

EDITOR'S NOTE: *The Spring/Summer issue of the Review presented Part I, which explored the 19th and early 20th century history of voter access. Part II, below, carries the story to the present day. This report, from the Luskin Center for History and Policy at UCLA, was written prior to the November 2020 General Election and has been lightly edited for style. In addition, some footnotes and links have been augmented or updated, and some text has been modified or added. The Review is grateful to the Luskin Center for reprint permission and for the use of images that accompanied the original report.*

Reckoning With Our Rights:

The Evolution of Voter Access in California

PART II

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The Post-War Era — Broadening Voter Access

AS OF 1930, these were California's suffrage rules: Absentee voting was available, but limited and hard to do. Voter registration was permanent, but only for those who managed to vote every time. Asian immigrants could not become citizens and so were ineligible to vote.

However, World War II brought changes: Japanese Americans were forced into incarceration camps where, ironically, Nisei were able to request absentee ballots and vote in their home precincts in the elections of 1942 and 1944.¹ America's wartime alliance with China caused a reconsideration of anti-Chinese legislation, and after 1943,



Mrs. T. Z. Gasparian, right, explains voting rules to Mrs. F. W. Schmitt while sons Craig, Steve listen. Sept. 1, 1960. Photo: George Brich, Valley Times Collection, Los Angeles Public Library.

1. Natasha Varner, "Japanese Americans incarcerated during World War II could still vote, kind of," *PRI, The World*, Oct. 20, 2016, <https://theworld.org/stories/2016-10-18/japanese-americans-incarcerated-during-world-war-ii-were-still-allowed-vote-kind> [as of Aug. 24, 2024]. Tight absentee ballot deadlines combined with slow mail delivery to internment camp locations, a lack of information about local issues back home, and challenges to the eligibility of these voters by nativist groups limited the effective exercise of internees' voting rights. But many felt obliged to try to vote in order to preserve their registrations.

Chinese persons were able to immigrate to the U.S. and become citizens. In 1952, this privilege was extended to immigrants from elsewhere in Asia, and the following year, the noxious anti-Chinese article XIX of the California Constitution was repealed.

California voting practices began to pivot toward inclusivity in the late 1950s, perhaps due to the influence of the early civil rights movement or the Democratic Party's 1959 ascension to a dominant position in the Legislature, which it has largely retained since.² In 1957, the Elections Code was amended, encouraging county clerks to establish convenient locations for voter registration county-wide "in order to promote and encourage voter registrations."³ In 1961, the Legislature provided for citizen deputy registrars,⁴ paving the way for voter registration

2. Michael J. Dubin, *Party affiliations in the state Legislatures: a year-by-year summary, 1796–2006*, Jefferson, NC: McFarland & Com., Inc., 2007, quoted in Niall Ferguson, "California Burnin' — a Warning Against One-Party Rule," *Bloomberg Opinion*, Sept. 20, 2020, <https://www.bloomberg.com/view/articles/2020-09-20/california-burnin-a-warning-against-one-party-rule?embedded-checkout=true> [as of Aug. 24, 2024].

3. Cal. Stats. 1957, ch. 1240.

4. Cal. Stats. 1961, ch. 392.

drives by civic organizations and community groups. With these acts — the first to situate the state on the side of increasing access to the franchise, and not just worrying about fraud — the state of California steadily increased citizens' voting rights. Some of these innovations were challenged on the grounds that they would lead to fraud, but courts repeatedly sided with the state, agreeing that reasonable measures could be taken to increase the exercise of the right to vote. This balancing act, between expanding voter rights and ensuring election integrity, has characterized the last six decades.



Long line of voters, Nov. 4, 1952. Photo: Howard Ballew, *Herald Examiner* Collection, Los Angeles Public Library.

At first measures during this period focused solely on making absentee voting easier. Eligibility was expanded in 1959 to address religious obligations and people who lived far from the nearest polling place, and, in 1967, to those confined in hospitals or nursing homes.⁵ Seven years later, the Legislature directed county registrars to include an absentee ballot application in the sample ballot booklet.⁶ In 1978, the state eliminated the language specifying eligibility for absentee voting altogether, declaring instead: “The absentee ballot shall be available to any registered voter.”⁷

This change created “a new frontier in California’s electoral politics.” Using more than a touch of hyperbole, journalist Hal Stemmler declared, “With it, a candidate may take the voting booth into a person’s home, give a campaign pitch and leave with a vote in his or her

pocket.”⁸ As the article explained, the new law allowed campaigns to distribute absentee voter applications, collect the completed applications, and mail them to voting officials. This was a key part of the strategy that won the governorship for George Deukmejian in 1982. By mailing absentee voter applications to some 2.4 million Republican households and asking voters to return the completed applications to his campaign, he was able to record the names of applicants and, later on, urge them to support him.⁹

In 1980, Anna Beatie lost her re-election race for a seat on the Sanger City Council when her opponents mounted an aggressive absentee voter campaign. She sued, arguing that, in addition to using Deukmejian’s tactics, her opponents’ campaign workers “stood next to the voter while he or she voted and would indicate to the voter the names of the candidates [they were] supporting.” She sued to overturn the law that allowed a third party to handle an absentee voter’s completed ballot. The court ruled against her, finding that “absent proof of fraud or tampering . . . the mere possibility of wrongdoing and intrusion into the secrecy of the ballot does not suffice to vitiate either the ballot or the election.” The court also suggested that because of the “potential for wrongdoing,” the Legislature might wish to take another look at these provisions of the law.¹⁰ The law was indeed subsequently changed a number of times, but ballot harvesting remains legal and has been used by many campaigns of both major political parties. Nonetheless, according to the conservative Heritage Foundation’s Election Fraud Database, there has been only one documented case of absentee vote fraud in California since the law was liberalized in 1978.¹¹

California also began experimenting with all-mail elections. The nation’s first such election was held in Monterey County in 1977 to consider a flood control measure; it was considered a huge success. Voter participation doubled and the county saved a reported \$10,000 in election costs.¹² Another all-mail election was held in San Diego in 1981 to consider construction of a new convention center. Businessman Robert Peterson sued, alleging that it violated the California Constitution’s requirement that “[v]oting shall be secret.”¹³

8. Hal Stemmler, “Absentee ballots, a new frontier in California electoral politics” (1983) 14 *Calif. J.* 296, 298.

9. Raphael J. Sonenshein, “Can Black Candidates Win State-wide Elections?” (1990) 105 *Pol. Sci. Qtrly.* 219, 229.

10. *Beatie v. Davila* (1982) 132 Cal.App.3d 424, 433.

11. “Election Fraud Cases,” The Heritage Foundation Election Fraud Database, https://www.heritage.org/voterfraud/search?combine=&state=CA&year=&case_type=All&fraud_type=24489 [as of Aug. 24, 2024].

12. Mary Ann Barton, “Vote-by-mail: Cheaper, faster, so why isn’t it more popular?” *County News*, National Assn. of Counties, Mar. 4, 1996, 2.

13. Cal. Const., art. II, § 7 [the “Australian ballot”].

5. Cal. Stats. 1967, ch. 182.

6. Cal. Stats. 1974, ch. 945.

7. Cal. Stats. 1978, ch. 77.

Peterson claimed that mail balloting is not secret, and that “it opens the door to fraud, coercion, intimidation and undue influence.”¹⁴ In 1983, the California Supreme Court disagreed, noting, “We are satisfied that the secrecy provision of our Constitution was never intended to preclude reasonable measures to facilitate and increase exercise of the right to vote such as absentee and mail ballot voting.”¹⁵

In 1992, the Legislature authorized two counties to conduct pilot all-mail ballot elections and report on “the cost, rate of participation, and incidence of fraud involved.”¹⁶ Stanislaus County proceeded with the experiment and reported greatly increased turnout (8 percent above the state average, when county turnout had usually run 7 percent below the state average). Moreover, Stanislaus officials claimed to have saved the county half its usual election budget. According to County Clerk Karen Matthews, all the counties wanted a statewide expansion of this successful pilot, but it wasn’t implemented. She contended that all-mail voting was a “highly charged issue in political circles. . . . [The politicians are] concerned they can’t run campaigns in such a short time.”¹⁷ But concerns about voter fraud also played a role. During the late 1980s and 1990s, San Francisco and Los Angeles queried their voters concerning switching to all-mail elections. Both cities rejected the concept by a 60 to 40 margin, with fraud the salient issue.¹⁸

Another evolution was underway concerning voter registration. The previously cited 1967 study in *The American Political Science Review* had found that “registration requirements are a more effective deterrent to voting than anything that normally operates to deter citizens from voting once they have registered.”¹⁹ Indeed, at a 1974 hearing held by the Assembly Committee on Elections, one expert testified that California’s registration law “keeps somewhere from one-third to one-half of eligible persons from exercising their rights.”²⁰ Danny Curtin, representing Frontlash, a youth-oriented



From left: Doug Haskins, David Cowdrey, Mrs. Arnold Quittner, and Mrs. Elliot Boberg reach out to unregistered voters, Aug. 4, 1960. Photo: Jon Woods, Valley Times Collection, Los Angeles Public Library.

voter registration organization of the AFL-CIO, told the committee about his experiences conducting registration drives in low-income, blue-collar, and minority communities:

This is where the most shocking evidence of the real lack of voter participation is to be found. . . . One of the major problems is mobility. We purposely avoid registering in apartment buildings until a week or two before the close of registration. Any earlier attempt tends not to be fruitful because of the high amount of turnover and transiency of the occupants in these large apartment complexes, where not one single unit has the same occupant since the 1972 election. Therefore, most of these people are unregistered. Another problem is that young people are the most mobile of a very, very mobile society. . . . You would be amazed at some of the reaction when we ask [students] if they are registered to vote. They can hardly believe you are a deputy registrar of voters actually trying to solicit . . . their registration.²¹

Those whom Curtin and his organization managed to register were frequently felled by the biennial voter “purge.” The law in place since 1930 provided that if a voter did not vote in either a primary or general election, his or her name was to be stricken from the roll. By 1959 a person was allowed to skip the primary election without being purged, but the burden was on the non-voter to inform the county that he or she wished to remain

21. *Id.* 61–63 (Danny Curtin testimony).

14. Stemmler, “Absentee ballots,” *supra* n. 8, 14 *Calif. J.* at 297.

15. *Peterson v. City of San Diego* (1983) 34 Cal.3d 225, 230.

16. Cal. Stats. 1992, ch. 527.

17. Barton, “Vote-by-mail,” *supra* n. 12, at 2.

18. John Mott-Smith, Secretary of State’s Office, quoted in Senate Elections, Reapportionment & Constitutional Amendments Committee Informational Hearing: “O Voter, Where Art Thou? — The move away from Election Day Balloting,” Feb. 18, 2005, <https://selc.senate.ca.gov/february182005informationalhearingovoterwhereartthouthemoveawayfromelectionsdayballoting> [as of Aug. 24, 2024].

19. See Stanley Kelley, Richard E. Ayres & William G. Bowen, “Registration and Voting: Putting First Things First” (1967) 61 *Amer. Pol. Sci. Rev.* 359, 368.

20. Monroe Sweetland, former member of the Oregon State Senate Elections Committee, quoted in transcript of Assembly Committee on Elections and Reapportionment, Interim hearing on proposed reforms in laws affecting absentee ballots, Oct. 16, 1974, 6.



Mayor Tom Bradley, who later served as Mayor of Los Angeles, with unidentified women at an appreciation party for community leaders who opposed Proposition 14, a measure on the November 1964 state ballot that amended the California Constitution, nullifying the 1963 Rumford Fair Housing Act. In 1966, the California Supreme Court declared Proposition 14 unconstitutional under the equal protection clause of the U.S. Constitution. Photo: Rolland J. Curtis, Rolland J. Curtis Collection, Los Angeles Public Library.

registered. Not surprisingly, fewer than one-quarter actually did so. In the 1960s and early 1970s, purges typically resulted in a net loss of 20 percent of registered voters every two years. The Legislature addressed this problem in 1975 by using the post office to let the county know that the voter had not moved.²² This legislative fix was a game-changer; following the 1976 election, only 536,705 voters were purged even though 1.8 million registered Californians had failed to vote — a decrease in the total number of registered voters of only 5.4 percent.²³

Less frequent purges chiefly benefited Democrats, whose supporters were more likely to be infrequent voters. Other changes in this era benefited them as well. Chief among these was the elimination in the early 1970s of the English literacy requirement for voting. According to scholars Roger Daniels and Eric Petersen, writing in 1968, this requirement had not actually been enforced against immigrant groups including Italians, Yiddish-speaking Jews, or even newly naturalized Japanese. Instead, election officials apparently focused on “a group more native than the nativists themselves:

22. Cal. Stats. 1975, ch. 1197. Once an individual registered to vote by completing a mail registration card, the law required the clerk of the county in which the voter claimed to reside to mail a non-forwardable postcard confirming that registration. If the post office returned the card as undeliverable, the county clerk was to cancel the registration. Bruce C. Bolinger, *California Election Law During the Sixties and Seventies: Liberalization and Centralization*, St. Paul, MN: West Pub. Co., 1977, 55, 111–12.

23. *Id.* 113–19.

Spanish-speaking Mexican Americans whose increased political activity . . . resulted in the first significant use of the Gilded Age voting restriction.”²⁴

Indeed, as Mexican Americans began to naturalize, register to vote, and organize during the 1950s, opponents used the literacy law in an attempt to keep them from the polls. At that time election observers were allowed to challenge the eligibility of voters, and in 1958 Democratic poll watchers were warned that “this vicious practice of intimidation, through challenge, has, in the past been used by Republicans particularly against foreign language group members.”²⁵ After the 1960 presidential election, one state assemblymember told the *Sacramento Bee*, “I am firmly convinced that literally thousands of voters did not vote because of fear of public embarrassment, rather than because of the question of their ability to read.”²⁶ In 1970, the English-language requirement was challenged in *Castro v. State of California*, a lawsuit brought on behalf of citizens who

were literate in Spanish but not in English. The California Supreme Court struck the English literacy requirement as a violation of the Fourteenth Amendment.²⁷ But efforts to intimidate Mexican American voters on other grounds, primarily by challenging their citizenship, persisted, notably through organized efforts by the Orange County Republican Party in 1988.²⁸

Lawsuits and action at the federal level also pushed the limits of the franchise in the early 1970s. Passage of the Twenty-Sixth Amendment to the U.S. Constitution lowered the voting age to 18; California’s extensive residency requirement for voters was ruled illegal by the California Supreme Court;²⁹ and the 1970 Amendments to the Voting Rights Act (together with the decision in the *Castro* case) ended enforcement of the literacy requirement. In 1972 the California Constitution was amended to remove all these impediments to the franchise. Another constitutional amendment that same year eliminated the 90-day waiting period before newly

24. Daniels and Petersen quoted in Bolinger, *supra* n. 22, at 60.

25. *Id.* 60, n. 6.

26. *Id.* 60, n. 7.

27. (1970) 2 Cal.3d 223. See also Don B. Kates, “California: An Unexpurgated History,” *Noticiero CRLA*, Jan.–Feb. 1970.

28. “The Long Shadow of Jim Crow: Voter Intimidation and Suppression in America Today” (booklet), People for the American Way, 2004.

29. *Young v. Gness* (1972) 7 Cal.3d 18, 27. See Bolinger, *California Election Law*, *supra* n. 22, at 59–73, 75–89.

naturalized citizens could register. By the end of 1972, article II of the California Constitution, addressing “Suffrage,” had shed its 19th-century limits on race and sex and foreign birth; it provided now only that “a United States citizen 18 years of age and resident in this state may vote.”³⁰

Even the long-standing disqualification of voters for conviction of a felony was removed; in 1974 voters approved Proposition 10 to restore voting rights to ex-felons who had completed their prison sentences, including any parole. This was proponents’ third try; earlier measures in 1954 and 1960 had failed. Experts estimate that felony disenfranchisement disproportionately harms minorities, causing 1 out of every 13

Black adults to lose their right to vote.³¹ During the Jim Crow era many Southern states dramatically expanded the category of “felony” crimes in order to disenfranchise Blacks. The Brennan Center for Justice quotes a Virginia lawmaker who declared in 1902, “This plan will eliminate the darkey as a political factor in this state in less than five years.”³² Although California has had felony disenfranchisement since 1849, it does not appear that the state expanded the number and nature of disenfranchising crimes until the “War on Drugs” era of the 1970s. In 2020, voters amended the state constitution to restore voting rights to ex-felons currently on parole.³³

Toward the end of the 20th century, elections administration became a national concern. The National Voter Registration Act (NVRA) became law in 1993, requiring



President Bill Clinton signing the National Voter Registration Act of 1993, May 20, 1993. Photo: Library of Congress.

30. See Voter Information Guide, 1972 General Election, “Proposition 6, Naturalized Citizens Voting Eligibility Amendment,” [https://ballotpedia.org/California_Proposition_6,_Naturalized_Citizens_Voting_Eligibility_Amendment_\(June_1972\)](https://ballotpedia.org/California_Proposition_6,_Naturalized_Citizens_Voting_Eligibility_Amendment_(June_1972)) [as of Jan. 29, 2024]; Voter Information Guide, 1972 General Election, “Proposition 7, Changes to Elections Amendment,” [https://ballotpedia.org/California_Proposition_7,_Changes_to_Elections_Amendment_\(1972\)](https://ballotpedia.org/California_Proposition_7,_Changes_to_Elections_Amendment_(1972)) [as of Aug. 26, 2024].

31. Christopher Uggen, Ryan Larson & Sarah Shannon, “6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement,” The Sentencing Project, Oct. 6, 2016, <https://www.sentencingproject.org/app/uploads/2022/08/6-Million-Lost-Voters.pdf> [as of Aug. 26, 2024].

32. Brennan Center for Justice, quoted in Sam Fulwood III, “At Long Last, A Wrong Righted for Disenfranchised Virginians” (Apr. 28, 2016) Center for American Progress, <https://www.americanprogress.org/article/at-long-last-a-wrong-righted-for-disenfranchised-virginians/> [as of Aug. 26, 2024].

33. Voter Information Guide, 2020 General Election, “Proposition 17, Voting Rights Restoration for Persons on Parole Amendment,” [https://ballotpedia.org/California_Proposition_17,_Voting_Rights_Restoration_for_Persons_on_Parole_Amendment_\(2020\)](https://ballotpedia.org/California_Proposition_17,_Voting_Rights_Restoration_for_Persons_on_Parole_Amendment_(2020)) [as of Aug. 26, 2024].

state motor vehicle departments to offer voter registration services to anyone applying for a driver’s license. NVRA also created a national standard for the purge of voter registration lists. After the 2000 presidential election and the “hanging chads” debacle in Florida, a private, bipartisan panel co-chaired by former presidents Jimmy Carter and Gerald Ford convened to study election issues. Their 2001 report provides an interesting window into national sentiment concerning the proper balance between voting system integrity and voter rights.

The resulting Carter-Ford Commission report noted that under NVRA, voter lists had become so “swollen” with voters who had moved or died or become otherwise ineligible to vote that some jurisdictions found they had more registered voters than people. The panel expressed concern about no-excuse absentee voting, early voting, and all-mail elections, contending that these measures had not been proved to increase voter turnout and could present opportunities for fraud.³⁴ They observed, however, that elections administrators in states with the heaviest reliance on these measures expressed confidence in their security and integrity.³⁵

In California, both judges and elected officials expressed satisfaction with the integrity of absentee voting and vote-by-mail, and they continued moving ahead. In 1994 existing state law was interpreted to allow early voting.³⁶ In 2001 any registered voter could become a

34. Jimmy Carter (ed.), Gerald R. Ford (ed.), Lloyd Cutler (ed.), *To Assure Pride and Confidence in the Electoral Process: Report of the National Commission on Election Reform*, Washington: Brookings Institution, 2002, 26–29, 43–44.

35. John Mark Hansen, “Early Voting, Unrestricted Absentee Voting, and Voting by Mail,” Task Force Report to Accompany the Report of the National Commission on Election Reform, 2001, 26.

36. “O Voter, Where Art Thou?” *supra* n. 18, at 81 (John Mott-Smith testimony).

“Permanent Absentee Voter” or PAV and automatically receive an absentee ballot. In 2003 the Legislature permitted all-mail elections in cities with populations of up to 100,000.³⁷

In 2005, a state senate committee convened an informational hearing to assess the progress and pitfalls concerning what it called “the move away from election day balloting.”³⁸ Echoing another concern of the Carter-Ford Commission, Yolo County Registrar of Voters Freddie Oakley expressed her constituents’ angst over the loss of the civic ritual of the polling place. According to Oakley, many voters felt that “by allowing voting by mail, by allowing early voting, we aren’t requiring of voters the discipline and the attention to ritual and sacredness that they think is important.”³⁹

John Mott-Smith of the Secretary of State’s Office testified that between 1978, when rules for absentee voting were first liberalized, and 2004, the share of absentee ballots cast had increased eightfold. Both he and

several county registrars expressed concern about the administrative complexity involved in elections that simultaneously offered early, absentee, and polling-place voting. But they all reported widespread public support for this amalgam of voting options, as well as increased numbers of people signing up to become PAVs.

Speakers at this hearing expressed a new concern that not every mailed-in ballot ends up being

counted. Elections professionals pointed out that by forgoing the assistance of the polling place, with its ballot scanner machines and knowledgeable poll workers, absentee voters are more likely to err in marking their ballots.⁴⁰ There was also testimony concerning absentee ballot rejection rates. Contra Costa County Registrar Stephen Weir told the committee about a 1996 election in which the rejection rate for AV ballots was a “staggering” 4 percent due to lateness, missing or invalid signatures, or other problems. He testified that after two rounds of intensive voter education, the rejection rate dropped to 1.3 percent. Then in 2004, Weir was stunned to experience an 11.5 percent absentee ballot rejection rate. After investigating, he learned that the problem was in the post office. Because the postal clerk who ordinarily handled the registrar’s business reply mail had been on vacation Monday and Tuesday of election week, 500 ballots that arrived at the post office before the registrar’s deadline to

receive them were not delivered to the registrar’s office until after that deadline. Once the registrar accounted for the post office’s delay, the rejection rate dropped to 1 percent.

Others testified that many voters were not interested in, or even aware of, the right to vote absentee. Kim Alexander of the California Voter Foundation discussed a 2004 survey of infrequent voters conducted by her organization found that many of them were not at all familiar with absentee voting. This educational challenge has long been an issue. As this paper points out, absentee voting was understood from its inception to benefit primarily the educated and the well-off. The Carter-Ford Commission observed the same thing in 2001, writing, “Use of absentee ballots also has a class bias.”⁴¹

Once again, the Legislature altered the law to make voting more accessible, changing the term “absentee voting” to “vote by mail” or VBM.⁴² This semantic adjustment turned the entire concept of absentee voting on its head: Instead of a stopgap, quasi-emergency mechanism, voting at home became a means of exercising the franchise that was just as acceptable and legitimate as voting at the polls. In 2016, the Legislature passed the Voter’s Choice Act, under which selected counties would mail every voter a ballot, traditional polling places would be replaced by Vote Centers, and every voter would have the option of casting a ballot in one of several ways — through the mail, via drop boxes, voting early, or voting on Election Day.⁴³ As of mid-2024, 29 counties are participating in this program (there are also three sparsely populated Sierra Nevada counties that offer voting only by mail).⁴⁴

California also has continued to sweep away restrictions that have long prevented young, minority, and poor people from registering to vote. The state enacted internet voter registration in 2008, same-day registration in 2012, and, most important, the “New Motor Voter Act” of 2015.⁴⁵ (Implementation of each of these was delayed until after “VoteCal,” California’s centralized voter registration database, came online in 2016.) The New Motor Voter Act promises a transition to automatic voter registration, hopefully breaking the last barrier to universal suffrage and ridding the state of what author David Litt has called “the racist history of voter registration.”⁴⁶ The initial rollout of the program was marred

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37. Cal. Stats. 2001, ch. 922; Cal. Stats. 2003, ch. 401.

38. “O Voter, Where Art Thou,” *supra* n. 18, at 81.

39. *Ibid.* (Freddie Oakley testimony).

40. A ballot scanner machine checks for under-votes (failure to vote in every race) and over-votes (voting for too many candidates in any race).

41. Hansen, “Early voting,” *supra* n. 35, at 3. See also “O Voter, Where Art Thou,” *supra* n. 18, at 81 (Mott-Smith, Weir, and Alexander testimony).

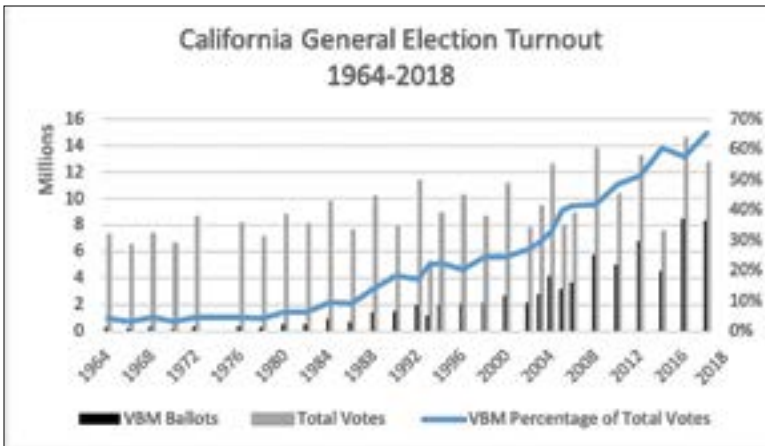
42. Cal. Stats. 2007, ch. 508.

43. Cal. Stats. 2016, ch. 832.

44. California Secretary of State, “California Voter’s Choice Act,” <https://www.sos.ca.gov/elections/voters-choice-act/vca-counties/> [as of Feb. 9, 2024].

45. Cal. Stats. 2008, ch. 613; Cal. Stats. 2012, ch. 497; Cal. Stats. 2015, ch. 729.

46. David Litt, “The Racist History of Voter Registration” (June 18, 2020) *Time*, <https://time.com/5855885/>



Percentage of vote-by-mail ballots out of total votes, California general election turnout, 1964–2018. Data compiled by the authors.

by errors and litigation challenges. Nonetheless, between 2018 and 2022, 2.7 million to 3.9 million Californians a year registered to vote using “motor voter” procedures.⁴⁷

Other changes have sparked controversy, too. California modified “voter purge” processes in the mid-1970s, as discussed above, and again in accordance with federal law to provide that those who do not respond to address confirmation notices are placed on the “inactive file” — and may then be purged from the voter rolls after two federal election cycles if they do not ask to vote. In 2017, the conservative activist group Judicial Watch sued Los Angeles County and the state in an effort to purge more voters, alleging that the county had more registered voters than its entire adult population, and that this would inevitably lead to fraud.⁴⁸ The following year, in a 5–4 decision, the U.S. Supreme Court reinterpreted the NVRA to speed voter purges, and the Judicial Watch case was settled in conformance with that ruling.⁴⁹ According to a leading county official, “Nothing in the (settlement) agreement jeopardizes even one eligible Los Angeles County voter; moreover, Judicial Watch’s allegation was unsubstantiated in either the settlement or

voter-registration-history-race/ [as of Aug. 26, 2024].

47. California Secretary of State, “California New Motor Voter,” 2022 Annual Report, 7, <https://elections.cdn.sos.ca.gov/motor-voter/annual-report-2022.pdf> [as of Aug. 26, 2024].

48. *Judicial Watch, Inc., et al. v. Dean C. Logan, et al.* (United States Dist. Ct., Central Dist. of Cal., No. 17-CV08948) Dawn Hodson, “Judicial Watch wins voter roll lawsuit in L.A.,” *Mountain Democrat*, Jan. 21, 2019, https://www.mtdemocrat.com/news/the_divide/judicial-watch-wins-voter-roll-lawsuit-in-lalarticle_3b85e8a1-9109-5497-9d54-e2875d02c393.html [as of Aug. 26, 2024].

49. *Husted v. A. Philip Randolph Inst.* (2018) 584 U.S. 756; settlement agreement in *Judicial Watch, Inc., et al. v. Dean C. Logan, et al.*, <https://www.judicialwatch.org/wp-content/uploads/2019/01/JW-v-Logan-California-NVRA-settlement-08948.pdf> [as of Aug. 26, 2024].

in voter registration statistics.”⁵⁰ But this action by the Supreme Court will impede voter access as more are purged in the years ahead.

California elections administrators also have been challenged from the other end of the political spectrum. In 2018, the ACLU of Northern California sued to prevent counties from throwing out absentee ballots due to mismatched signatures, alleging that more than 45,000 ballots were discarded for this reason in the 2016 election alone. It won the case, and in September 2018 the state passed a new law requiring counties to contact voters whose signatures on vote-by-mail ballots are challenged, giving them an

opportunity to “cure” or provide a valid signature and help ensure their votes will be counted.⁵¹

Why Do Members of Minority Groups Still Vote at Lower Rates Than Whites?

As of now, it seems that the barriers erected by previous generations of California lawmakers to prevent non-white, poor, and naturalized citizens from voting have almost all been swept away. Racial, literacy, residence, and naturalization status no longer bar the door of the voting booth. Registration is easy and nearly automatic. Those who move frequently can easily reregister over the internet; those without cars or a driver’s license can apply for California Identification Cards and register to vote at the DMV. Anyone may vote by mail, vote early, or vote in person at a convenient polling place or vote center. Since 2020, ex-felons on parole can vote as well.

But California’s electorate remains wealthier, older, and whiter than its population. In Los Angeles County, election statistics show that supervisorial districts of precisely equal population consistently deliver differently sized electorates, with wealthier, whiter districts casting as many as 40 percent more votes than those with heavily Latino/a, working-class populations.⁵²

According to the Advancement Project/UC Riverside’s 2016 study,⁵³ only 50 percent of Native Ameri-

50. Statement of Dean Logan, Los Angeles County Registrar of Voters/County Clerk, Jan. 3, 2019; email to authors from Dean Logan, Sept. 20, 2020.

51. Cal. Stats. 2018, ch. 446.

52. Data provided to the authors by Los Angeles County Registrar of Voters. In the 2016 Presidential General Election, there were 862,313 registered voters in the 1st Supervisorial District, and 1,136,179 registered voters in the 3rd Supervisorial District. There were 567,563 ballots cast in the 1st district and 793,547 ballots cast in the 3rd district.

53. The Advancement Project and UC Riverside School of Public Policy (Feb. 2017) “Unequal Voices: Who Speaks for California? Part II,” <https://www.advancementprojectca.org/>

cans, 43 percent of Pacific Islanders, 35 percent of Asian Americans, and 32 percent of Latinos voted in the 2012 presidential election. These figures are for all adults — not just citizens. The report discusses “the three component stages of voting: citizenship, registration, and turnout” and explains that Asian Americans and Latinos have far lower rates of citizenship and of voter registration



Vote-by-mail ballots, 2020 general election.

than do whites and Blacks. For example, only 66 percent of adult Latinos were citizens in 2012, and slightly more than half of these were registered to vote, as compared to whites (96 percent citizens, two-thirds of them registered) and Blacks (99 percent citizens, two-thirds of them registered). Blacks turn out to vote slightly less frequently than whites in presidential elections (65 percent vs. 68 percent), and far less frequently in midterm elections (38 percent to 53 percent). As indicated previously, these differences persist even after controlling for age and social class.

Unfortunately, the universal availability of Vote-by-Mail has not equalized turnout. Research shows that VBM participation increases with age, median income, and education — as did absentee voting of old.⁵⁴ An analysis of the 2014 election found that young voters (18–23) were the least likely group to use VBM, while voters 64 and older were the only group reporting majority VBM use. Latino/a people utilized VBM at significantly lower rates than the population as a whole (50 percent vs. 61 percent), while Asian American use was much higher — 72 percent.⁵⁵ Statewide data showing rates of VBM usage among African Americans is not available; however, studies and experts suggest an aversion among Blacks (as

well as Latino/a voters) to conducting transactions via the post office;⁵⁶ in addition, Black voters often cite the battle for African American voting rights as a reason to show up in person at the polling place.⁵⁷

Critics portray California as a state that still practices voter suppression — although of a much different nature than in the past.

Voting rights advocate Valerie Morishige recently lauded California’s “amazing policies” while criticizing its practice:

A democratic institution like voting is made up of policies, practices and people. California might have amazing policies like online registration, pre-registration, motor voter registration, vote-by-mail sent to all, a vote-by-mail ballot tracing system, early voting, ADA accessible vote centers, in-language assistance and no restrictive ID laws; but our practices and our people are falling short.⁵⁸

Morishige contends that despite these advances in legislation, California continues to suppress the vote through the lack of an adequate number of vote centers, frequent equipment failures, and underpaid and undertrained poll workers. It also should be noted that despite California’s vast linguistic diversity, election materials are frequently poorly translated, and there is no statewide policy guiding counties on how to perform this work.⁵⁹ Although the “motor voter” system has been implemented, the state might also provide automatic voter registration through interaction with other branches of the government. Finally, at-large voting schemes and gerrymandering may be suppressing the minority vote. These remain unresolved issues.

Another pathway toward reducing or erasing racial disparities in voter participation is through political participation, including contacting public officials, attending public meetings, making campaign contributions,

[wp-content/uploads/2017/02/APUnequalVoices2ExecutiveSummary1.pdf](#) [as of Aug. 26, 2024].

54. R. Michael Alvarez & Thad E. Hall, “Whose absentee voters are counted: The variety and use of absentee ballots in California,” California Institute of Technology (2005); R. Michael Alvarez, Ines Levin & J. Andrew Sinclair, “Making Voting Easier: Convenience Voting in the 2008 Presidential Election,” (2012) 65 *Pol. Res. Qtrly* 248; Matt Barreto, “Do Absentee Voters Differ from Polling Place Voters? New Evidence from California” (2006) 70 *Pub. Opin. Qtrly* 224; A.J. Berinsky, N. Burns & M.W. Traugott, “Who Votes by Mail?: A Dynamic Model of the Individual-Level Consequences of Voting-by-Mail Systems” (2001) 65 *Pub. Opin. Qtrly* 178; Mark DiCamillo, “The Continuing Growth of Mail Ballot Voting in California in 2008” (2009) 1 *Calif. J. of Pol. and Policy*, 1; Jeffrey A. Dubin & Gretchen A. Kalsow, “Comparing Absentee and Precinct Voters: A View over Time” (1996) 18 *Pol. Behavior* 369.

55. UC Davis Center for Regional Change (July 2016) The California Voter Experience Study, Issue 1: Vote-by-Mail vs. the Polls, <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/57ffe6bfe3df28f75af48b3b/1476388544252/UCDavisCCEPCVEBrief1.pdf> [as of Aug. 26, 2024, 2024].

56. Authors’ conversations with then-Secretary of State Alex Padilla and Los Angeles County Registrar of Voters Dean Logan, Aug. 7 and 14, 2020.

57. UC Davis Center for Regional Change (Sept. 2016) The California Voter Experience Study, Issue 2: Why African American Voters Choose to Vote at the Polls or Vote-by-Mail, and How They Perceive Proposed Changes to California’s Voting System, <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/57ffe66ff7e0abb-9f7b5f3e6/1476388465082/UCDavisCCEPCVEBriefTwo.pdf> [as of Aug. 28, 2024].

58. Valerie Morishige, “Voter suppression is a California problem, too,” *Cal Matters*, July 15, 2020, <https://calmatters.org/commentary/2020/07/voter-suppression-is-a-california-problem-tool/> [as of Aug. 28, 2024].

59. Cal. Elections Code, § 14201.

signing petitions, and attending protests as well as voting. A 2017 study documented that individuals from minority groups are underrepresented in most of these political activities. The authors conclude, “racial disparities are best explained by people of color being less empowered to participate, due to either structural obstacles or poor mobilization by political parties and campaigns, rather than a lack of interest in politics.”⁶⁰ The study authors recommend strategies such as civic education programs for children and adults of color, enhanced efforts to mobilize people of color, expansion of the “Empowerment Congress” model pioneered by former L.A. County Supervisor Mark Ridley-Thomas, and other tools.⁶¹

The Election of 2020 and Beyond

In October 2020, for the first time in California, every registered voter was mailed a ballot for the November 2020 general election. The move, initiated by Gov. Gavin Newsom in response to the coronavirus pandemic, allowed more flexibility — voters could return their ballots by mail, by depositing them in secure “drop boxes,” or by casting their votes in person as early as October 5 and up through Election Day. That flexibility resulted in a major jump in turnout; 80.67 percent of registered voters turned out, the highest since 1976, and 70.88 percent of eligible voting-age Californians cast ballots, the highest since 1952.⁶²

In September 2021, California law was changed to permanently require that every registered voter receive a vote-by-mail ballot.⁶³ Huge majorities of Californians are making use of this voter access tool; 91 percent voted by mail in the 2021 gubernatorial recall election, 91.24 percent in the June 2022 primary election, and 87.32 percent in the November 2022 general election. Overall voter turnout, however, has returned to pre-2020 levels. And while new studies have not been completed, we can safely assume that California remains “a ‘majority-minority’ state . . . with a conversely unrepresentative, older, white, wealthy electorate.”⁶⁴

60. The Advancement Project and UC Riverside School of Public Policy, *supra* n. 53 at 2.

61. Formed in 1992, the Empowerment Congress “is an ongoing effort in participatory government, founded on the principle that elected officials are most effective when the constituents they serve are actively involved in the decision-making process,” <https://empowermentcongress.org/aboutus/> [as of Feb. 6, 2024]. See also The Advancement Project and UC Riverside School of Public Policy, “Unequal Voices,” *supra* n. 53.

62. California Secretary of State, “Secretary of State Alex Padilla Certifies Record Setting General Election Results,” press release, Dec. 11, 2020, <https://www.sos.ca.gov/administration/news-releases-and-advisories/2020-news-releases-and-advisories/lap20116> [as of Aug. 29, 2024].

63. Cal. Stats. 2021, ch. 312 (Assembly Bill 37).

64. Turnout in the gubernatorial recall election was 58 percent, in the June 2022 primary 33 percent, and in the

Half a century ago, Danny Curtin of the AFL-CIO told an Assembly committee just what is at stake:

We at Frontlash believe the needs of these groups of people, the medical needs of the elderly, the decent jobs for working people and many of these unemployed young people that we see throughout the city, decent housing and equal educational opportunities for the poor [—] we feel that these needs will never really be properly taken care of until the real silent voice of America is heard, throughout the political process.⁶⁵

Mr. Curtin’s words ring true today. Until every American is able and motivated to express his or her views through the ballot box, we will not be on a genuine path to resolving this country’s myriad social ills. California’s first century was marred by state action that limited the franchise to select groups; now, in its second century, the state is focused on making voting accessible and secure for all. This report demonstrates the general success of policies, but other significant structural barriers block many citizens from participating fully in our democracy. Disparities in income, wealth, housing security, education, access to quality medical care, access to technology, and many other of society’s inequities help ensure that political power, too, is not fairly distributed. This points to a broader problem: After all the bills have passed and all the policies are in place, our democracy still does not give voice to all segments of society. Analyzing these structural inequities is a far larger task, but one that can draw on the charting of historical change described in this paper. ★

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November 2022 election, 50.8 percent. League of Women Voters of California (undated) “Voting Rights,” <https://lwvc.org/issues/voting-rights> 1 [as of Aug. 28, 2024].

65. Transcript of Assembly Committee on Elections and Reapportionment, *supra* n. 20.