

Chapter 6
Provisional Voting

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I. California Law and Provisional Voting

California law provides that any voter claiming to be properly registered, but whose qualifications cannot be immediately established upon examination of the list of registered voters for the precinct or the records on file with the county elections official, is entitled to cast a provisional ballot.

The elections official must advise voters of their right to cast a provisional ballot and must provide the voter with written instructions regarding the provisional voting process and procedures. State law requires people who vote a provisional ballot to execute, in the presence of the elections official, a written affirmation, stating that they are eligible to vote and are registered in the county where they desire to vote.

Provisional ballots are delivered, along with regular ballots, to the elections office canvassing area. Using the same procedures as used with vote-by-mail envelopes, the elections official compares the signature for the provisional ballot with the signature on that voter's affidavit of registration. If the signature does not match, the ballot is rejected. (Minor variation in signatures does not invalidate the ballot.) If the signature matches, the elections official checks the voter registration database to verify whether the voter is properly registered to vote. Once the signature on the envelope has been verified and the voter's registration is confirmed, the ballot is separated from the envelope and counted as a regular ballot. If the voter's registration cannot be confirmed, the ballot is not counted, and the reason for not counting the ballot is recorded. Only the votes for contests for which the voter is eligible to vote are counted.

Similar to HAVA, California law also requires the establishment of a Free Access System so the voter can find out if his or her provisional ballot has been counted. Information about how to access each county's Free Access System can be found on the Secretary of State's website at: www.sos.ca.gov/elections/ballot-status/

Finally, California law provides that voters who have moved from one address to another within the same county and who have not notified the county elections office of their new address may vote provisionally on the day of the election at the polling place at which they are entitled to vote based on their new address, or at the county elections office, or at another central location designated by the elections office.

California's provisional voting laws effectively comply with and compliment the NVRA "fail safe" protections and the HAVA provisional voting statutes.

II. NVRA “Fail Safe” Voting Requirements

Section 8 of the NVRA contains protections for voters that allow an eligible registered voter to cast a provisional ballot in California, if: 1) the voter has been placed on the inactive list or; 2) the voter moved to a new address inside the county but did not notify the county elections office before the election. The NVRA requires elections officials must allow these voters to update their registration and vote in the election using a provisional ballot. California law has provided for provisional voting since 1983 and meets the NVRA fail safe voting requirements.

III. The Help America Vote Act (HAVA) and Provisional Voting

Provisional voting is also mandated under the Help America Vote Act (HAVA) of 2002. Similar to the NVRA “fail safe” protections, provisional voting under HAVA is intended to prevent disenfranchisement of otherwise eligible voters due to voter registration errors or other unusual circumstances. HAVA requires provisional voting to be offered to voters when the voter's name does not appear on the roster or when the voter is required to provide identification under HAVA and is unable to provide identification. During the canvass period following each election, elections officials verify eligibility and registration before counting each provisional ballot. California law meets the HAVA provisional voting requirements.

IV. When Do Voters Cast a Provisional Ballot?

Below are some of the common situations when a voter will need to cast a provisional ballot rather than a regular ballot:

- The voter moved but did not update his or her voter registration record to reflect the move;
- The voter’s name does not appear on the list of registered voters and the eligibility to vote cannot be verified at the polling place;
- The voter is required to provide identification under HAVA and is unable or refuses to provide proof of identity. Under HAVA, first-time voters who registered by mail – and for whom neither the social security number nor state identification number could be verified – may be required to provide proof of identity;
- The voter requested a vote-by-mail ballot but has neither returned the ballot by mail nor brought it to the polling place;
- The voter is voting during polling place hours that have been extended by a state or federal court; or

- The voter is registered to vote, but is attempting to vote in a precinct different from the one in which the voter is registered or assigned.

In order to vote provisionally, the voter must sign a written affirmation of eligibility and registration. After Election Day, elections officials verify each provisional voter's registration and eligibility to vote and then count provisional ballots.

At the time a voter casts a provisional ballot, the elections official provides the voter with written information on how the voter can check whether his or her provisional ballot was counted.