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Why the Wait? Unpacking California's Untimely Election Counting Process

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My first election as an attorney for a campaign was March 2004. California still had a partisan primary election then, and it took 2 weeks after the election for the nominee to be known. For well over 20 years, California's counting of ballots has been slow.

While advances in technology in the last 20 years have helped speed up some canvass activities, California's Legislature continues to add requirements that delay final election results. California lawmakers and Constitutional officers consistently support policies that extend counting far beyond election night. As the number of registered voters and voter turnout have both increased exponentially during the last two decades, the number of elections officials remains fixed at 58. The county election administrators must contend with the larger volume of ballots and complete numerous complex tasks in a one-month period after each election.

The original culprit behind California's lengthy canvass is no-excuse access to mail ballots. Over the last 47 years, there has been an expansion of nearly every aspect of mail ballot handling, from mailing them earlier, mailing to more voters, accepting them later, and allowing curing of signature deficiencies.

In 1978, California became the first state¹ to allow all voters to vote by mail without a reason.² Prior to that, fewer than 5% of voters voted by mail.³ Thereafter, adoption of mail voting quickly escalated. In 1980, the first year no-excuse mail voting was in effect, just over 6%⁴ of the 11 million registered voters⁵ cast a mail ballot. In the most recent general election, nearly 81%⁶ of California's 22.5 million registered voters⁷ cast a mail ballot.

Other changes in California's laws accelerated adoption of voting by mail. In 1982, California created permanent vote by mail, which gave voters with specific impairments or conditions the ability to vote by mail automatically, without having to submit an application for absentee status each election.⁸ In 1993, eligibility was expanded to spouses and caregivers of such

¹ <https://www.desertsun.com/in-depth/news/politics/elections/2022/08/23/california-election-voter-rights-state-has-long-history-expanding-access-mail-absentee-ballots/10184884002/>

² 1976 version of Elections Code Section 1003 (effective January 1, 1977): "The absentee ballot shall be available to any registered voter who is unable to appear at his polling place for any one of the following reasons: (a) Illness. (b) Absence from the precinct on the day of the election. (c) Physical handicap. (d) Conflicting religious commitments. (e) The voter resides more than 10 miles from his polling place.

The absentee ballot shall also be available to any registered voter who resides within a precinct which is wholly on federally owned or controlled land." 1978 version of Elections Code Section 1003 (effective January 1, 1979): "The absentee ballot shall be available to any registered voter."

³ <https://www.sos.ca.gov/elections/historical-absentee>

⁴ <https://www.sos.ca.gov/elections/historical-absentee>

⁵ <https://admin.cdn.sos.ca.gov/elections/sov/2024-general/sov/04-historical-voter-reg-general.pdf>

⁶ <https://www.sos.ca.gov/elections/historical-absentee>

⁷ <https://elections.cdn.sos.ca.gov/ror/15day-gen-2024/complete-ror.pdf>

⁸ Stats. 1982 Ch. 1422, adding Chapter 7 (commencing with Section 1450) added to Division 2 of the California Elections Code.

voters.⁹ In 2001, any voter became eligible to obtain permanent vote by mail status.¹⁰ In 2016, California adopted the “Voter’s Choice Act,” whereby each County board of supervisors could vote to opt-in to mailing all active voters a ballot for every election without regard to a voter’s status as a permanent mail ballot voter, and hold in-person voting beginning 11 days before each election.¹¹ The first election this law was in effect, 5 counties out of 58 participated.¹² By the 2024 elections, 29 counties participated – one half of California’s counties encompassing nearly 78% of registered voters.¹³

COVID-19 upended election administration in 2020 for the entire country, prompting several temporary and permanent changes. California’s primary election was held March 3 that year, and on March 4 the Governor declared a State of Emergency. The Governor issued numerous executive orders pertaining to election administration, including one¹⁴ that required all counties to mail every active voter a ballot, which effectively expanded that component of the Voter’s Choice Act beyond the 15 counties that opted into that framework at the time.¹⁵ This directive was ratified by the Legislature through passage of an urgency bill prior to the general election.¹⁶ In 2021, the Legislature made this permanent.¹⁷

Additionally, the way in which a voter may return their mail ballot to the county elections official has evolved over the years. In its original form, a mail ballot could only be returned by a bona fide delivery service, the voter, or a specified family member if the voter experienced an illness or physical disability making them unable to personally return their ballot.¹⁸ A 2001 amendment expanded this list to add “a person residing in the same household” as the voter, but also added a provision which prohibited any paid or volunteer worker of any committee, political party, candidate’s campaign, or other group from returning a voter’s ballot.¹⁹ In other words, the 2001 amendment explicitly prohibited paid and volunteer ballot harvesting. In

⁹ Stats. 1993 Ch. 214, amending Section 1451 of the California Elections Code.

¹⁰ See former Elections Code section 3201, Stats. 2001 Ch. 922: “Any voter may apply for permanent absent voter status. Application for permanent absent voter status shall be made in accordance with Section 3001...”

¹¹ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB450

¹² <https://elections.cdn.sos.ca.gov/vca/2020/vca-november-2018-general-election-report.pdf>

¹³ <https://www.sos.ca.gov/voters-choice-act/vca-participating-counties>

¹⁴ <https://www.gov.ca.gov/wp-content/uploads/2020/05/05.08.2020-EO-N-64-20-text.pdf>

¹⁵ <https://elections.cdn.sos.ca.gov/vca/2020-vca-report/2020-vca-final-report.pdf>

¹⁶ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB860

¹⁷ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB37

¹⁸ California Elections Code Section 3017 prior to 2002 amendment: “All absentee be voted on or before the day of the election. After marking the ballot, the absent voter shall either: (1) return the ballot by mail or in person to the elections official from whom it came or (2) return the ballot in person to any member of a precinct board at any polling place within the jurisdiction. However, an absent voter who, because of illness or other physical disability, is unable to return the ballot, may designate his or her spouse, child, parent, grandparent, grandchild, brother, or sister to return the ballot to the elections official from whom it came or to the precinct board at any polling place within the jurisdiction. The ballot must, however, be received by either the elections official from whom it came or the precinct board before the close of the polls on election day.

The elections official shall establish procedures to insure the secrecy of any ballot returned to a precinct polling place.

The provisions of this section are mandatory, not directory, and no ballot shall be counted if it is not delivered in compliance with this section.”

¹⁹ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=200120020AB302

2012, the California Elections Code was amended to remove the condition that a voter must be ill or disabled to allow specified family and household members to deliver a voter's ballot.²⁰ In 2015, drop boxes for mail ballots were added.²¹ Amendments adopted in 2016 legalized the practice known as ballot harvesting, by deleting the prohibition on campaigns and organizations collecting and delivering mail ballots for voters.²² Instead, any person authorized by the voter may deliver their ballot so long as the person isn't paid on a per-ballot basis.²³ Organized ballot harvesting has been a part of California's statewide elections since the 2018 cycle.

The timing for returning a mail ballot remained the same for nearly 40 years. Through elections held in 2014, a mail ballot had to be received by the voter's county elections official before the close of the polls on election day.²⁴ Amendments enacted in 2014 authorized counting a mail ballot if the envelope was dated or postmarked on or before election day and received no later than 3 days after election day.²⁵ During the COVID-19 State of Emergency, this was extended to 17 days after the election, but only for the November 2020 election.²⁶ Beginning with elections held in 2022, mail ballots dated or postmarked no later than election day may be counted if received by an elections office by the 7th day after election day.²⁷

As the volume of voting by mail increased, the Legislature sought to accommodate the workload of elections officials by shifting processing of mail ballots received prior to election day. Current laws permit county elections officials to begin processing mail ballots as early as the 29th day before the election – the same day they are mailed to voters.²⁸ "Processing" means conducting signature comparison, opening of envelopes and ballot extraction, duplicating damaged ballots, preparing ballots to be machine read, and allowing the machine to read them, stopping just short of accessing or releasing the vote count.²⁹ While helpful, about half of mail ballots cast are dropped off by voters on election day and remain to be processed until after all of the ballots cast in-person are counted on election night.³⁰

²⁰ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB365

²¹ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB2080

²² https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1921

²³ Id.

²⁴ California Elections Code Section 3020 prior to 2014 amendment: "All absentee ballots cast under this division shall be received by the elections official from whom they were obtained or by the precinct board no later than the close of the polls on election day." A 2007 amendment changed "absentee" to "vote by mail." AB 1243 (2007).

²⁵ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB29

²⁶ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB860

²⁷ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB37

²⁸ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=ELEC§ionNum=15101.

²⁹ Id.

³⁰ For the November 5, 2024 statewide general election, California Secretary of State statistics posted on 11/05/24 tallied 8,280,096 mail ballots returned. By the end of the canvass, 16,140,044 mail ballots were returned.

<https://www.sos.ca.gov/elections/historical-absentee>

When a mail ballot is received by an elections office, the laborious signature comparison process begins. Some counties in California use technology to conduct the first signature comparison, while others solely rely on election workers. Regardless of the method, before a signature on an envelope is deemed “not to compare” to a voter’s signature on file, three elections workers must find “beyond a reasonable doubt” that the signature on the mail ballot envelope “possesses multiple, significant, and obvious differing characteristics when compared to all signatures in the voter’s registration record.”³¹ Upon reaching this consensus, the voter has an opportunity to provide a substitute signature for comparison.³² In addition, if a voter returns their mail ballot envelope without a signature, the voter has an opportunity to provide a signature for comparison.³³ In both cases, this process is known as signature “curing.” The right to cure a signature problem was rolled out in phases. First, in 2015 a process was added to the California Elections Code to notify voters who failed to sign their mail ballot envelope and allow a signature to be submitted no later than the 8th day after the election.³⁴ Second, with respect to “mismatched” signature problems, the ACLU filed a lawsuit in 2017 seeking the remedy that no ballot be rejected based on a mismatched signature without providing notice to the voter and the opportunity to cure.³⁵ In early 2018, the court awarded the relief requested³⁶, and the Legislature responded by amending the Elections Code to incorporate a process to cure a mismatched signature, which took effect shortly before the 2018 general election.³⁷ This statute has been amended multiple times since it was originally adopted, and in its current form a voter may submit a substitute signature as late as 2 days prior to certification of the election results by their county elections official – which is up to 28 days after election day.³⁸ The cure form may be returned to the county elections office by mail, hand delivered, emailed, faxed, or by any other electronic means offered by the elections official.³⁹ Many cure forms are in fact “harvested” by paid and volunteer workers affiliated with close contests.⁴⁰

Generally, county elections officials are permitted to certify their election results as soon as they have completed all of the required tasks.⁴¹ However, a law temporarily in effect only for the 2024 general election prohibited counties from certifying earlier than the 28th day after the

³¹ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=ELEC§ionNum=3019

³² Id.

³³ Id.

³⁴ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB477

³⁵ *La Follette v. Padilla* (2017) Superior Court, County of San Francisco, CPF-17-515931,

https://www.aclunc.org/docs/20171113-la-follette_complaint.pdf

³⁶ https://www.aclunc.org/docs/20180305-la_follette_order_granting_writ_of_mandate.pdf

³⁷ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB759

³⁸ California Elections Code Section 3019(d)(1)(A) and (e)(1)(A)

³⁹ California Elections Code Section 3019(d)(4)(A) and (e)(2)

⁴⁰ For example, <https://gwire.com/2024/11/22/christine-pelosi-leads-charge-to-ensure-every-vote-counts-in-tight-duarte-gray-race/> and <https://www.latimes.com/politics/story/2024-11-13/ballot-curing-california-counts-votes-close-house-races>

⁴¹ California Elections Code Sections 15301, 15302, 15371, 15372

election.⁴² The reaction of many county elections officials was to suspend canvass activities after normal working hours, weekends, and holidays, to avoid paying overtime wages to canvass workers, for which the State was not reimbursing them, thus delaying the reporting of results for that election.⁴³

In addition to the mail voting process, California's same-day voter registration significantly contributes to the delay in finalizing election results. Known as "conditional voter registration," California permits individuals who are not registered to vote by the 15th day before any election to complete a registration affidavit and cast a ballot.⁴⁴ If eligibility to register is confirmed and the personal information is validated, the individual is simultaneously registered and the ballot is counted. In most counties, these are processed as a type of provisional ballot, which doesn't begin until a week or two after election day, and take the most labor and time to handle.⁴⁵

It is the cumulative effect of all of these procedures and deadlines that cause the delay in finalizing California's election results. Of the "days or weeks" it takes to know the "outcomes of close contests," California's Secretary of State, Dr. Shirley Weber, said "California elections officials prioritize the right to vote and election security over rushing the vote count" and that Californians should be "patient."⁴⁶

But not all of California's policy makers agree that we should just accept this. In March 2025, California State Senate's Elections and Constitutional Amendments Committee held an informational hearing on signature curing⁴⁷, though most of the questions from the Senators focused the length of the canvass process. There is at least a recognition that there's a downside to this reality. So far, the proposals for solving this likely remain inadequate. In 2024, state law was amended to allow voters to drop off their completed mail ballot without the envelope in counties that have the capacity to verify a voter has not yet voted in the election and can update the voter's status in real time, thus evading the signature comparison and cure processes.⁴⁸ Counties were slow to implement this in 2024. There's currently a proposal that

⁴² California Elections Code section 15391:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB3184&search_keywords=election

⁴³ <https://www.modbee.com/news/politics-government/election/article293504474.html>;

https://www.actionnewsnow.com/news/butte-county-clerk-recorder-registrar-of-voters-is-disappointed-with-passing-of-assembly-bill-3184/article_f0fea4b4-79ec-11ef-af34-139b3bee8844.html;

<https://www.sandiegouniontribune.com/2024/10/16/when-will-election-results-be-available-in-california/>

⁴⁴ California Elections Code Section 2170-2173

⁴⁵ California Elections Code Section 2170(f): an elections official may offer a nonprovisional ballot if the official uses the statewide voter registration database to verify the person is deemed eligible to register to vote, has not voted in the state in that election, has not been included on a roster for the same election in another county in the state, and updates the voter's record to indicate the voter has voted in that election.

⁴⁶ <https://elections.cdn.sos.ca.gov/statewide-elections/2022-general/media-releases/11-07-22-vote-counting-process.pdf>

⁴⁷ <https://selc.senate.ca.gov/hearings/informationaloversight-hearings>

⁴⁸ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB626

would require non-Voter's Choice Act counties to offer in person voting the Saturday prior to an election⁴⁹, but given that over 80% of California's voters returned a mail ballot in an envelope at the most recent statewide election⁵⁰, this may not ease the post-election delay. Several members of the California Legislature have authored bills this session to simply mandate speeding things up – but these proposals would impose an arbitrary deadline by which certain ballots must be counted or that the canvass must be completed, without addressing the root causes of the current lengthy process and without equipping county elections officials with the means to process envelopes and ballots faster.⁵¹

For decades, California policy makers have prioritized maximizing opportunities to register and cast a ballot in each election, at the expense of finalizing election results closer to election day. The slow pace of counting ballots is beginning to get the attention of some members of the California Legislature, creating an opportunity for policy changes to speed up the canvass and reporting of final results. The solutions must focus on mail ballot and same-day voter registration procedures and deadlines.

⁴⁹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB1249

⁵⁰ <https://www.sos.ca.gov/elections/historical-absentee>

⁵¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB5;
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB1214;
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB407