

FINDINGS PURSUANT TO PARAGRAPH 11 OF STIPULATED ORDER

(April 30, 2019)

League of Women Voters of California, et al., v. David S. Kim, Secretary of the California Transportation Agency, et al., (N.D. Cal. 3:17-cv-02665-LB)

The Secretary of State's Office (SOS) presents the following results of its review of National Voter Registration Act (NVRA) compliance by the California Department of Motor Vehicles (DMV) and SOS as it relates to DMV's transmittal of voter registration information to SOS.

The NVRA provides that "a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance," and that "[i]f a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance." 52 U.S.C. § 20504(e)(1), (2).

Since the implementation of California's New Motor Voter Program (Cal. Elec. Code § 2260 *et seq.*) on April 23, 2018, through April 22, 2019, there have been 8,150,561 voter registration transactions transmitted from DMV to SOS, resulting in 4,236,528 new or updated voter registrations in California.

At times, records have been transmitted from DMV to SOS beyond the timeframes required by the NVRA; have been transmitted in circumstances under which compliance with NVRA timeliness requirements is not settled or easily ascertainable; or have not been transmitted at all due to an inability to confirm that a voter has attested to his or her eligibility to register to vote. These issues have arisen in four different contexts, which are described below along with the steps taken to prevent or reduce future such occurrences.

DMV's Quality Assurance Process

On October 12, 2018, DMV implemented a Quality Assurance process, directed at the voter registration records to be transmitted to SOS. The Quality Assurance process was implemented at the request of SOS in response to previous DMV errors that resulted in the co-mingling of DMV customer information. Under this process, the DMV Audits Branch reviews, by date and DMV transaction source, a representative sample of DMV voter registration records, to monitor that the system only delivers to SOS records of those persons who have attested to their eligibility to vote and that the information transmitted to the SOS is accurate. After the representative sample of records has been found to satisfy the Quality Assurance process requirements, the entire set of records for that date and source are cleared for transmission to SOS.

The DMV's Quality Assurance process resulted in transmission delays beyond the deadlines provided in the NVRA for some records that were either submitted by mail or submitted as part of transactions completed in a field office. These delays started with the rollout of the Quality Assurance process and continued until early January 2019. These delays were due in part to the fact that, as originally implemented, the Quality Assurance process mandates that further review of one record in a batch (e.g., a batch of records from transactions completed in a field office on

a particular day) prevents the release of all records in that batch to ensure that any issues identified with a particular batch could be reconciled before transmission to SOS.

Records that were (1) accepted by DMV as of October 22, 2018 (the registration deadline for the November 6, 2018 general election) or earlier, and (2) certified as having been reviewed in accordance with the Quality Assurance process were transmitted to SOS by October 30, 2018. This includes the vast majority of records accepted by DMV as of October 22, 2018. However, DMV and SOS are currently attempting to confirm whether a small number of records accepted on or before October 22, 2018, but transmitted to SOS in early January 2019, were delayed because of DMV's Quality Assurance process. Persons with new or updated registrations transmitted to SOS by October 30, 2018 should have been able to vote in the November 6, 2018 general election based on that new or updated registration information.

In addition, communication lapses between DMV and SOS resulted in no records being transmitted for several weeks, from November 8, 2018 to November 30, 2018. When transmissions restarted on November 30, 2018, not all of the backlogged records were transmitted at once, and it took several weeks (until mid-January 2019) for transmissions to come back into compliance with NVRA requirements.

Since December 2018, DMV has revised the Quality Assurance process to require that voter registration records be reviewed and delivered to SOS within 10 days of acceptance by DMV. On a daily basis, DMV emails SOS with a notification of the records, by DMV transaction source and process date, that are available to be retrieved. Also, on a daily basis, DMV staff monitor daily the streams of records coming out of the Quality Assurance process and confers with Quality Assurance staff regarding any delays or challenges in completing the work. Field office staff also participate in the Quality Assurance process as they receive paper confirmations and applications for Quality Assurance usage. Field office division management coordinates this work daily with Quality Assurance staff. In addition, the DMV NVRA Coordinator (who was appointed pursuant to the Stipulated Order) meets daily with staff who monitor Quality Assurance and record delivery. Any issues related to proper delivery of records are to be discussed in that meeting and elevated to the highest levels of DMV and SOS management when identified.

DMV is also implementing further changes to the Quality Assurance process, with the goal of improving efficiency and accuracy while timely delivering voter registration records in accordance with the NVRA. DMV is streamlining the process for reviewing paper applications, eDL44s, and remittances (renewal-by-mail and paper change of address forms) on a daily basis. For internet transactions, which have had virtually no errors, DMV will conduct weekly, monthly, or quarterly spot checks. These revisions will retain the functionality of the current Quality Assurance process, while eliminating redundancies and further reducing the time between acceptance of an application and delivery to SOS. In addition, DMV will develop a more efficient feedback process to understand, report, and correct operational issues or errors discovered through the Quality Assurance process.

SOS has implemented new procedures for monitoring the transmission of records from DMV, since December 2018. Each Monday, Wednesday, and Friday, SOS retrieves the voter registration information from DMV's voter registration electronic data system. SOS then

analyzes the data and removes duplicate records and records for which the SOS has a more recent registration effective date. The remaining records are then processed by the SOS for normal list maintenance activities and released to county elections officials. If this review process indicates that records from DMV have been delayed beyond the established NVRA timeframes, SOS will immediately notify DMV, in writing, to request an explanation and/or initiate steps to remediate any potential issue. SOS will also communicate to county elections officials about impacts they will experience.

Finally, pursuant to the Stipulated Order, DMV and SOS have appointed Section 5 NVRA Coordinators.

HAVA/COVR

HAVA/COVR refers to electronic data and customer validation rules that DMV's system currently runs on all voter registration records. Voter registration records associated with DMV transactions generally pass through the HAVA/COVR check before proceeding to the Quality Assurance process. All records must clear the HAVA/COVR check before they are eligible for transmission to SOS.

Records may remain pending in HAVA/COVR for a variety of reasons, including the lack of a valid driver's license or identification card associated with a record. In that example, once a customer's driver's license or identification card does become validly issued (upon completion of a vision test, for instance), the voter registration record would clear the HAVA/COVR check and become available for transmission to SOS.

There are records accepted by DMV on or by the October 22, 2018 voter registration deadline for the November 6, 2018 general election that did not immediately clear the HAVA/COVR check, and thus did not ultimately reach county elections officials, until after the November 6, 2018 election. Since the election, a small number of such records continue to remain pending in HAVA/COVR for various reasons instead of immediately being cleared. These delays in transmitting records that fail to immediately clear the HAVA/COVR check are not delays resulting from the Quality Assurance process. And because records may remain pending in HAVA/COVR for a variety of reasons, including a failure to confirm identity, it is not clear that *all* records pending in the HAVA/COVR process are validly accepted voter registration records that should be transmitted to SOS in accordance with the NVRA.

To reduce the number of records that fail the HAVA/COVR check but that are associated with customers who are eligible to register to vote, DMV has begun a programming effort that will allow it to immediately validate handwritten customer records received by mail, to confirm that the information provided matches existing DMV information for that customer. This will prevent records from pending in HAVA/COVR based on inaccurately provided or entered information, such as an incorrect driver's license or identification card number, or improperly formatted or incomplete name information.

Until the programming changes described above have been implemented, DMV and SOS are taking the following steps to clear the records that are currently pending in HAVA/COVR.

DMV and SOS are coordinating the review of customer information pending in HAVA/COVR to determine whether a registration attempt was made by the customer, and whether the customer has made a subsequent registration attempt or update. For customers who indicated an intent to register during their DMV transaction and who have not had a subsequent registration event, outreach letters outlining voter registration options will be sent.

Paper Records Lacking Electronic Counterparts

Part of the DMV Quality Assurance process involves the comparison of voter registration information entered on paper driver's license or identification card applications (called DL 44s) with the corresponding electronic version of the information from those applications, as keyed in by DMV technicians in field offices. It is the electronic version that is ultimately transmitted to SOS. DMV has identified a small number of paper records lacking a matching electronic version, and that have been delayed for that reason. This was due to a programming issue that prevented a small number of electronic voter registration records generated in DMV field offices from being uploaded to DMV's electronic voter registration information system, beginning on September 26, 2018. DMV has identified and reviewed 15,678 records to date, resulting in 577 affected records. These records include records for customers who attested to their eligibility to vote, even if they declined to register to vote.

Because the electronic version of these records was never uploaded, the only format in which these records exist are as images of the paper summary sheet (listing the information transcribed by the field office technician) and the paper DL 44 form. Records in this format cannot be processed automatically by SOS. SOS has been sending the images (of those that did not opt out) to the county election officials and requesting that they be treated as a paper affidavit for voter registration. The county election officials have then had staff manually input the data to register the individual.

DMV anticipates that a programming upgrade to resolve the issue of paper records lacking electronic counterparts will be completed by mid-May. In the interim, DMV has issued a memo to field office staff instructing them to perform a workaround for the current programming issue. DMV is also running a daily query to identify any new records affected by the programming issue.

Electronic Records Lacking Paper Counterparts

DMV has identified 559 records associated with paper DL 44 forms completed in a field office, for which DMV has the electronic version of the voter registration information as it was keyed in by the field office technician, but no paper record with which to compare the electronic version, as required under the Quality Assurance process. This is because neither the paper summary sheet (listing the information transcribed by the field office technician and signed by the voter), nor the paper DL 44 form (also signed by the voter) has been routed to DMV headquarters or imaged, for use during the Quality Assurance process. This is likely due to human error in the handling of paper forms. Because the DMV Audits Branch is unable to verify that the electronic version of the voter registration information matches the information entered on the paper application, and because DMV cannot locate a copy of the customer's signature attesting to his or her eligibility to vote, these records do not meet the Quality Assurance process requirements

for transmittal to SOS. These records therefore have not resulted in new or updated voter registrations.

Within the revised Quality Assurance process for paper DL 44 applications, DMV is moving away from having field offices send (via courier) the paper summary sheets to the Audits Branch for review, to having field offices image those papers instead. In addition, over the last six months, the number of paper applications processed in field offices has trended down, and DMV leadership encourages field office management and employees to take affirmative steps to assist customers in navigating the eDL platform, which provides a more accurate and secure method of information delivery.

DMV has sent outreach letters to impacted customers, informing them that the voter registration information provided during their recent DMV transaction could not be processed by SOS, and providing information on registering or updating their voter registration, as well as the SOS phone number they can call with any questions or to request a paper voter registration card. Going forward, these records will continue to be identified through the Quality Assurance process, and outreach letters will be sent as the records are identified.