

**State of California
Office of Administrative Law**

In re:
Secretary of State

Regulatory Action:

Title 02, California Code of Regulations

Adopt sections: 20871, 20872, 20873,
20874, 20875, 20876,
20878, 20879

NOTICE OF APPROVAL OF REGULATORY
ACTION

Government Code Section 11349.3

OAL Matter Number: 2024-0122-01

OAL Matter Type: Regular (S)

This action by the Secretary of State adopts regulations within new chapter 8.2 of division 7 of title 2 of the California Code of Regulations to set forth the rights and responsibilities for election observers and county election officials.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on February 27, 2024 under Government Code section 11343.4(b)(3).

Date: February 27, 2024



Nicole C. Carrillo
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Dr. Shirley N. Weber, Secretary
of State

Copy: Robbie Anderson

RESUBMITTAL

For use by Secretary of State only

OAL FILE NUMBERS NOTICE FILE NUMBER REGULATORY ACTION NUMBER EMERGENCY NUMBER
Z-2023-0919-04 2024-0122-01 SR

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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

FEB 27 2024

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OFFICE OF ADMIN. LAW
2024 JAN 22 2:52 PM
REGULATIONS

NOTICE

AGENCY WITH RULEMAKING AUTHORITY
SECRETARY OF STATE

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) ELECTION OBSERVATIONS RIGHTS AND RESPONSIBILITIES	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) PER AGENCY REQUEST NCC
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) TITLE(S) 2	ADOPT 20871, 20872, 20873, 20874, 20875, 20876, 20878, 20879 AMEND REPEAL
3. TYPE OF FILING <input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only	4. ALL BEGINNING AND ENDING DATES OF AVOIDANCE OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) December 5, 2023 - December 26, 2023; December 26, 2023 - January 10, 2024
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify)	6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal PER AGENCY REQUEST NCC
7. CONTACT PERSON Robbie Anderson	TELEPHONE NUMBER (916) 216-6488 FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) aanderso@sos.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

STEVEN J. REYES, CHIEF COUNSEL

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 27 2024

Office of Administrative Law

**California Secretary of State
Proposed Regulatory Action:
Election Observations Rights and Responsibilities
Proposed Regulation Text**

These proposed regulations will add Chapter 8.2 to Division 7 of Title 2 of the California Code of Regulations. All new sections in Chapter 8.2 are proposed for adoption and are, therefore, not underlined in the text.

Title 2. Administration
Division 7. Secretary of
State
Chapter 8.2. Election Observation: Rights and Responsibilities

20871. General Provisions.

The purpose of this Chapter is to establish uniform requirements and procedures for elections officials and any person who observes the election process in California. These regulations are intended to increase transparency in the elections process and shall apply to all elections in California conducted under the California Elections Code.

*Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.
Reference: Section 10, Elections Code.*

20872. Definitions.

As used in this Chapter, the following terms have the following definitions:

- (a) "Bona fide association of citizens" means an organization or association that is organized by articles of incorporation, articles of organization, statement of organization, articles of association, partnership documents, bylaws, or any similar document.
- (b) "Central counting site" means a location or locations where ballots are counted by the elections official.
- (c) "County elections official" shall mean the county registrar of voters or county clerk.
- (d) "County election observer panel member" means individuals, interested organizations, groups, and entities who have accepted an invitation from their county elections official to observe and provide feedback in an official capacity on the election process.
- (e) "Election observer" means a person who observes the conduct of elections in California.

- (f) "Elections official" shall have the meaning set forth in Elections Code section 320. As used in this Chapter, an elections official has decision making authority for election processes and activities.
- (g) "Election worker" is a person who assists with the conducting of the election. An election worker includes poll workers, employees of the elections official, volunteers, and any other person designated or assigned by the elections official to assist in all processes necessary for conducting an election.
- (h) "Observe" means to watch, view, listen, take notes, and ask questions.
- (i) "Polling place" shall have the meaning set forth in Elections Code section 338.5, which includes vote centers, and shall also include any satellite office as provided in Elections Code section 3018.
- (j) "Precinct board" shall have the meaning set forth in Elections Code section 339.
- (k) "Precinct" shall have the meaning set forth in Elections Code section 338.6.
- (l) "Sufficiently close" shall mean the distance determined by the elections official that enables an observer to observe and see the vote-by-mail identification envelopes and the signatures and dates, date stamps, or postmarks thereon and challenge whether those individuals handling vote by mail ballots are following established procedures, which includes all of the following:
- (1) Verifying signatures on the vote by mail ballot return envelopes by comparing them to voter registration information.
 - (2) Duplicating accurately damaged or defective ballots.
 - (3) Securing vote by mail ballots to prevent tampering with them before they are counted on election day.
- (m) "Vote-by-mail ballot processing" shall mean the activities set forth in Elections Code section 15101 and shall also include the activities set forth in Section 20873(c).
- (n) "Voting equipment" as used in this Chapter shall include the following:
- (1) "Ballot on demand system" as defined in Elections Code section 303.4,
 - (2) "Electronic poll book" as defined in Elections Code section 2550,
 - (3) "Vote tabulating device" as defined in Elections Code section 358,
 - (4) "Voting device" as defined in Elections Code section 360,
 - (5) "Voting machine" as defined in Elections Code section 361,
 - (6) "Voting system" as defined in Elections Code section 362, and
- (o) "Voter list" shall have the same meaning set forth in Elections Code section 359.2.

*Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.
Reference: Sections 303.4, 320, 335.5, 338.5, 338.6, 339, 358, 359.2, 360, 361, 362, 2550,
3018, 15101, and 15104, Elections Code.*

20873. Rights of Election Observers.

(a) As provided in Elections Code sections 15004(a) and (b), each political party qualified to participate in an election in California and any bona fide association of citizens or a media organization may employ, and may have present at the central counting site or sites, not more than two representatives to check and review the preparation and operation of the tabulating devices, their programming and testing, and have the representatives in attendance at any or all phases of the election.

(b) An election observer shall have the right to check and review the preparation and operation of the tabulating devices, their programming and testing, and observe any or all phases of the election.

(c) An election observer shall have the right to observe the processing of vote-by-mail identification envelopes and vote-by-mail ballots pursuant to Elections Code section 15104. Observers shall be allowed sufficiently close access to enable them to observe the vote-by-mail identification envelopes, the signatures and dates thereon, and the manner in which vote-by-mail ballots are handled. The processing of vote-by-mail identification envelopes and vote-by-mail ballots includes, but is not limited to, the following:

- (1) Securing vote-by-mail ballots to prevent tampering with them before, during, and after the ballots are counted.
- (2) Verifying signatures on the vote-by-mail identification envelope, which may include the use of signature verification technology, in accordance with Section 20960.
- (3) Identifying whether there are multiple signatures on the vote-by-mail identification envelope, and whether there is more than one ballot in the vote-by-mail identification envelope and verifying signatures accordingly pursuant to Section 20991.
- (4) Checking the opened vote-by-mail identification envelopes to ensure that all of the contents have been removed.
- (5) Duplicating damaged or defective ballots, votes cast on a sample ballot, or ballots cast using a remote accessible vote-by-mail system in accordance with Elections Code section 15210.
- (6) Checking postmarks on vote-by-mail identification envelopes or the time and date stamps on envelopes or packages delivered by a bona fide private mail delivery company received after Election Day, and checking postmarks on vote-by-mail ballots that are enclosed in an envelope or package delivered by a bona fide private mail delivery company.
- (7) Checking the statewide voter registration system to confirm that the voter has not already voted, or that the conditional voter registration is proper.
- (8) Adjudicating hand-marked ballots, which may be done with a paper ballot or a scanned

ballot image, where the ballot tabulator cannot discern the voter's choice.

(9) Counting valid ballots.

(10) Making notes on rejected ballots in accordance with Elections Code section 15154.

(d) An election observer shall have the right to make challenges pursuant to Section 20879.

(e) An election observer shall have the right to observe any proceedings at a polling place before it opens to the public, during polling hours, and after the polls close.

(f) An election observer has the right to inspect any information available from the voter list that is or should be posted or otherwise available at the polling place or at the office of the elections official pursuant to Elections Code sections 14223 and 14294. However, the inspection shall occur at a time or in a manner which will not impede, interfere, or interrupt the normal process of voting.

(g) An election observer has the right to observe the retrieval of vote-by-mail ballots from vote-by-mail drop boxes and vote-by-mail drop off locations.

(h) An election observer has the right to observe the election processes and activities at the central counting site, or sites if applicable, beginning when the elections official starts processing vote-by-mail ballots, through Election Day, and until the elections official has certified the results of the election.

(i) An election observer has the right to observe the activities of the semifinal official canvass and the official canvass as defined in Elections Code sections 353.5 and 335.5, respectively.

(j) An election observer has the right to ask questions of the precinct board and receive answers so long as they do not interfere with the conduct of any part of the voting process. If questioning disrupts the execution of the duties of the precinct board, the precinct board may discontinue responding to questions from that observer. The elections official may designate a member of the precinct board to whom an election observer may ask questions at the polling place. If the elections official has not designated a person, or that person is not available, the observer may pose questions to any member of the precinct board. If an answer cannot be provided immediately, the election worker or elections official shall provide an answer as soon as is reasonably practicable.

(k) An election observer has the right to ask questions and receive answers during the observation of an elections process or activity so long as they do not interfere with the conduct of the elections process or activity being observed. If questioning disrupts the execution of the duties of the elections official, the elections official may discontinue responding to questions

from that observer. The elections official may designate a person to whom an election observer may ask questions about the process being observed. If the elections official has not designated a person, or that person is not available, the observer may pose questions to the elections official or to any election worker. If an answer cannot be provided immediately, the election worker or elections official shall provide an answer as soon as is reasonably practicable.

(l) If the elections official utilizes signature verification technology to verify signatures on vote-by-mail identification envelopes, an observer shall be permitted to ask questions and receive answers about that process and technology. The elections official may designate a person to whom an election observer may ask questions about signature verification technology. If the elections official has not designated a person, or that person is not available, the observer may pose questions to the elections official or to any election worker. If an answer cannot be provided immediately, the election worker or elections official shall provide an answer as soon as is reasonably practicable.

(m) Subject to Elections Code section 2302, an election observer may use an electronic device, including a smartphone, tablet, or other handheld device, at a polling place.

(n) An international election observer, as defined in Elections Code section 2301(b), shall be provided uniform and nondiscriminatory access to all stages of the election process that are open to the public, including the public review period for the certification of a ballot marking system, the processing and counting of vote by mail ballots, the canvassing of ballots, and the recounting of ballots. An international election observer shall not interfere with a voter in the preparation or casting of the voter's ballot, with a precinct board member or an elections official in the performance of his or her duties, or with the orderly conduct of an election.

*Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.
Reference: 335.5, 353.5, 2300, 2301, 2302, 14223, 14240, 14251, 14294, 15004, 15101, 15104, 15105, 15106, 15204, and 15210, Elections Code.*

20874. Rights of Elections Officials.

(a) The elections official, at their discretion, while maintaining the right to observe the elections process and ensuring that observers have the ability to see and view the election process or activity being observed, may determine the distance at which the observer(s) shall observe any election process or activity. In making such determination, the elections official may take into consideration, among other things, the following:

- (1) the size and area of the polling place;
- (2) the size and configuration of the building and the elections office;
- (3) the presence and path of travel of staff;
- (4) the size and configuration of the location where ballots are being processed and counted;

- (5) the elections official's staffing levels and the number of observers who are requesting access to observe a particular process;
- (6) the maintaining of security and limiting observer access to voting equipment to ensure that it cannot be touched or tampered with;
- (7) the maintaining of privacy and security of the ballot and the voter's confidential information, which does not include the voter's signature or address for the purpose of observing the processing of vote-by-mail identification envelopes;
- (8) the elections process that is being observed (for example, observers shall have sufficiently close access to view the processing of vote-by-mail ballots);
- (9) the lighting in the location where the elections activity or process is occurring;
- (10) the angle at which the observer can view the elections activity or process;
- (11) the right of a voter to vote safely, securely, and free from intimidation or corruption;
- (12) the safety and security of elections officials, workers, and the public, which may include any health and safety measures or requirements in place at the time observation is occurring;
- (13) the use of video displays to magnify voting materials and closed-circuit video displays of election processes or activities;
- (14) technological limitations of the elections official's office;
- (15) the maintaining of security and limiting observer access to other county or city departments; and,
- (16) maintaining accessibility for election observers with disabilities.

(b) At the discretion of the elections official, an election observer may be required to wear election official-issued identification that contains the first name of the observer and the term "observer" to ensure that observers are readily identifiable.

(c) The elections official may designate a person to whom an election observer can ask questions and present a challenge(s) during the observation process. The designation may either be in writing or verbal, as determined by the elections official.

(d) The elections official may designate a person to whom an election observer may present a challenge during the processing of vote-by-mail identification envelopes and vote-by-mail ballots. The designation may either be in writing or verbal, as determined by the elections official.

(e) The elections official may require an election observer to remain silent inside the observation area if the talk from or the conduct of an observer is disrupting the elections activity or process being observed, unless the observer is posing a question to the person designated by the elections official to respond to questions or any other inquiries.

(f) If an election observer is not following the observation rules provided for and developed pursuant to this Chapter, the elections official or their designee shall give a verbal or written warning to that observer that they shall comply with the observation rules. The warning shall

include an explanation of what observation rules are not being complied with. However, if an election observer continues to not comply with the observation rules, the elections official or their designee may require an election observer to leave the observation area, the premises, or both. In addition, if the situation warrants, the elections official or their designee may require an election observer to leave the observation area, the premises, or both immediately.

(g) Subject to the provisions of Elections Code section 15004, the elections official may limit the number of election observers permitted in an observation area in order to prevent interference with the conduct of voting and elections processes.

(h) Subject to the provisions of Elections Code section 15004, in the event there are more observers than can be accommodated at a particular site, the elections official may limit the number of observers. If necessary to provide an equal opportunity for those present to observe the elections process or activity, the elections official shall provide for a rotation of observers or provide a random lottery-type drawing.

(i) In accordance with Section 20876(b), to ensure the safety and security of election workers and to prevent interference with the conduct of the elections process, the elections official may restrict the size and type of items the election observer can bring into the location where observation is taking place.

(j) The elections official may develop and provide additional written rules and procedures, but those additional written rules and procedures shall be consistent with the intent of this Chapter and the provisions of the California Elections Code.

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.

Reference: Sections 10 and 15004, Elections Code.

20875. Duties of Election Observers.

(a) Upon entering at any polling location, central counting site, or any other location where election processes or activities are occurring, an election observer shall check in at the site designated by the elections official.

(b) The elections official has the discretion to require an observer to wear identification provided by the elections official. An election observer may also wear their own identification at any time, but that identification shall not include any electioneering information or information that could intimidate a voter.

(c) At all times while observing, an election observer shall not disrupt or interfere with the election process or activity being observed and shall follow the procedures and requirements

provided in this Chapter and any additional written rules and procedures established by the elections official in accordance with Section 20874(j).

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.

Reference: Section 10, Elections Code.

20876. Duties of Election Officials.

(a) The elections official shall make available written observation rules and procedures for the election process being observed to the election observers or post the written observation rules and any written procedures for the election process being observed conspicuously at any location where observation is taking place. If the elections official has their own website, the elections official shall make the written observation rules and procedures for the elections processes being observed available on that elections website.

(b) The elections official shall, consistent with the intent of this Chapter and the provisions of the Elections Code, establish written security rules for observation. These security rules may include, but shall not be limited to, the use of sign-in sheets and identification to be worn by observers and prohibiting or limiting the use of cell phones, pagers, cameras, and other audio or video equipment or electronic devices, if the use of such item(s) is interfering with or will interfere with the conduct of the elections process, the privacy of voters, or if the use of those items compromises the security of the location where observation is taking place. However, any limitation on the use of an electronic device shall be subject to the provisions of Elections Code section 2302.

(c) The elections official shall maintain the integrity of the election process and shall, while considering the content of this Chapter, have the discretion to determine what constitutes election observer misconduct or interference. Examples of election observer misconduct or interference may include, but are not limited to, unauthorized touching of voting equipment or elections officials, obstructing ballot transportation and handling, threatening elections officials, election workers, and voters, and attempting to view confidential voter registration information.

(d) The elections official shall provide notice(s) to the public which shall contain the specific date(s), time(s) and place(s) of the election process or activity that may be observed by the public. If there is a change of schedule for an elections process or activity that has been noticed to the public, the elections official shall provide updated information to the public regarding the schedule changes as soon as the changes are made. The notices shall be conspicuously posted on the elections official's website if the elections official has their own website, and at the location where the elections activity or process is taking place. The elections official may also provide notice to voters via email. The following notice(s) are required, as applicable:

- (1) one percent manual tally (Elections Code section 15360),
- (2) logic and accuracy testing (Elections Code section 15000),
- (3) early ballot retrieval (Elections Code section 14422; Section 20142), and

- (4) vote-by-mail processing and counting (Elections Code section 15104, subdivision (c)).
- (e) If the elections official requires an election observer to wear identification while observing a particular elections process or activity, a designated area for the election observers to check in and receive identification shall be provided.
- (f) An elections official need not delay or interrupt scheduled operations and processes solely because an election observer is, will be, or is not yet present, and shall not halt scheduled operations because an election observer is or is not present.
- (g) Except as provided in Elections Code section 2194(c)(2), when vote-by-mail ballot identification envelopes and vote-by-mail ballots are being processed, the elections official shall use reasonable measures to ensure that the voter registration information that is deemed confidential under Elections Code section 2194 is not visible to election observers.
- (h) In the event an elections official provides a live video feed for a remote observation for the observation of an elections activity or process in response to a threat or emergency that impairs in-person observation of election activities and processes, the elections official shall provide a mechanism for an election observer to ask questions about the activity or process being conducted or make a challenge to that activity or process.
- (i) Unless necessary to ensure the safety and security of election workers and observers, when determining the locations of where observers may observe from pursuant to Section 20874(a), the elections official shall not intentionally configure those locations in a manner that would impede or obstruct the ability of observers to observe the elections process or activity.
- (j) As observers have the right to ask questions about elections processes and receive answers pursuant to Elections Code section 2300, the elections officials shall provide answers to questions posed as soon as is reasonably practicable.
- (k) The elections official shall abide by any local, state, or federal health and safety directives in place during the time of the conducting of the election.

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.

Reference: Sections 336.5, 3203, 14422, 15104, 15105, 15360, and 15367, Elections Code.

20878. Conduct of Election Observers.

- (a) In order to minimize distraction or disruption an elections observer shall not:
- (1) Interfere with the:
- (A) retrieval of vote-by-mail ballots from vote-by-mail drop boxes and vote-by-mail dropoff locations, processing of vote-by-mail ballot identification envelopes, or the processing and counting of vote-by-mail ballots.
- (B) conduct of the election in general or disrupt any other elections activity or process.

- (2) Touch or handle any ballots.
- (3) Physically handle any voting equipment or voting materials.
- (4) Move or rearrange tables, chairs, or voting booths at the polling place or central counting site without the express permission of the elections official.
- (5) Sit at the elections official worktables or view confidential voter information on any computer terminal or document, except as provided in Elections Code section 2194(c)(2).
- (6) Engage in any electioneering activities.
- (7) Display any political party or campaign material or wear political party or campaign badges, buttons, or apparel.
- (8) Solicit a vote, speak to a voter on the subject of marking the voter's ballot while electioneering, or communicate with voters regarding their qualification to vote within 100 feet of the locations identified in Elections Code section 319.5. However, an election observer may conduct exit polling of voters, provided it is conducted at least 25 feet away from the locations identified in Elections Code section 319.5. This provision shall not apply to a voter who has asked for assistance casting their ballot.
- (9) Wear the uniform of a peace officer, a private guard, or security personnel.
- (10) Stop or attempt to stop poll workers or the central counting site workers while they are processing voted ballots. However, the election observer shall retain the right to make a challenge, and the elections official shall determine whether the processing of the ballots shall be stopped.
- (11) Use the elections officials' phones, computers, or any other polling place equipment at polling places or the central counting site.
- (12) Eat or drink in a polling place or the central counting site without the express permission of the elections official.
- (13) Assist in operations at any polling place or the central counting site without the express permission of the elections official.
- (14) Intentionally prevent other elections observers from observing election materials or an elections process or activity.
- (15) Enter secure areas without the express permission of the elections official.
- (16) Enter any area other than an identified observation area without the express permission of the elections official.

(b) An election observer shall refrain from touching an elections official.

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.

Reference: Sections 319.5, 338.5, 3018, 2194, 15104, and 18370, Elections Code.

20879. Voter Challenges.

- (a) During the processing of vote-by-mail identification envelopes and vote-by-mail ballots, an elections observer shall have the right to make challenges as provided in Elections Code sections 15104(b) and (d).
 - (1) Election observers and the groups identified in Elections Code section 15104(b) shall be permitted to observe and challenge the manner in which the vote-by-mail ballots are handled, from

the processing of vote-by-mail ballot identification envelopes through the counting and disposition of the ballots.

(2) Election observers may challenge whether those individuals handling vote-by-mail ballots are following established procedures, including all of the following:

(A) Verifying signatures on the vote-by-mail ballot identification envelopes by comparing them to the signature(s) in the voter's registration record in accordance with Elections Code section 3019 and Section 20960.

(B) Accurately duplicating damaged or defective ballots in accordance with Elections Code section 15210.

(C) Securing vote-by-mail ballots to prevent tampering with them before they are counted on Election Day.

(3) As provided in Elections Code section 15105, challenges to a vote-by-mail voter may be made for the same reasons as those made against a voter at a polling place. Additionally, a challenge may be entered on the grounds that the vote-by-mail ballot was not timely received, or that the voter is imprisoned for a conviction of a felony. These challenges shall be made prior to the opening of the identification envelope of the challenged vote-by-mail voter.

(b) As provided in Elections Code section 15106, because the voter is not present, the challenger shall have the burden of establishing extraordinary proof of the validity of the challenge at the time the challenge is made. An example of such proof would be if a challenger alleges that a vote-by-mail ballot was cast by a voter who was deceased before vote-by-mail ballots were issued by the elections official, and the challenger provided a copy of that voter's death certificate to the elections official showing that the voter was deceased prior to the time vote-by-mail ballots were issued. Any doubt in the interpretation of the Elections Code applicable to the challenge shall be resolved in favor of the challenged voter.

(c) The elections official shall have the discretion to halt challenges from a person or group if multiple challenges are being made by the same person or group, and those challenges are disrupting the processing of the vote-by-mail identification envelopes. However, that person or group shall have the right to submit written challenges for the elections official to review at a later time. The elections official shall document and resolve these challenges as provided in Section 20879(h).

(d) As provided in Elections Code section 14240, only a member of the precinct board has the authority to challenge a voter's right to vote. An election observer is not authorized to directly challenge a voter.

(e) An election observer requesting a challenge under Elections Code section 14240(c) has the burden of providing evidence to the elections official that establishes, at a minimum, probable cause for the requested challenge. Any doubt in the interpretation of the provisions of the California Elections Code shall be resolved in favor of the challenged voter.

(f) The elections official has the discretion as to whether a challenge made during the processing of vote-by-mail identification envelopes and vote-by-mail ballots can be made verbally or in writing.

(g) In the event the elections official determines that challenges appear frivolous or meritless, the elections official shall have the right to halt the challenge process for those making the frivolous or meritless challenges in order to prevent interference with the conduct of the elections activity or process being undertaken. The elections official shall document these challenges as provided in Section 20879(h).

(h) The elections official shall develop written procedures for maintaining, reviewing, and determining the outcome of challenges made by elections observers. These procedures shall be made available to election observers where an elections activity or process is occurring and shall include:

- (1) retaining the name and organization (if applicable) of the challenger,
- (2) a description of the proposed issue,
- (3) the date and time issue was reported,
- (4) the type of election equipment used at the location/station where the problem was noted (identification number, make, model, and serial number),
- (5) pictures of sufficient quantity depicting the right details and positions necessary to document the problem(s) associated with the challenge, and
- (6) the ultimate resolution and disposition of the challenge.

(i) Upon the resolution of a challenge the elections official shall provide the election observer with an oral or written disposition of the challenge as soon as is reasonably practicable. The elections official must ensure that no confidential voter registration information is disclosed when providing the disposition of the challenge.

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.

Reference: 3019, 14240, 14251, 15101, 15104, 15106, and 15210, Elections Code.