections. Scanners can detect a cross out and stop treating it as an overvote. Allowing whiteout and correction tape can be economically discriminatory, interfere with scanners, and invite forgery some time after the ballot leaves the voter.
(7) Writes in a qualified write-in candidate's name, or a reasonable facsimile of the spelling of the name, in the designated write-in spaces directly below the list of candidates for that office and marks the associated write-in voting target position.	(7) Writes in a qualified write-in candidate's name, or a reasonable facsimile of the spelling of the name, in the designated write-in spaces directly below the list of candidates for that office ~~and marks the associated write-in voting target position.~~	ELEC 15342 says "count a vote for the office if the intent of the voter can be determined,"

(8) Writes in a listed candidate's name in the designated write-in space and marks the associated write-in voting target position. In such case, the vote shall be counted as a single vote for the listed candidate. (9) Marks a voting target position for a listed candidate and also enters the listed candidate's name in the designated candidate write-in space. In such case, the vote shall be counted as a single vote for the listed candidate. (10) Writes in a qualified write-in candidate's name, or a reasonable facsimile of the spelling of the name, on the secrecy sleeve envelope or stub and indicates the contest for which the vote is being cast, in the case of voting systems where write-in spaces appear separately from the list of candidates for an office and do not provide voting position targets. (d) A voter's choice shall be considered an invalid vote if the voter: (1) Uses random markings, indentations, punctures or impressions, squiggly/dimpled or crimp marks, pinholes or pinpricks on a ballot, and there is no distinctive and consistent voting pattern to clearly indicate the voter's choice(s).		

Title 2, Div. 7, Ch. 8.3, Article 8. UNIFORM VOTE COUNTING STANDARDS	Proposed additions underlined and deletions lined out.	Reasons for Changes
(2) Indicates vote choice by filling in less than the entire voting position target, and the voter has not consistently marked the entire ballot in the same manner, making the voter's choice unclear.	(2) Indicates vote choice by filling in less than the entire voting position target, and the voter has not consistently marked the entire ballot in the same manner, making the voter's choice unclear.	No reason to suppress votes of voter who starts with careful marks, then becomes impatient and uses partial marks or vice versa
(3) Inconsistently places a mark above, below or beside the associated voting position target on a ballot, instead of inside the voting position target, and the voter's choice cannot be clearly determined. (4) Writes in the name of a person who has not qualified as a write-in candidate.		
(5) Writes in a listed candidate's name in the designated write-in space and fills in the associated voting position target for a different listed candidate in the same contest.	(5) Writes in a listed candidate's name in the designated write-in space and fills in the associated voting position target for a different listed candidate in the same contest, resulting in more than the maximum number of choices for the contest.	Some contests allow multiple choices.
(6) Writes in a candidate name that is unrecognizable/undecipherable and it cannot be determined for whom the vote is intended to be cast.		
(7) Writes in a qualified write-in candidate's name in the designated write-in space and does not fill in the associated voting position target for the write-in candidate. However, in the event of a manual recount, pursuant to Elections Code section 15342.5 if the intent of the voter can be determined, the vote shall be counted regardless of whether the voter has filled in the associated voting position target for the write-in candidate.	(7) Writes in a qualified write-in candidate's name in the designated writein space and does not fill in the associated voting position target for the write-in candidate, and there are enough targets filled in to match the maximum number of votes for the contest. However, in the event of a manual recount, pursuant to Elections Code section 15342.5 if the intent of the voter can be determined, the vote shall be counted regardless of whether the voter has filled in the associated voting position target for the write-in candidate.	ELEC 15342 says "count a vote for the office if the intent of the voter can be determined," It is reasonable to ignore an unmarked target for a write-in if there are enough marked targets. However an unmarked target with a filled name can easily be found by scanners and should be tallied if it doesn't create an overvote. Manual adjudication of these few cases may be needed, pending better software.

(8) Uses pressure-sensitive stickers, rubber stamps, glued stamps, or any other device not provided for in the voting procedures for the approved voting system used by the county to indicate the name of the voter's choice for a writein candidate.

(e) If the voter leaves the voting booth without casting the ballot, the precinct official shall cause the ballot to be cast without examining the ballot.

20984. Other Paper Voting Systems

(a)   A paper ballot shall be subject to the standards in the section applicable to the voting system on which it is processed.

(b)   When paper ballots, or voting responses on paper other than a ballot, are counted by the hand and eye, the provisions of Section 20983 shall apply.

20985. Direct Recording Electronic (DRE) Voting Systems

(a) When direct recording electronic (DRE) technology is used to cast and count the votes on a ballot, the provisions of this section shall apply. The following standards shall be used to determine whether the voter has made a definite choice.

(b) A voter's choice shall be considered a valid vote if the voter:

(1) Operates the DRE in a manner to cause an "X" or "√" or "highlight" or similar designation to display in the$_{voting}$ target position of the name of the candidate or measure for which the voter chooses to vote, followed by the voter activating the cast vote indicator.

(2)   Operates the DRE in a manner to cause the name of a qualified write-in candidate to be entered in the designated write-in space, followed by the voter activating the cast vote indicator.

(3)   Operates the DRE in a manner to cause the name of a candidate listed on the ballot to be entered in the designated write-in space, followed by the voter activating the cast vote indicator.

(4)   Operates the DRE in a manner to cause the cast ballot indicator to be activated and has not voted for more contests or candidates than the number for which the voter is eligible to vote.

(c) If the voter leaves the voting booth without causing the ballot to be cast, the precinct official shall cause the ballot to be cast, without examining how any votes have been recorded on the machine.