

Chapter 5
Provisional Voting

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I. California Law and Provisional Voting

California law provides that any voter claiming to be properly registered, but whose qualifications cannot be immediately established upon examination of the list of registered voters for the precinct or the records on file with the county elections official, is entitled to cast a provisional ballot. (Elec. Code, §§ 2300, 14310(a).)

The county elections official must advise voters of their right to cast a provisional ballot and must provide the voter with written instructions regarding the provisional voting process and procedures. State law requires people who vote a provisional ballot to execute, in the presence of the county elections official, a written affirmation, stating that they are eligible to vote and are registered in the county where they desire to vote. (Elec. Code, § 14310(a).)

Additionally, vote-by-mail voters shall be issued provisional ballots if: 1) they are unable to surrender their vote-by-mail ballot and the precinct board, vote center election board, or elections official cannot verify if the voters have returned their voted vote-by-mail ballot, and notate the voters' voter record accordingly or 2) they are unable to surrender their vote-by-mail ballot and the precinct board or elections official cannot readily determine if the voters are in the correct polling location. (Elec. Code, §§ 3016, 14310.)

Provisional ballot envelopes are delivered, along with regular ballots, to the county elections office canvassing area. Using the same procedures as used with vote-by-mail envelopes, the county elections official compares the signature for the provisional ballot with the signature on that voter's affidavit of registration. (Elections Code, § 3019.) If the signature does not match, the county elections official must follow specified procedures to notify the voter and allow the voter an opportunity to verify his or her signature before certification of the election. If the signature matches, the county elections official checks the voter registration database to verify whether the voter is properly registered to vote. Once the signature on the envelope has been verified and the voter's registration is confirmed, the ballot is separated from the envelope and counted as a regular ballot. Only the votes for contests for which the voter is eligible to vote are counted. If the voter's registration cannot be confirmed, the ballot is not counted, and the reason for not counting the ballot is recorded; however, beginning in 2019, by virtue of completing a provisional ballot envelope, voters may be registered for future elections. (Elec. Code, § 2160.)

Similar to HAVA, California law also requires the establishment of a Free Access System so the voter can find out if his or her provisional ballot has been counted. (Elec. Code, § 14310(d).) Information about how to access each county's Free Access System can be found on the Secretary of State's website at: www.sos.ca.gov/elections/ballot-status/.

Finally, California law provides that voters who have moved from one address to another within the same county and who have not notified the county elections official of their new address may vote provisionally on the day of the election at the polling place at which they are entitled to vote based on their new address, or at the county elections office, or at another central location designated by the elections office. (Elec. Code, § 14311.) As an alternative, conditional voter registration (CVR) and CVR provisional voting are available at all permanent offices of the county elections official, all vote centers, and designated satellite offices, which can include polling places if in compliance with Section 20023(d) of the California Code of Regulations. (Elec. Code, § 2170.)

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

II. NVRA "Fail Safe" Voting Requirements

Section 8¹ of the NVRA contains protections for voters that allow an eligible registered voter to cast a provisional ballot in California, if: 1) the voter has been placed on the inactive list or; 2) the voter moved to a new address inside the county but did not notify the county elections office before the election. The NVRA requires elections officials must allow these voters to update their registration and vote in the election using a provisional ballot envelope process. California law has provided for provisional voting since 1984 and meets the NVRA fail safe voting requirements.

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

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

IV. When Do Voters Cast a Provisional Ballot?

In counties that do not conduct elections using vote centers (see Elections Code section 4005), below are some of the common situations when a voter will need to cast a provisional ballot rather than a regular ballot:

¹ Throughout this chapter, "Section 8" refers to 52 U.S.C. § 20507.

- The voter moved but did not update his or her voter registration record to reflect the move;
- The voter's name does not appear on the list of registered voters and the eligibility to vote cannot be verified at the polling place;
- The voter's name (unless it is a changed surname) or address is different than that listed on the roster lists;
- The voter is required to provide identification under HAVA and is unable or refuses to provide proof of identity. Under HAVA, first-time voters who registered by mail – and for whom neither the social security number nor state identification number could be verified – may be required to provide proof of identity;
- The voter requested a vote-by-mail ballot, but cannot surrender his or her vote-by-mail ballot, AND your location cannot verify if the voter has already returned his or her voted vote-by-mail ballot, and cannot notate the voter's voter record accordingly;
- The voter is voting during polling place hours that have been extended by a state or federal court;
- The voter is registered to vote, but is attempting to vote in a precinct different from the one in which the voter is registered or assigned (this does not apply in counties that conduct elections using vote centers); or
- The voter is challenged and the challenge is not resolved in his or her favor.

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

At the time a voter casts a provisional ballot, the elections official provides the voter with written information on how the voter can check whether his or her provisional ballot was counted. This can include visiting the Secretary of State's [My Voter Status](#) tool following the completion of the canvass.