



# SHIRLEY N. WEBER, Ph.D.

## CALIFORNIA SECRETARY OF STATE

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December 5, 2023

County Clerk/Registrar of Voters (CC/ROV) Memorandum #23138

TO: All County Clerks/Registrars of Voters

FROM: /s/ Robbie Anderson  
Election Counsel

RE: Regulations: Election Observations Rights and Responsibilities

The Secretary of State is providing notice of changes to the Election Observations Rights and Responsibilities regulations originally published on September 29, 2023. The Secretary of State is proposing amendments to the proposed regulation text to address comments received during the 45-day public comment period that ended on November 13, 2023.

### **Written Comment Period: December 5 – December 20, 2023**

Any interested person, or their authorized representative, may submit written comments pertaining to the changes in the text of the proposed regulations. The Secretary of State will accept written comments on the changes from December 5, 2023, through December 20, 2023. The Secretary of State will consider only comments received at the Secretary of State's office by that date.

Following the close of the written comment period, the Secretary of State, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals provided by the public or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available from our office for 15 days prior to its adoption and will be provided to those persons who submit written comments related to this proposal or who have requested notification of any changes to the proposal.

Copies of the Notice of Modification to Proposed Regulations Rulemaking and copies of the text of the proposed regulation, with changes identified in underline and strikeout, can be accessed through the Secretary of State's website at:

<https://www.sos.ca.gov/administration/regulations/proposed-regulations>.

CCROV # 23138  
December 5, 2023  
Page 2

If you have any questions, please feel free to contact Robbie Anderson [aanderso@sos.ca.gov](mailto:aanderso@sos.ca.gov) or Rachelle Delucchi at [rdelucch@sos.ca.gov](mailto:rdelucch@sos.ca.gov) or (916) 657-2166.

Enclosed:

1. Notice of Modification of Text of Proposed Regulations
2. Amended Proposed Regulations Text
3. Addendum to the Initial Statement of Reasons

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

**NOTICE OF MODIFICATIONS TO TEXT OF  
PROPOSED REGULATIONS**

Please take notice that the Secretary of State is proposing changes to the regulations that are the subject of this rulemaking action. The proposed revised text is enclosed with this notice. All sections in Chapter 8.2 were proposed for adoption in the originally noticed text and are, therefore, not underlined. Proposed revisions to the originally noticed text of the regulation as well as the edits to that text noticed from September 29, 2023, through November 13, 2023. The edits to the text of proposed language have been made using ~~strikeout~~ for any text proposed for deletion and underlining for any text proposed to be added. (See Govt. Code, § 11346.8(c); Cal. Code Regs., tit. 1, § 44.)

**NOTICE OF ADDITION OF DOCUMENTS AND INFORMATION TO  
RULEMAKING FILE**

Please take notice that the Secretary of State is adding the following documents and other information to the rulemaking file in this rulemaking action:

- Addendum to Initial Statement of Reasons

(See Govt. Code §§ 11346.8(d), 11346.9(a)(1), and 11347.1.)

The documents and other information are available for public inspection during the dates of the public comment period, described below, excluding weekends and holidays, from 8:00 a.m. through 5:00 p.m. The rulemaking file is maintained at the following address:

California Secretary of State  
Elections Division  
1500 11<sup>th</sup> Street, 5<sup>th</sup> Floor  
Sacramento, CA 95814

Website Access: Materials regarding this proposal can be found at  
<https://www.sos.ca.gov/administration/regulations>.

Due to restrictions related to COVID-19, the Elections Division's public counter is not open to the public. Please contact the contact persons below to arrange for public inspection of the rulemaking documents. Options for public inspection during COVID-19 may include having the rulemaking documents emailed to you or scheduling an in-person review.

## PUBLIC COMMENT PERIOD

If you have any comments regarding the proposed changes to the regulations and/or the documents and other information added to the rulemaking file pursuant to this notice, the Secretary of State will accept written comments from December 5, 2023, through December 20, 2023.

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Robbie Anderson  
Secretary of State  
1500 11<sup>th</sup> St., 5<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 657-2166, Or to: [aanderso@sos.ca.gov](mailto:aanderso@sos.ca.gov)  
The backup contact person is:

Rachelle Delucchi  
California Secretary of State  
1500 11<sup>th</sup> St., 5<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 657-2166, Or to: [rdelucch@sos.ca.gov](mailto:rdelucch@sos.ca.gov)

The Secretary of State will review all written comments that it has received by the close of the public comment period and that pertain only to the indicated changes to the modified text and/or documents and other information added pursuant to this notice. The Secretary of State will include the comments in the public rulemaking file and will summarize and respond to relevant comments in the Final Statement of Reasons.

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

**Amended Proposed Regulation Text**

The Proposed Regulation Text was originally submitted for a 45-day public comment on September 29, 2023. A public hearing was held on October 31, 2023, and public comments were received during the 45-day public comment period that ended on November 13, 2023. This version of the proposed regulation text reflects edits to the proposed regulation text based upon the public comments.

Edits are shown below using strikeout for any text proposed for deletion and underlining for any text proposed to be added.

These proposed regulations will add Chapter 8.2 to Division 7 of Title 2 of the California Code of Regulations. All sections in Chapter 8.2 are new and 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) “County election observation plan” shall mean the official plan designed by the county elections official and submitted to the Secretary of State that outlines the county’s election observation processes and protocols as set forth in Section 20877.
- (f) “Election observer” means a person who observes the conduct of elections in California.
- (g) “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.
- (h) “Election worker” is a person who assists with the ~~conduct~~ 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 ~~with the conduct of the election~~ in all processes necessary for conducting an election.
- (i) “Observe” means to watch, view, listen, take notes and ask questions.
- (j) “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.
- (k) “Precinct board” shall have the meaning set forth in Elections Code section 339.
- (l) “Precinct” shall have the meaning set forth in Elections Code section 338.6.
- (m) “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. ~~to observe the complete processing of vote by mail ballots and vote by mail~~

~~identification envelopes, except that confidential voter registration information identified in Elections Code section 2194 shall not be disclosed.~~

(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, 2194, 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) As provided in Elections Code section 15004(b), 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~~ An election observer shall have the right to check and review the preparation and operation of the tabulating devices, their programming and testing, and have the representatives in attendance at 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, ~~and 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 ~~scanned images of~~ hand-marked ballots, which may 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 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

~~(g)~~(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.

(h)(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.

~~(i)~~(j) An election observer has the right to ask questions of ~~poll workers~~ 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.

~~(j)~~(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.

~~(k)~~(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.

~~(l)~~(m) Subject to Elections Code 2302, an ~~An~~ election observer may use an electronic device, including a smartphone, tablet, or other handheld device, at a polling place ~~pursuant to Elections Code section 2302 and any restrictions established by the elections official as authorized in Section 20876(b).~~

~~(m)~~(n) An international election observer, as defined in Elections Code section 2301(b), shall ~~have the same rights and responsibilities as any other person who observes election activities.~~ 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 ~~its~~ such determination, the elections officials 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; ~~and,~~
- (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 ~~by name~~.

(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, ~~In addition,~~ the elections official ~~may~~ shall provide for a rotation of observers or provide a random lottery-type drawing ~~to provide an equal opportunity for those present to observe the elections process or activity.~~

(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 ~~also~~ 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 ~~California~~ 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 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.*

## **20877. County Election Observation Plans**

(a) To encourage election observation in their county, each—~~Each~~ county elections official shall develop and submit to the Secretary of State, thirty (30) calendar days prior to the date of a ~~the~~ statewide election, a county election observation plan that outlines election observation processes and protocols. The county elections official shall also make available to the public a copy of the county election observation plan on the county website, if the county elections official has their own website, and in person at the county elections office.

(b) The county election observation plan shall include the following information:

(1) County information, which shall include the following:

(A) Name of county.

(B) Name of county contact.

(C) County contact's telephone number and email address.

(D) Voting technology used in county for each election.

(2) Name of voting system used by the county and the version number of that voting system.

(3) Whether the county uses a central tabulator, a precinct tabulator, or both.

(4) Type of ballot marking device used by the county for accessible voting.

(5) The name of the electronic poll book or EMS Lite used by the county, if any.

(6) The name of the ballot on demand system used by the county, if any.

(7) Any existing county election observation rules and procedures, which may include,

(A) A list of election observer rights, duties, and conduct as described in this Chapter;

(B) A list of elections officials rights and duties as described in this Chapter;

(C) A list of observable activities (i.e., pre-election, election day, and post-election);

(D) County check-in procedures for election observers;

(E) General description of security procedures used by the county for chain of custody of voting

equipment and ballots;

(F) Designated observation areas, which are located as to allow continuous observation and prevent the need to interrupt or obscure the election observer's view at any point during the polling; and

(G) Designated county point of contact for election observers and back-up point of contact, as needed.

(8) Planned implementation date of county election observer plan.

(9) List of county election observer panel members, if applicable.

(10) County established mechanics of feedback for election observer panel members.

(c) The county shall invite the following to become a member of the county election observer panel, if applicable to the county:

(1) County grand jury

(2) Political party central committees in the county.

(3) The entities and groups identified in Elections Code section 15004, any other group, interested organization, or individual known to the county elections official that has expressed interest in observing the elections process.

(d) The invitations to those individuals and entities described in subdivision (c) shall be sent between 90 to 30 days prior to the day of the election.

(1) After the county elections official sends the invitations, if any individual or entity accepts the invitation to become part of the county election observer panel, the county elections official shall appoint that individual or entity to the county election observer panel and issue that individual or entity an appointment letter appointing them to the county election observer panel and to introduce the panelist(s) to the precinct workers.

(2) The county elections official shall prepare materials for each panelist which shall include, but not be limited to, a list of all polling places in the county for the specific election, as well as the central counting site location and hours of operation.

(3) The county elections official shall provide the county elections observer panel members, a checklist or questionnaire to provide feedback regarding the observation for return to the elections official at the end of the observation process.

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

*Reference: Section 12172.5, Government Code; Sections 10 and 15004, 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 or not 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 ~~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 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 or not 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 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), and

(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. ~~These procedures shall be made available to election observers where an elections activity or process is occurring.~~

(i) Upon the resolution of a challenge ~~made by an election observer~~, the elections official shall provide the election observer with the a 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: 14240, 14251, 15101, 15104, 15106, and 15210, Elections Code.*

**California Secretary of State  
Proposed Regulatory Action:  
Election Observations Rights and Responsibilities  
Proposed Regulation Text  
Addendum to the Initial Statement of Reasons**

This Addendum to the Initial Statement of Reasons address updates to the Proposed Regulation Text, which was originally submitted for a 45-day public comment on September 29, 2023, and for which a public hearing was held on October 31, 2023. The 45-day public comment period ended on November 13, 2023. Changes to the Proposed Regulation Text have been made based upon comments received during the 45-day public comment period and the public hearing.

**The factual basis and rationale of the following sections of the proposed regulations are modified as follows:**

**Section 20872. Definitions.**

Subsection (h) – The term “conduct” used in the definition of “Election worker” has been changed to “conducting” for clarity purposes. The term “conducting” is a better term than “conduct” as it relates to this definition. In addition, for clarity of what an election worker does, the text “in all processes necessary for conducting an election” has been added to this definition. These changes are necessary for clarity and completeness.

Subsection (m) – This definition has been modified for clarity. The initial version of this proposed section did not fully set forth all of the rights afforded to observers provided in Elections Code section 15104. The intent of this definition is to make it clear that observers have the right to be close enough to observe and see the processing of vote-by-mail identification envelopes and vote-by-mail ballots. Under Elections Code section 15104(d), observers must have the ability to see the vote by mail ballot return envelopes and the signatures thereon. While this definition contains a recitation of Elections Code section 15104, this recitation is necessary for clarity to observers and elections officials as to what rights observers have relating to the processing of vote-by-mail identification envelopes and vote-by-mail ballots.

In addition, the reference to Elections Code section 2194 has been removed, as the existing language related to a duty of the elections official rather than a part of a defined term. The reference to Elections Code section 2194 as it relates to a duty of the elections official is in proposed Section 20876(g).

The reference to Elections Code section 2194 in the Note section has been removed as that Elections Code section is no longer a referenced section for proposed Section 29872.

**20873. Rights of Election Observers.**

The original Subsections (a) and (b) have been combined for clarity and ease of reference .

Elections Code sections 15004(a) and (b) provide for the same rights for different groups. The duplicative text is not necessary to include in both sections.

Subsection (b) has been amended to provide that all observers in general have the same right to observe the activities set forth in Elections Code section 15004. In addition, for clarity as to the rights of observers, Subsection (b) also provides a statement that an election observer has the right to observe any or all phases of the election. This change to proposed Subsection (b) is necessary to provide clarity to elections officials and observers that the observers may be present to observe all phases of the election.

Subsection (c) has been amended to add additional text regarding the right of an observer to observe “the manner in which vote-by-mail ballots are handled.” This text is a part of Elections Code section 15104 and is included in this proposed section to ensure that the rights afforded to observers are identified regarding the observation of the processing of vote-by-mail identification envelopes and vote-by-mail ballots. This addition is necessary for clarity and ease of reference to observers and elections officials.

Subsection (c)(8) has been amended to include a reference to paper ballots. The original text provided for scanned images only, but not all counties adjudicate ballots using ballot images. This revision is necessary to ensure that observers have the right to observe the adjudication of ballots regardless of whether those ballots are adjudicated using paper ballots or scanned images. The original text was not clear as to that right.

A new proposed Subsection (g) has been added to provide that observers shall have the right observe the retrieval of vote-by-mail ballots from vote-by-mail drop boxes and drop-off locations. Elections officials retrieve voted ballots from drop boxes and drop-off locations throughout the 29 days prior to the election, and on election day. As this is a part of the elections process, this new proposed subdivision (g) is being added to ensure that this right of observers is preserved. This section is necessary for clarity as to the rights of observers for election observers and the elections official.

Due to the addition of proposed Subsection (g), Subdivisions (g), (h), (i), (j), (k), (l), and (m) have been renumbered.

Newly identified proposed Subsection (h) has been added to include “or sites if applicable” in the event the elections official counts ballots are more than one central counting site. This addition is necessary to ensure that the observer has the right to observe activities at all central counting sites the elections official may have. The existing language referred to a single site, and the new text is intended to provide clarity to election observers and the elections official.

Newly identified proposed Subsection (j) has been amended to conform to the provisions of Elections Code section 2300(a)(9)(B). The existing proposed text referred to a “poll worker,” but the correct term found in Elections Code section 2300(a)(9)(B) is “precinct board.” This amendment is necessary for clarity that an observer may ask questions of the entire precinct board, and not just a poll worker.

In addition, a new sentence was added to provide for an instance where the elections official or elections worker is not able to provide an immediate answer to a question. The answer may need to be researched or discussed, so the purpose of this new language is to make it clear that the

elections official or elections worker is not expected to provide an immediate answer if they can't do so. An immediate answer may not be possible in many situations.

Newly identified Subsection (k) has been amended to include an additional sentence. This new sentence was added to provide for an instance where the elections official or elections worker is not able to provide an immediate answer to a question. The answer may need to be researched or discussed, so the purpose of this new language is to make it clear that the elections official or elections worker is not expected to provide an immediate answer if they can't do so. An immediate answer may not be possible in many situations.

Newly identified proposed Subsection (l) has been amended to include the right of observers to receive answers when asking questions about signature verification technology. This amendment is necessary for consistency with other proposed sections that specifically provide that observers are entitled to answers to their questions.

In addition, a new sentence was added to provide for an instance where the elections official or elections worker is not able to provide an immediate answer to a question. The answer may need to be researched or discussed, so the purpose of this new language is to make it clear that the elections official or elections worker is not expected to provide an immediate answer if they can't do so. An immediate answer may not be possible in many situations.

Newly identified proposed Subsection (m) has been changed to remove the reference to any security measures created by the elections official. Under Elections Code section 2302, an election observer may use an electronic device when observing, with several noted exceptions. The existing text could have allowed the elections official to create an outright prohibition on the use of electronic devices, which would likely be contrary to Elections Code section 2302. This change is necessary to ensure that the regulations do not create a situation where the provision of Elections Code section 2302 is not complied with.

Newly identified proposed Subsection (n) has been modified to conform to the provisions of Elections Code section 2301. The existing text provided international observers with all of the same rights that a citizen is entitled to. This existing text provided rights to international observers beyond what is detailed in Elections Code section 2301. The text of Elections Code section 2301(a) is being recited in this proposed section. The recitation of Elections Code section 2301(a) is necessary for clarity and ease of reference for international election observers and elections officials.

Elections Code section 15204 has been added to the reference section as that Section is applicable to proposed Subsection (h). Elections Code section 15204 provides that activities at central counting sites shall be open to the public.

#### **20874. Rights of County Elections Officials.**

Subsection (a) has been amended for clarity. The existing language was not precise, and the amendments are necessary for clarity and ease of reading.

As a new Subdivision (a)(16) has been added, the punctuation of existing proposed Subdivisions (a)(14) and (15) has been changed.

A new proposed Subdivision (a)(16) has been added to the list of considerations that an elections official may utilize when determining the distance at which observers may be located for the observation of a particular elections process or activity. The new addition provides that the elections official may consider the accessibility of the location where an elections activity or process is taking place. This addition is necessary to ensure that the elections official is mindful of a disabled observer's needs when determining where observers are to be located for a particular elections process or activity.

Proposed Subsection (b) has been changed to specify that election-issued identification is to include the observers' first name and the term "observer." The original text required that the observer's name be included, which could have meant the observer's full name was required. However, that requirement could have resulted in a safety concern for observers. The requirement for the identification to include the first name of the observer is necessary to ensure the elections official can identify the person for any needed reason. In addition, the term "observer" is necessary to ensure that an observer is readily identifiable to make sure voters and others are aware that an observer is present, and that it is not some unknown person loitering around a polling location or other location where observation is taking place.

Proposed Subsection (h) has been rearranged for clarity and amended to require the elections official to provide for a rotation of observers in the event there are more observers that can be accommodated at a particular time and location. In the existing text, this was permissive. The purpose of making the rotation mandatory is to ensure that those observers who are present have an opportunity to observe.

## **20876. Duties of County Election Officials.**

Subsection (a) has been amended to include the terms "for the elections processes being observed" in the final sentence. This change is being made to conform to the text in the first sentence for clarity. The final sentence did not recite the information contained in the first sentence, but should have for clarity and ease of reference. In addition, for clarity the term "also" has been removed from the final sentence. As the first sentence provided two options for providing information, the use of "also" in the last sentence was not clear or proper.

Subsection (b) has been amended to remove the term "California" immediately before the reference to the Elections Code. This change is necessary for consistency. No other reference to the Elections Code is accompanied by the term "California."

In addition, the term "to be worn by observers" has been included after the term "identification." This additional text has been included to make it clear that a security rule would apply to an observer wearing identification, and not any reference to identification being required to vote. The existing language was ambiguous and could have led to confusion.

Finally, a reference to Elections Code section 2302 has been added to this section to ensure that the rights of observers to use electronic devices is maintained. The existing language could have allowed the elections official to create an outright ban of electronic devices, which could result in

the provisions of Elections Code section 2302 not being followed. This change is necessary to preserve the rights of observers and to ensure that the proposed text and possible actions by the elections official do not conflict with the provisions of Elections Code section 2302.

Subsection (d) provides for certain notices to be provided by the Elections Code. Additional text has been included to require the elections official to notify the public of the schedule of a noticed event has been changed. This is necessary to ensure that observers are aware of any schedule change so they can modify their plans if need be. In addition, new text has been added to allow the elections official to send notices to observers via email. This is not a mandatory notice as the elections official does not have the email address of every voter in their county. The ability to include an email address on the voter registration affidavit is optional pursuant to Elections Code section 2150(a)(3). This addition is necessary to provide the elections official with an additional mechanism to notify voters of when a particular elections activity or process will occur.

Subsection (f) has been changed to include a statement that the elections official shall not halt scheduled operations because an observer is not present. The intent of this section (and the addition) are to ensure that the elections official does not need to modify scheduled activities because an observer is not present, and in no event shall an activity be halted because an observer is not present. Elections officials are under strict timelines, and if they were required to pause an activity to wait for an observer to arrive, that could cause disruption to the elections process.

A new subsection (i) has been added to prevent the elections official from intentionally configuring a location where observation may occur in a manner that would impede or obstruct the ability of an observer to observe. Proposed Section 20874(a) provides the elections official with a list of considerations to utilize when determining where observers may observe an elections activity or process from That section requires the elections official to maintain the rights of observers, but this new subsection is added for clarity to ensure that the rights of observers is maintained and not intentionally limited or restricted. However, this is subject to any safety concerns that may be of concern, such as needing a clear path of travel in case of an emergency in a small office.

A new subsection (j) has been added to require the elections official to provide an answer to a question as soon as is practicable. The elections official is provided with discretion here because a question may need to be researched or evaluated with additional staff, therefore an immediate answer may not be feasible. As all elections officials have differing and unique circumstances, a specific timeframe for a response is not practicable.

A new subsection (k) has been added to require elections officials to abide by any health directives that may be in place during the conduct of the election. This new subsection is necessary to ensure that the elections official follows local, state, or federal mandates to maintain the health and safety of voters, observers, election workers, and the public in general. The elections official does not have the right to not follow any such orders.

Elections Code section 2302 has been added to the reference section due to the reference to that section in modified proposed Subsection (b).

## **20877. County Election Observation Plans**

Subdivision (a) has been amended to include the purpose of the county election observation plan. The existing text did not have any sort of explanation of the purpose of the plan, so the addition is intended to provide clarity with respect to why the county elections official is required to create the plan.

In addition, the term “the” has been changed to “a” regarding a statewide election. The existing language was not clear – what is “the statewide election?” The purpose of this change is to make it clear that the elections official is to create and submit the observation plan prior to a statewide election.

## **20879. Voter Challenges.**

Subsection (a) has been amended to include a reference to Elections Code section 15104(d). The existing text referred to Elections Code section 15104(b), but this did not fully set forth rights afforded to observers. This addition is necessary to fully set forth the rights of observers to challenge under Elections Code section 15104(d). This addition provides clarity to election observers and elections officials.

A reference to Elections Code section 3019 has been added to proposed Subsection (a)(2)(A). Existing Subsection (a)(2)(A) referred to Section 20960, which provides guidance to elections officials for signature verification. Elections Code section 3019 requires elections officials to verify signatures and also contains some of the provisions of Section 20960. It is necessary to include the reference to Elections Code section 3019 here to ensure that all signature verification requirements and steps are included in this section. This addition is intended to provide clarity for election observers and elections officials.

A reference to Elections Code section 15105 has been added to proposed Subsection (a)(3) for clarity and ease of reference. The reference is necessary so observers and elections officials are aware of what provision of the Elections Code is being recited in the proposed regulations. In addition, this addition is consistent with proposed Section (b) which includes a reference to Elections Code section 15106.

Additional text has been added to proposed Subsection (c) to acknowledge that an observer maintains the right to submit a written challenge in the event the elections official has determined to halt challenges made by a particular observer or group of those challenges are disrupting the conduct of the election. The purpose of this addition is to ensure that the observer can submit a written challenge even if the elections official has halted challenges from that observer. The elections official is still required to document and resolve those written challenges pursuant to proposed subsection (h).

Additional text has been added to subdivision (g) to require any challenges that have been identified as frivolous or meritless to be included in the challenge log made pursuant to



subsection (h). The purpose of this requirement is to ensure that all challenges are properly logged/maintained in the event a question arises regarding the challenge at a later time.

Subsection (h) has been rearranged for clarity and ease of reading.

A new subdivision (h)(6) has been added to require the elections official to include the ultimate resolution and disposition of a challenge in the challenge log. It is necessary to include this requirement to ensure that the challenge log is complete and contains all relevant information in the event there are questions down the road.

Subsection (i) has been amended to require the elections official to provide a resolution to a challenge as soon as is practicable in writing. The purpose of this addition is to ensure that there is a resolution or determination to a challenge and that the challenger is made aware of the disposition of that challenge. The purpose of requiring a written disposition is to ensure the challenger has the disposition in writing in case it is needed for future use or reference, and also to ensure that there is no miscommunication regarding the resolution of the challenge.

Elections Code section 3019 has been added to the reference section based upon the addition of that section in proposed subdivision (a)(2)(B).