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CALIFORNIA SECRETARY OF STATE

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May 2, 2023

County Clerk/Registrar of Voters (CC/ROV) Memorandum #23036

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 July 29, 2022. The Secretary of State is proposing amendments to the originally noticed proposed regulation text to address concerns raised during the initial 45- day public comment period that ended on September 12, 2022.

Written Comment Period: May 2 – June 16, 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 May 2, 2023, through June 16, 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>.

If you have any questions, please feel free to contact Robbie Anderson aanderso@sos.ca.gov or Rachelle Delucchi at 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 July 29, 2022, through September 12, 2022. 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 11th Street, 5th 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 May 2, 2023, through June 16, 2023.

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

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

Rachelle Delucchi
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1500 11th St., 5th Floor
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(916) 657-2166, Or to: 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
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 July 29, 2022, and for which a public hearing was held on September 12, 2022. 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 20871. General Provisions.

This section has been updated to clarify that the intent of the regulations is to provide uniform requirements rather than general guidelines for observers and elections officials to follow. In addition, a statement regarding increasing transparency in the elections process has been added, and for clarification. Finally, this section has been amended to make it clear that the regulations shall apply to all elections in California conducted under the provisions of the California Elections Code.

Section 20872. Definitions.

Subsection (f) – The term “listen” was added to the definition of “observe” as part of observing the elections process includes listening to election workers carrying out their duties and tasks.

Subsection (j) – This definition has been modified for clarity. The intent of this definition is to make it clear that observers have the right to be close enough to observe the processing of vote-by-mail identification envelopes and vote-by-mail ballots, but in no event is the elections official to allow the observer to view any confidential voter registration information in the voter’s registration record pursuant to Elections Code section 2194. Under Elections Code section 15104(d), observers must have the ability to see the vote by mail ballot return envelopes and the signatures thereon, but that must be done without disclosing any confidential voter registration information.

Subsection (k) – A reference to proposed Section 20783(b) has been added to the definition of “vote-by-mail processing” because there are additional activities listed in that section that are not included in Elections Code section 15101.

Elections Code section 15104 was added as a reference statute based upon the change to subsection (j).

20873. Rights of Election Observers.

Subsection (a) has been amended to make it clear that observers have the right to observe rather than simply being allowed to observe. This change of text was made to clarify what rights an observer has.

Subsection (b) has been amended to make it clear that observers have the right to observe rather than simply being allowed to observe. This change of text was made to clarify what rights an observer has. In addition, this section now specifically states that the observer shall have the right to see the date provided by the voter on the vote-by-mail identification envelope. The observer has the right to see the vote-by-mail return envelopes and signatures thereon (pursuant to Elections Code section 15104(d)) and must also have the ability to see the date provided by the voter on the vote-by-mail identification envelope. The original text regarding challenges has been moved to its own subsection (c) for clarity and ease of reference.

A reference to voting technology has been added to subdivision (b)(1)(B) to make it clear that if a county utilizes signature verification technology when verifying signatures on a vote-by-mail ballot envelope, that process may be observed as well.

A reference to Section 20991 has been added to subdivision (b)(1)(C) for clarity as to what the elections official must do in the event there is more than one signature on and/or more than one ballot in the vote-by-mail identification envelope.

Subdivision (b)(1)(E) has been updated to include a reference to the duplication of votes cast on a sample ballot. If a voter casts their vote on a sample ballot and returns that to the county elections official, it must be duplicated for that vote to be processed.

Subdivision (b)(1)(J) has been added to include another part of the processing of vote-by-mail identification envelope and vote-by-mail ballot process . While this is a recitation of the provisions of Elections Code section 15154, this addition is necessary for clarity and ease of reference for observers and elections officials.

Subsection (c) has been amended to contain information on the right of observers to make challenges during the processing of vote-by-mail identification envelopes and vote-by-mail ballots. The text of (c) was taken from subsection (b) in the original proposed text. Subdivision (c)(1) was the original proposed text in this section. Subdivisions (c)(2) and (3) detail additional instances where a challenge may be made by an observer, and when those challenges are to be made. While these instances are provided in Elections Code section 15104 (which has been added to the text for clarity), they are recited in these sections for clarity and ease of reference for observers and elections officials. In addition, the burden of proof for a challenge and a statement about any doubt of interpretation being resolved in favor of the voter has been added. This is a recitation of Elections Code section 15016 but has been added for clarity and ease of reference for observers and elections officials. In addition, a new subdivision (B) has been added to provide the elections official with the authority to halt challenges in the event multiple challenges are being made by the same person or group, and those challenges are disrupting the processing of vote-by-mail identification envelopes. The purpose of this addition is to provide elections officials with this authority in the event multiple challenges are being made that could be intended to interfere with the processing of the vote-by-mail identification envelopes. This situation has not occurred here in California, but has in other states. The intent of this section is

not to limit the rights of observers, but to allow the elections official to halt challenges if the elections official believes the multiple challenges are intended to disrupt the processing of vote-by-mail identification envelopes.

Subsection (d) has been modified to include the statement found in Elections Code section 14223 regarding how an inspection of the roster and lists may be made - the inspection shall occur at a time or in a manner which will impede, interfere, or interrupt the normal process of voting. Although this is a recitation of Elections Code section 14223(b), it is being added to this subsection for clarity and ease of reference for observers and elections officials.

Subsection (i) has been modified for clarity. The original proposed text referred only to supervisors at the central counting site, but this was a narrow provision. For clarity, that text has been stricken, and the terms “or activity being observed” to make it clear that observers may ask questions at any time or place so long as those questions do not interfere with the elections process being observed. In addition, for consistency throughout this chapter, a reference to the elections official having authority to designate a person to whom questions may be presented has been added to this section.

Subsection (j) has been added to make it clear that if an elections official utilizes signature verification technology during the processing of vote-by-mail identification envelopes, observers have the right to ask questions about that technology. In addition, for consistency throughout this chapter, a reference to the elections official having authority to designate a person to whom questions may be presented has been added to this section.

The original subsections (j), (k), and (l) have been renumbered based upon the addition of newly proposed subsection (j).

Newly identified subsection (k) has been modified to include newly proposed subdivision (j), as subdivision (j) provides observers with the right to ask questions on signature verification technology.

Newly identified subdivision (l) has been updated to correct a transposition in numbers in the reference to Section 20876.

Elections Code sections 14251 and 15106 have been added to the reference section.

20874. Rights of County Elections Officials.

Subsection (a) has been amended to include a statement to clarify that although the elections official has the discretion to determine the distance at which the observers are to observe, the elections official must ensure that the observers can see and view the elections process or activity being observed. The purpose of this is to protect the rights of observers, while balancing the needs of the elections officials with respect to the where the observers are to observe from.

For the purposes of clarity, the term “observe” has been added to subdivision (a)(5).

The text of subdivision (a)(6) has been rewritten for clarity purposes. The content of this subdivision has not been changed.

Additional text has been added to subdivision (a)(7) to clarify that the voter's signature and/or address are not considered confidential information for the purposes of processing vote-by-mail ballot return envelopes. Some counties will display a voter's signature from the voter's registration record for observers to view, so the intent of this section is to ensure that it is known to observers and elections officials that the voter's signature may be viewed by an observer.

Additional considerations for elections officials to utilize regarding the distance at which observers may be placed have been added to subsection (a). Newly proposed subsections (a)(9), (10), (11), and (12) provide additional considerations for elections officials to utilize when determining where observers may be located to observe a particular elections process or activity. The elections official must ensure that the observers can meaningfully observe the elections process or activity, while maintaining the safety and security of ballots, election workers, and observers.

Subsection (b) has been amended to require the observer to wear identification provided by the elections official, and to require that the identification provide the observer's name. Section 20875(b) contains this information as well for duties of observers, but is also provided in this subdivision to make it clear that the elections official has this duty as well.

The term "if applicable" has been stricken from subsection (c) as it was not clear as to its application. In addition, additional language has been included in subsection (c) to make it clear that the elections official may designate a person to receive questions and/or challenges either in writing or verbally. This provides the elections official with needed flexibility.

Additional language has been included in subsection (d) to make it clear that the elections official may designate a person to receive questions and/or challenges either in writing or verbally. This provides the elections official with needed flexibility.

Additional text has been added to subsection (e) to clarify that the elections official may ask an observer to be quiet, but only if the talking amongst the observers or their conduct is disrupting the elections activity or process being observed. The observers may need to discuss the activity amongst themselves but should do so in a manner that does not disrupt the elections process being observed.

Subsection (f) has been amended to define specific individuals who may warn an observer about their actions and/or ask the observer to leave the area. The definition of "elections official" covers a broad spectrum of individuals, so the purpose of inserting the specific individuals into this section is to ensure that only those persons with decision-making authority can provide a warning to the observers and then make the determination that the observer must be asked to leave. Additionally, text has been added to this section to allow the registrar of voters/county clerk or their designee remove the observer immediately. This has been added to this section because there could be an instance when an observer's conduct is so egregious that the observer should be asked to leave immediately so no further disruption or interference occurs.

Subsection (g) has been amended to remove "restrict" and instead use "limit" with respect to the number of observers who may be present in a certain location. This change is intended to make

it clear that observers may not be restricted from a certain location, but the number of observers who may be present may need to be reduced. Other changes were made to this subsection for clarity.

Subsection (h) has been added to make it clear that if there are more observers than can reasonably be accommodated are present, the elections official has the authority to limit the number of observers pursuant to Elections Code section 15004. In addition, this section provides that the elections official may rotate observers or provide a lottery-type drawing to provide an equal opportunity for those who wish to observe the chance to do so. This section does not contain a specific time for rotation as each elections process takes differing amounts of time, and each county elections office differs in many ways. The elections official is provided discretion here to ensure that all observers have a chance to observe, while minimizing disruptions to the particular process being carried out.

Existing subsections (h) and (i) have been renumbered based upon the insertion of newly proposed subsection (h).

Newly identified subsection (i) has been amended to include the safety and security for election workers regarding items that may be brought to a particular observation location. The existing text allows the elections official to limit certain items to ensure that those items do not interfere with the elections process. These items could also affect the safety and security of the workers, so the elections officials should have the discretion to limit items for those reasons as well. In addition, the remaining text of this section has also been amended for clarity.

20875. Duties of Election Observers.

In subsection (b), the term “would” has been changed to “could” for the purpose of clarity.

Subsection (c) has been amended for clarity. The original text referred to disruption of the elections process, but not refers to either disruption or interference. Those two terms are not necessarily inclusive of each other. In addition, the reference to Section 20874(i) has been updated to reflect an additional section being added to Section 20874, and now refers to Section 20874(j).

20876. Duties of County Election Officials.

Subsection (a) has been amended to include the term “written” regarding the observation rules and/or any written procedures. The purpose of adding “written” is to make it clear that all rules and procedures need to be in place for observers to review and be aware of during the observation process. If the rules and procedures are not written, then there could be confusion about the process and possibly unclear directions. This subsection also provides that the elections official may post these rules and procedures on the county website as well.

Subsection (b) has been amended to include a reference to “voter privacy.” This has been added to the list of reasons why the elections official may limit the use of certain devices at the place of observation to ensure that voter privacy is maintained.

Subsection (c) provides the elections official to determine what constitutes observer misconduct or interference. Additional text has been included in this section to ensure that the elections official is mindful of the content of the regulations and the rights of observers when determining whether or not certain behavior leads to misconduct or interference.

Subsection (d) provides for certain notices to be provided by the Elections Code. Additional text has been included to require the elections official to conspicuously post those notices so that observers will have clear information on when and where a certain activity will be taking place.

The term “badges” has been added to subsection (e) for clarity and consistency.

The original text of subsection (g) has been removed from this section, and moved to its own section 20877.

Subsection (f) has been changed to include a statement that the elections official shall not halt scheduled operations because an observer is 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 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.

New subsection (g) has been added to reiterate that during the processing of vote-by-mail ballot identification envelopes and vote-by-mail ballots, no confidential voter registration information may be viewed by observers. Although this is already mentioned above in this chapter, the repetition is being included in the duties of elections officials section for clarity and ease of reference.

New subsection (h) has been added because some county elections officials utilize remote video feeds for certain elections processes. If a county does utilize video feeds for remote observation, the observers must be provided with some sort of mechanism to ask questions about and/or make a challenge to the process or activity being observed.

20877. County Election Panel Plans

The provisions of this section were originally provided in subsection (g) of Section 20876. These provisions are clearer in their own section.

The originally proposed text of this section is unchanged, except for three alterations:

In the original text, the introductory paragraph had a deadline of 60 days prior to an election for counties to send their plans to the Secretary of State. To ensure that counties have sufficient time to plan the election, this deadline has been changed to 30 days prior to an election.

Also in the introductory paragraph, the original text provided that the county elections official may either make their plan available on the county website or provide a copy in person at the office of the elections official. This provision has been changed to require the elections official to post the plan on its county website and make a copy available at the office of the elections official. The purpose of this change is ensure that the information regarding the county's plan is readily available to all those who wish to view it.

Subdivision (1)(G)(vi) has been changed to add additional text. The additional text provides that the designated observation areas are to be located in a manner to allow continuous observation. This ensures that the observation process is not interrupted or obscured.

20878. Conduct of Election Observers.

This section was previously identified as Section 20877 but has been renumbered due to a new section 20877 being inserted.

Subdivision (a)(1) originally had a list of actions that observers are not to do because those actions would interfere with the election. For clarity and ease of reference, this section has been broken down into separate actions, rather than one long sentence.

Additional prohibited actions have been added to subdivision (a)(1) to provide information on what an observer shall not do. The purpose of these additions is to make it clear to observers that they are not to interfere with the retrieval of vote-by-mail ballots from vote-by-mail drop boxes and/or vote-by mail dropoff locations or the processing of vote-by-mail return envelopes or ballots in any fashion. In addition, this section provides that an observer must not interfere with the conduct of the election in general or disrupt any other elections activity or process.

In addition, this subdivision ((a)(2) and (3)) now states that the observer shall not touch or handle any ballots, or physically handle voting materials. The elections official must ensure that the ballots and other voting materials are not removed or damaged in any fashion.

Subdivision (a)(8) has been amended to clarify the circumstances in which an observer shall not solicit a vote or speak to a voter regarding marking their ballot. The previous text was overbroad, and the changes are intended to make this specific and clear.

Subdivision (a)(10) has been updated to provide an exception to a possible stoppage of ballot processing. An observer has the right to make a challenge, which could lead to a stoppage, so this change is intended to make the right of an observer to challenge clear. The elections official can make the determination as to whether the processing shall stop.

Subdivision (a)(11) has been updated to remove the language regarding the use of equipment without the express permission of the elections official. To prevent interference with the election and tampering of equipment, the observers shall not have the right to touch voting equipment.

Elections Code section 15104 has been included in the reference section based upon the changes to this section.

20879. Voter Challenges.

This section was previously identified as Section 20878 but has been renumbered due to a new section 20877 being inserted.

Additional text has been added to subdivision (a) to make it clear that an observer is not authorized to directly challenge a voter. While the existing text inferred that fact, the additional text has been included for clarity.

Subsection (b) has been amended to refer to a challenge made under Elections Code section 14240(c), and clearly state that the observer presenting a challenge has the burden of providing evidence of the alleged wrongdoing. The previous text provided a partial description of Elections Code section 14240(c), and the changes made are intended to clarify how those challenges are to be handled. In accordance with Elections Code section 14251, the evidence must establish, at a minimum, probable cause for the requested challenge. In addition, this section provides that any doubt in the interpretation of the provisions of the Elections Code shall be resolved in favor of the challenged voter. While these provisions are recitations of Elections Code sections 14251 and 15106, they are being added to this section to provide clarity and ease of reference to observers and elections officials.

Subsection (c) has been added to provide the elections official with the discretion as to how a challenge may be made during the vote-by-mail identification envelope and ballot processing. Based upon the unique situations of the counties and the timing of the processing, the elections official can best determine if a challenge should be made in writing, or if a verbal challenge is acceptable.

Subsection (d) has been added to provide elections officials to halt a challenge if the elections official has determined that mass challenges being made are frivolous and/or meritless. These challenges may be intended to disrupt the elections process being observed, and the elections official shall have the right to halt the challenge process in order to prevent interference with the conduct of the elections activity or process being undertaken. This situation has not occurred here in California, but has in other states. The intent of this section is not to limit the rights of observers, but to allow the elections official to halt challenges if the elections official believes the multiple challenges are being made to disrupt the conduct of the election.

Subsection (e) has been added to require the elections official to develop written procedures for a challenge process. The rules and procedures for challenges are not specific in the Elections Code, so this new section is intended to provide some framework for observers to be aware of in the event they wish to make a challenge. Part of the maintenance of the challenges is for the elections official to retain the name and organization (if applicable) of the person making the challenges so the challenger can be contacted if necessary. The elections official is to make the procedures available to observers where an elections process or activity is occurring.

To ensure that an observer making a challenge is made aware of the decision by the elections official regarding that challenge, subsection (f) has been added to require the elections official to notify the observer with the disposition of that challenge as soon as is practicable. There are no provisions in the Elections Code that would require this, but observers have a right to know the disposition of their challenge.

Elections Code sections 14251 and 15016 have been added to the reference section based upon the new provisions of this section.

**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 July 29, 2022. A public hearing was held on September 12, 2022, and public comments were received during the 45-day public comment period that ended on September 12, 2022. This version of the proposed regulation text reflects edits to the proposed regulation text based upon the public comments.

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 ~~guidelines~~ 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 Article, 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 county elections official.
- (c) “Election observer” means a person who observes the conduct of elections in California.
- (d) “Election Observer Panel” means individuals or entities invited by the county election officials to observe and provide feedback in an official capacity on the election process.
- (e) “Elections official” shall have the meaning set forth in Elections Code section 320. In addition, poll workers, elections employees, and volunteers shall be considered an “elections

official” for the purposes of this Chapter.

(f) “Observe” means to watch, view, listen, take notes and ask questions.

(g) “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 where election activity occurs and the office of the county elections official.

(h) “Precinct board” shall have the meaning set forth in Elections Code section 339.

(i) “Precinct” shall have the meaning set forth in Elections Code section 338.6.

(j) “Sufficiently close” shall mean the distance that enables an observer to observe the 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. ~~Without violating paragraph (1) of subdivision (b) of Section 2194.~~

(k) “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 20783(b).

(l) The term “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) “Vote tabulating device” as defined in Elections Code section 358,

(3) “Voting device” as defined in Elections Code section 360,

(4) “Voting machine” as defined in Elections Code section 361,

(5) “Voting equipment” as defined in Elections Code section 362, and

(6) “Electronic poll book” as defined in Elections Code section 2550.

(m) “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, ~~and 15101~~, and 15104, Elections Code.

20873. Rights of Election Observers.

(a) Individuals and groups identified in Elections Code section 15004 shall ~~be allowed~~ have the right to observe the preparation and operation of the tabulating devices, their programming and testing.

(b) An election observer shall ~~be permitted~~ have the right to observe the processing of vote-by-mail ballots and vote-by-mail identification envelopes 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 challenge whether those individuals handling vote-by-mail ballots are following established procedures.~~

(1) The processing of vote-by-mail ballots and vote-by-mail identification envelopes includes, but is not limited to, the following:

(A) Securing vote-by-mail ballots to prevent tampering with them before, during and after the ballots are counted.

(B) Verifying signatures on the vote-by-mail identification envelope, which may include the

use of signature verification technology.

(C) 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.

(D) Checking the opened vote-by-mail identification envelopes ensure that all of the contents have been removed.

(E) Duplicating damaged or defective ballots, votes cast on a sample ballot, or ballots cast using a remote accessible vote-by-mail system.

(F) Checking postmarks on vote-by-mail identification envelopes received after Election Day.

(G) Checking the statewide voter registration system to confirm that the voter has not already voted, or that the conditional voter registration is proper.

(H) Adjudicating scanned images of hand-marked ballots where the ballot tabulator cannot discern the voter's choice.

(I) Counting valid ballots.

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

(c) 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 section 15104(b).

(1) 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 return envelopes through the counting and disposition of the ballots.

(2) 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.

(B) Duplicating accurately damaged or defective ballots.

(C) Securing vote by mail ballots to prevent tampering with them before they are counted on election day.

(3) An elections observer shall have the right to present a challenge, prior to the opening of the vote-by-mail identification envelope of a challenged vote-by-mail voter, for the same reasons as challenges may be made against a voter at a polling place under Elections Code section 14240. 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, an elections observer may enter a challenge 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.

(A) 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. Any doubt in the interpretation of the Elections Code applicable to the challenge shall be resolved in favor of the challenged voter.

(B) The elections official shall have the discretion to halt challenges 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.

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

(e) An election observer shall be permitted to inspect any information available from the voter list that is 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 impede, interfere, or interrupt the normal process of voting.

(f) An election observer shall be permitted to observe election-related activities at the central counting site on Election Day.

(g) An election observer shall be permitted to observe the activities of the official canvass and the semiofficial canvass as defined in Elections Code sections 335.5 and 353.5.

(h) An election observer shall be permitted to ask questions of poll workers 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.

(i) An election observer shall be permitted to ask questions during the observation of an elections process or activity ~~of supervisors at the central counting site~~ 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. The county elections official may designate a person to whom an election observer may ask questions about the process being observed.

(j) 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 about that process and technology. The county elections official may designate a person to whom an election observer may ask questions about signature verification technology.

~~(j)~~ (k) Notwithstanding subdivisions (h), (i), and (j), an election observer at a polling location may only ask questions of a person designated by the county election official. If the county 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.

~~(k)~~ (l) An election observer shall not be prohibited from using an electronic device, including a smartphone, tablet, or other handheld device, at a polling place or central counting site pursuant to Elections Code section 2302, unless the use of that electronic device conflicts with the provisions set forth in Section ~~20786~~20876(b).

~~(l)~~ (m) 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.

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, ~~and~~ 15105, 15106, Elections Code.

20874. Rights of County Elections Officials.

(a) The county 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 determination, the county 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/or 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 county elections official's staffing levels and the number of observers who are requesting access to observe a particular process;
- (6) maintaining security of and limiting observer access ~~how accessible the~~ to voting equipment ~~is to the observers~~ to ensure that it cannot be touched or tampered with;
- (7) maintaining privacy and security of the ballot and/or 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; and,
- (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; and,
- (12) the safety and security of elections officials and workers, which may include any health and safety measures or requirements in place at the time observation is occurring.

(b) The county elections official shall require an election observer to wear election official-issued identification to ensure that observers are readily identifiable by name.

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

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

(e) The county 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/or developed pursuant to this Chapter, the ~~county~~ registrar of voters/county clerk or their designee elections-official shall give a verbal or written warning to that observer that they shall comply with the observation rules. However, if an election observer continues to not comply with the observation rules, ~~a county~~ the registrar of voters/county clerk or their designee elections-official may require

an election observer to leave the observation area and/or the premises. In addition, if the situation warrants, the registrar of voters/county clerk or their designee may require an election observer to leave the observation area and/or the premises immediately.

(g) The county elections official may limit the number of election observers ~~that are~~ permitted in an observation area in order to prevent interference with the conduct of ~~the~~ voting and elections processes.

(h) In the event there are more observers than can be accommodated at a particular site, the elections official may limit the number of observers pursuant to Elections Code section 15004. In addition, the elections official may 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.

~~(h)~~ (i) To ensure the safety and security of election workers and to prevent interference with the conduct of the elections process, the ~~The~~ county elections official may restrict the size and type of items the election observer can bring into the polling place or central counting site that location where observation is taking place. they are observing such as large bags, backpacks or similar items, if that item is interfering or will interfere with the conduct of the elections process.

~~(i)~~ (j) The county elections official may develop and provide additional written rules and procedures, but those additional written rules and/or 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, 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 are occurring, an election observer shall check in at the site designated by the elections official.

(b) At all times while observing, an election observer shall wear identification provided by the elections official. An observer may also wear their own identification, but that identification shall not include any electioneering information or information that ~~would~~ could intimidate a voter.

(c) At all times while observing, an election observer shall not ~~be disruptive~~ disrupt or interfere with ~~to~~ the election process and follow the procedures and requirements provided in this Chapter and any additional written rules and/or procedures established by the elections official in accordance with Section 20874~~(i)~~(j).

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

Reference: Section 10, Elections Code.

20876. Duties of County Election Officials.

(a) The county elections official shall make available written observation rules and/or any written procedures for the election process being observed, to the observers or post the written observation rules and/or any written procedures for the election process being observed conspicuously at any location where observation is taking place. The elections official may also make the observation rules and/or written procedures on its county elections website.

(b) The county elections official shall, consistent with the intent of this Chapter and the provisions of the California Elections Code, establish security rules for observation. These security rules may include, but shall not be limited to, the use of sign-in sheets and identification 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.

(c) The county 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 observer misconduct or interference.

(d) The county elections official shall provide notice(s) to the public which shall contain the specific date(s), time(s) and place(s) of the election related activity that may be observed by the public. The notices shall be conspicuously posted on the elections official's website and at the location where the elections activity and/or process is taking place. The following notice(s) are required, as applicable:

- (1) one percent manual tally (Elections Code section 15360);
- (2) risk limiting audit program (Elections Code section 15367);
- (3) logic and accuracy testing (Elections Code section 15000);
- (4) early ballot retrieval (Elections Code section 14422), and
- (5) vote-by-mail processing and counting (Elections Code section 15104, subdivision (c)).

(e) The county elections official shall have a designated area for the election observers to check in and receive identification badges.

(f) A county 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 observer is present.

~~(g) Each county shall develop and submit to the Secretary of State, sixty (60) calendar days prior to the date of the statewide election, a County Election Observation Plan that outlines election observation processes and protocols. The county shall also make available to the public a copy of the County Election Observation Plan either on the county website or and in person at the county elections office.~~

~~(1) The County Election Observation Plan shall include the following information:~~

~~(A) County Information, which shall include the following:~~

~~(i) Name of county.~~

~~(ii) Name of county contact.~~

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

~~(iv) Voting technology used in county for each election.~~

- ~~(B) Name of voting system used by the county and the version number of that voting system.~~
- ~~(C) Whether the county uses a central tabulator, a precinct tabulator, or both.~~
- ~~(D) Type of ballot marking device used by the county for accessible voting.~~
- ~~(E) The name of the electronic poll book or EMS Lite used by the county, if any.~~
- ~~(F) The name of the ballot on demand system used by the county, if any.~~
- ~~(G) Any existing county election observation rules and procedures, which may include,~~
 - ~~(i) A list of election observer rights, duties, and conduct as described in this Chapter;~~
 - ~~(ii) A list of elections officials rights and duties as described in this Chapter;~~
 - ~~(iii) A list of observable activities (i.e., pre-election, election day, and post-election);~~
 - ~~(iv) County check-in procedures for election observers;~~
 - ~~(v) County General description of security procedures used by the county for chain of custody of voting equipment and ballots;~~
 - ~~(vi) Designated observation areas; and~~
 - ~~(vii) Designated county point of contact for election observers and back-up point of contact, as needed.~~
- ~~(H) Planned implementation date of County Election Observer Plan.~~
- ~~(I) List of County Election Observer Panel members, if applicable.~~
- ~~(J) County established mechanics of feedback for panel members, if applicable.~~
- ~~(2) The county shall invite the following to become a member of the County Election Observer Panel, if applicable to the county:~~
 - ~~(A) County grand jury~~
 - ~~(B) Political party central committees in the county.~~
 - ~~(C) Any group or individual known to the county elections official that has expressed interest in observing the elections process.~~
- ~~(3) The invitations to the entities described in subdivision (2) shall be sent between 90 to 30 days prior to the day of the election.~~
 - ~~(A) After the county elections officials 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 entity or individual an appointment letter appointing them to the County Election Observer Panel and to introduce the panelist(s) to the precinct workers.~~
 - ~~(B) The 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.~~
 - ~~(C) The elections official may provide the County Elections Observer Panel members, a checklist and/or questionnaire to provide feedback regarding the observation that shall be returned to the elections official at the end of the observation process.~~

(g) When vote-by-mail ballot identification envelopes and vote-by-mail ballots are being processed, the elections official shall ensure that the voter registration information that is deemed confidential under Elections Code section 2194 is not visible to observers.

(h) In the event a county elections official provides a live video feed for a remote observation for the observation of an elections activity or process, the elections official shall provide a mechanism

for an observer to ask questions about the activity or process being conducted or make a challenge to that activity or process.

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

Reference: Sections 336.5, 3203, 14215, 14422, 15104, 15015, 15360, and 15367, Elections Code.

20877. County Election Panel Plans

Each county shall develop and submit to the Secretary of State, thirty (30) calendar days prior to the date of the statewide election, a County Election Observation Plan that outlines election observation processes and protocols. The county shall also make available to the public a copy of the County Election Observation Plan either on the county website or and in person at the county elections office.

(1) The County Election Observation Plan shall include the following information:

(A) County Information, which shall include the following:

(i) Name of county.

(ii) Name of county contact.

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

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

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

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

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

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

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

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

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

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

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

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

(v) County General description of security procedures used by the county for chain of custody of voting equipment and ballots;

(vi) Designated observation areas, which are located as to allow continuous observation and prevent the need to interrupt or obscure the observers view at any point during the polling; and

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

(H) Planned implementation date of County Election Observer Plan.

(I) List of County Election Observer Panel members, if applicable.

(J) County established mechanics of feedback for panel members, if applicable.

(2) The county shall invite the following to become a member of the County Election Observer Panel, if applicable to the county:

(A) County grand jury

(B) Political party central committees in the county.

(C) Any group or individual known to the county elections official that has expressed interest in

observing the elections process.

(3) The invitations to the entities described in subdivision (2) shall be sent between 90 to 30 days prior to the day of the election.

(A) 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 entity or individual an appointment letter appointing them to the County Election Observer Panel and to introduce the panelist(s) to the precinct workers.

(B) The 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.

(C) The elections official may provide the County Elections Observer Panel members, a checklist and/or questionnaire to provide feedback regarding the observation that shall be returned to the elections official at the end of the observation process.

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

Reference: None.

2087720878. 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 return 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. An election observer shall not physically handle any voting materials without the express permission of the elections official.

(2) Touch or handle any ballots.

(3) Physically handle any voting equipment and/or voting materials.

(4) Move or rearrange tables, chairs, or voting booths at the polling place or central counting facility 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.

(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, ~~or~~ 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 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.

(A) 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 ballots. However, the 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 ~~without the express permission of the elections official.~~
 - (12) Eat or drink in a polling place or the central counting site without permission of the elections official.
 - (13) Assist in operations at any polling place or the central counting site without express permission of the elections official.
 - (14) Intentionally prevent other elections observers from observing materials or a process.
 - (15) Enter secure areas without 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, 15104, and 18370, Elections Code.*

20878 20879. Voter Challenges.

- (a) 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.
- ~~(b) An election observer is not authorized to directly challenge a voter. However, an election observer may, pursuant to Elections Code section 14240(c), provide written evidence to a member of the precinct board concerning the residence or other voting qualifications of any person or persons, with the express or implied suggestion, request, or demand that the person or persons be challenged. The precinct board member may, upon review, challenge a voter based upon that evidence.~~
- (b) An observer requesting a challenge under Elections Code section 14240(c) has the burden of providing evidence to the elections 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.
- (c) 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.
- (d) In the event the elections official has determined that mass challenges that appear frivolous and/or meritless are being made, the elections official shall have the right to halt the challenge process in order to prevent interference with the conduct of the elections activity or process being undertaken.
- (e) The elections official shall develop written procedures for the process of maintaining, investigating, and determining the outcome of challenges made by elections observers. The maintaining of the challenges shall include retaining the name and organization (if applicable) of

the challenger. These procedures shall be made available to observers where an elections activity or process is occurring.

(f) Upon the resolution of a challenge made by an observer, the elections official shall provide the observer with the 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, 15106, Elections Code.*