



COMMENTARY

PAST ELECTORAL REFORMS HAVE PREPARED CALIFORNIA FOR PANDEMIC CHALLENGES

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The COVID-19 pandemic has brought a plethora of challenges to our society, not the least to our democratic electoral system. The upcoming November 3 General Election will test our ability to protect what is perhaps an American's most basic and fundamental right—the right to vote. Throughout the nation, elections officials are turning to vote-by-mail (VBM) ballots as a safe and convenient alternative to in-person voting, but not without concerns for some jurisdictions' abilities to adjust their systems and adapt their processes. With the logistical challenges associated with systemic change and implementation, mixed with a drumbeat of dangerous and baseless claims about voting and the aftermath of the election from some of the most prominent voices in the land, I am frankly concerned about the election going smoothly in a number of other states. Thankfully, in California, we have more experience with physically distant voting. With the implementation of additional reforms and security measures in recent years – and orders from the Governor requiring elections officials to send a VBM ballot to every registered active voter in every county – the Golden State is far better equipped to deal with the logistical challenges the pandemic poses this season.

Voting by mail has become more popular with each election cycle in California. “No excuse” absentee voting has been available to all voters in the state since 1979.² And while permanent absentee voting – in which voters choose to have a ballot mailed to them automatically in every election – had been available for decades for people who had a documented excuse for not being able to go to the polls, in 2001 the Legislature and Governor expanded the law to permit all voters to request no-excuse permanent absentee voter status.³ A new law in 2008 rebranded absentee voting as vote-by-mail voting to more accurately reflect the availability of the option for every registered voter – not just those who are ill or out of town.⁴

In 2000, nearly 25 percent of ballots cast in the state's general election were mail ballots.⁵ By the 2010 general election, as word spread about universal permanent access to the option, 48 percent of California votes cast were VBM. In 2018, 65 percent of general election ballots cast were mail ballots. The ratio record was broken again in the 2020 statewide primary: 72 percent of ballots cast were VBM

¹ The author is most grateful for the assistance of Shannon Flaherty, Nicole Winger, and especially Jennifer Chase for the preparation of this article.

² Assembly Bill 1699 (Lehman), Chapter 77, Statutes of 1978.

³ Assembly Bill 1520 (Shelley), Chapter 922, Statutes of 2001.

⁴ Assembly Bill 1243 (Karnette), Chapter 508, Statutes of 2007.

⁵ “Historical Vote-By Mail Ballot Use in California,” California Secretary of State, <https://www.sos.ca.gov/elections/historical-absentee/>



ballots. This widespread usage demonstrates that most California voters understand the security of VBM voting and prefer the convenience of marking their ballot at anytime from anywhere in the 29 days leading up to Election Day.

Recognizing these trends and the need for greater flexibility in the voting process, I authored the Voter's Choice Act (VCA) of 2016 along with my colleague, Senator Bob Hertzberg.⁶ To a large extent, the VCA was inspired by the hybrid voting model that has been in place for a number of years in Colorado. Under our law, counties can choose to opt in to the VCA, which requires that all registered voters receive a VBM ballot and switches neighborhood polling places to better-equipped vote centers. Open for several days ahead of the election, these centers allow eligible citizens to vote at any location in the county and offer a variety of services including same-day voter registration and accessible voting machines for people with disabilities. Some vote centers are open for 11 days; a larger number of centers are open for four days. Voters can vote in person at one of the vote centers. Or they can fill out the ballot they receive in the mail and then either mail it in or drop it off at one of the vote centers or at one of the designated drop boxes available all throughout the county. Critically, voters are not restricted to voting at one polling location on one day within a certain time frame. Instead, they are allowed to vote anywhere convenient to them in their county several days before and on Election Day.

Five counties implemented the VCA for the 2018 election cycle and 15 counties implemented it in 2020. Researchers have found the VCA achieved the goal of increasing turnout and providing voters with more flexibility.^{7,8} Overall, turnout increased by four percent for those who prefer in-person voting and one percent for VBM voters.⁷ An analysis of Sacramento and Orange Counties showed most voters tend to mail or deliver ballots at drop boxes at a fairly steady rate over the weeks before the election, while a smaller concentration of voters dropped ballots or voted at vote centers closer to and on Election Day.⁷

While all 58 California counties are very familiar with processing vote-by-mail ballots – and two of the smallest counties have been voting one hundred percent by mail for a long time – the VCA has provided useful insights regarding the administration of large-scale VBM elections.

When COVID-19 hit, California continued its leadership in electoral reform when Governor Gavin Newsom and the state legislature took a series of actions to ensure Californians can exercise their right to vote in a safe and accessible manner amidst the pandemic. On May 8, Governor Newsom signed Executive Order N-64-20 to require county elections officials to mail a VBM ballot to every registered

⁶ Senate Bill 450 (Allen), Chapter 832, Statutes of 2016.

⁷ McGee, E., Paluch, J., and Romero M., “How Greater Vote-by-Mail Influences California Voter Turnout.” *Public Policy Institute of California*. September 2020. <https://www.ppic.org/wp-content/uploads/how-greater-vote-by-mail-influences-california-voter-turnout-september-2020.pdf>

⁸ McGhee, E., Romero, M., Daly, L., and Kousser, T. “How Did the Voter’s Choice Act Affect Turnout in 2018?” *New Electorate Study* May 1, 2019.

https://drive.google.com/file/d/158V4q_5nS8_O6cRw0RkdnHYs_9rvobOh/view



voter.⁹ We took action in the Legislature to codify the order by establishing specific procedures for early and in-person voting that are consistent with public health guidance and requirements.¹⁰

These changes give elections officials critical flexibility while preserving public health and voting access. Consolidated polling locations and vote centers will be open for Election Day and three days prior, and ballots will be mailed out and ballot drop-off locations will be available 30 days prior to Election Day. Counties can choose to increase the number of ballot drop-off locations, the number of vote centers or polling place locations, and the length of time they are open above the minimum standards set by the state law. Throughout Los Angeles County – the most populous in the state, with 4.3 million registered voters – there will be approximately 75 11-day vote centers, 725 five-day vote centers, and more than 400 ballot drop box locations.

Recent polls reinforce that voters are confident in a VBM system, particularly during the pandemic.^{11,12} Californians overwhelmingly support using VBM for the November 3 General Election; amongst the supporters, 52 percent prefer to mail in their ballot and 18 percent plan to use a VBM ballot but deliver it to a vote center or drop box.¹¹

The pandemic certainly exacerbates challenges for elections officials; however, well-established reforms in statutes, processes, equipment, and safety protocols have put California in a stronger place to implement a successful and fair election come November.

⁹ “Governor Newsom Issues Executive Order to Protect Public Health by Mailing Every Registered Voter a Ballot Ahead of the November General Election. Executive Order N-64-20.” May 8, 2020. <https://www.gov.ca.gov/wp-content/uploads/2020/05/05.08.2020-EO-N-64-20-signed.pdf>

¹⁰ Assembly Bill 860 (Berman), Chapter 4, Statutes of 2020; Senate Bill 423 (Umberg), Chapter 31, Statutes of 2020.

¹¹ Kousser, T., Romero, M., Lockhart, M. Hill, S. and Merolla, J. “How do Californians Want to Cast their Ballots During the COVID-19 Crisis?” *New Electorate Study*. May 21, 2020. <https://drive.google.com/file/d/10EmINSJaqKwc48qEKpyxexrGF8R6TnUX/view>

¹² Schickler, E., Mora, G., & Powell, J. A. “Californians confident in mail-in voting despite partisan attacks.” UC Berkeley: Institute of Governmental Studies. August 24, 2020. <https://escholarship.org/uc/item/1mm8c6v6>