

RECKONING WITH OUR RIGHTS:
THE EVOLUTION OF VOTER ACCESS IN CALIFORNIA

September 2020

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Introduction

For the first one hundred years of its existence as a state, California limited access to the franchise, excluding non-whites and using the tools of voter suppression to prevent “voter fraud” by minorities and the poor. In the post-World War II era, the state has changed its focus and worked hard to make it easier for all citizens to register and vote. Despite these efforts, California’s voters do not reflect the diversity of its people. As the California League of Women Voters says, “California is a ‘majority-minority’ state (our population is majority Latino/a, Asian-American, and other groups) with a conversely unrepresentative, older, white, wealthy electorate.”¹ A 2016 study by The Advancement Project and the U.C. Riverside School of Public Policy makes their point: between 2004 and 2012, while California’s adult citizens voted in presidential races at an average rate of 61%, turnout among ethnic minority adult citizens was far lower, with Latinx turnout of 51% and Asian American turnout only 48%. These differences persist even after controlling for age and social class.²

The first part of our study demonstrates how the State of California systematically discriminated during its first hundred years against different groups of prospective voters. In fact, the state employed some of the same tools used under the Jim Crow regime in the south in the 19th and early 20th centuries. These tactics were not directed primarily at African-Americans, who today vote at rates slightly lower than whites (according to The Advancement Project/UCR, 65% vs. 68%).³ Instead, for much

¹ League of Women Voters of California Website, “Voting Rights.” Accessed 8/21/2020.

<https://lwvc.org/issues/voting-rights>

² “Unequal Voices: California’s Racial Disparities in Political Participation,” The Advancement Project and U.C. Riverside School of Public Policy, June 2016. Accessed 8/21/2020. <https://www.advancementprojectca.org/what-we-do/political-voice/unequal-voices-part-i>

³ Ibid.

of its early history, California directed discriminatory practices squarely at immigrants from China, who were banned from public or private employment and whose very presence was, according to the California Constitution of 1879, “declared to be dangerous to the well-being of the State.”⁴ Also, early in its history California implemented voter registration and other systems, ostensibly to check fraud, which had the effect of barring access to the franchise for immigrants and the poor.

From 1849 until the Second World War, California fought to limit political power in these ways. After the war, and especially after 1959, the pendulum began to swing the other way. State law has evolved since that time to make voting easier and broaden voting rights, while maintaining the integrity of voting systems. The last part of our study shows that while significant changes have been made to open new pathways to voting, the effective exercise of the franchise is not yet equally available to all.

California’s First Hundred Years: Barriers of Race

California’s first Constitution, ratified in 1849, restricted the right to vote to white male citizens of the United States and to those white male Californios who had chosen to become U.S. citizens under the peace treaty that settled the Mexican War. As a concession to Mexican protocol, it allowed the legislature, by a two-thirds vote, to admit Indians to the suffrage (although such a vote was never taken).⁵ Voters had to be 21 years of age, residents of the state for six months, and of “the county or district in which he claims his vote,” 30 days; the franchise was prohibited to any “idiot or insane person,

⁴ California Constitution of 1879, Article XIX Sections 2, 3, 4.

⁵ Myra K. Saunders, “California Legal History: The California Constitution of 1849,” *Law Library Journal* 90, no. 3 (Summer 1998): 461. Mexican law allowed Indians who owned property to vote; also, one Californio delegate to the Constitutional Convention was himself half Indian.

or person convicted of any infamous crime.”⁶ The first California Election Law, passed in 1850, was faithful to these rules.

In the midst of the Civil War, with President Lincoln facing a re-election battle whose outcome was far from certain, Republicans across the country looked for ways to allow soldiers to vote for their commander-in-chief. California enacted legislation allowing absentee voting for soldiers, and thousands of them cast ballots in state and local elections in 1863. However, the law was challenged by John Bourland, who lost the race for sheriff of Tuolumne County by fewer votes than the number of soldiers’ ballots cast. The California Supreme Court threw out the law, saying that since the Constitution granted suffrage on the basis of residence in that “county or district in which (the voter) claims his vote,” absentee voting was not allowed.⁷ The court’s decision was criticized in the press as “intended to give aid and comfort to the Jeff Davis rebels...”⁸ Later that year a second law was passed that resolved the conundrum by allowing soldiers to vote for only certain offices. In 1864 President Lincoln won re-election with 55% of the vote nationwide, and more than 70% of military voters.⁹ Election returns from a cavalry unit stationed at Fort Humboldt in Northern California show that all but one soldier voted for Lincoln. The President won California’s 5 electoral votes narrowly, thanks in large part to soldiers’ support.¹⁰

⁶ California Constitution, 1849. Accessed 8/22/2020

http://www.dircost.unito.it/cs/pdf/18490000_UsaCalifornia_eng.pdf

⁷ “Soldiers’ Ballots,” California State Archives digital exhibit by Sebastian Nelson, 2018. Accessed 8/22/2020 <https://artsandculture.google.com/exhibit/soldiers-ballots-california-state-archives/vQilVsZoFNiLg?hl=en>; also Arnold Roth, “*Special Book Section: A History of the California Supreme Court In Its First Three Decades, 1850-1879*,” California Supreme Court Historical Society, Chapter 6. Accessed 9/12/2020 <https://www.cschs.org/wp-content/uploads/2019/11/Legal-Hist-v.-14-Book-Section-Court-History.pdf>. Roth notes that together with *Caulfield v. Hudson* this ruling, *Bourland v. Hildreth*, established the power of the judicial branch to declare acts of the legislature unconstitutional, making it the *Marbury v. Madison* of California.

⁸ Soldiers’ Ballots.

⁹ Soldiers’ Ballots.

¹⁰ Soldiers’ Ballots.

But there were many Confederate sympathizers in California before, during and after the war.¹¹ Because California was admitted to the Union as a Free State under the Compromise of 1850, delegates to the Constitutional Convention had not hesitated to declare in Article I that “(n)either slavery, nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.” But the California Legislature did not take a vote to ratify the 13th Amendment, ending slavery, until two days after it had already become the law of the land in December 1865. The Legislature did not take a vote at all on the 14th Amendment, guaranteeing equal protection of the laws, during the Reconstruction Period; it became law without our state’s support. And California was one of only two free states to vote down the 15th Amendment, guaranteeing the right to vote.¹² It was not until the early modern Civil Rights era that California reversed this record and voted to ratify the 14th in 1959 and the 15th in 1962.

Nevertheless, the 15th Amendment was ratified by the requisite number of other states and became law in February 1870. While this amendment guaranteed the right to vote to all citizens regardless of race, Native Americans who maintained their tribal relations were excluded on the grounds that they were not citizens of the United States. This would not be overturned until 1924.¹³ Ratification of the 15th did make a difference for California’s 1,731 Black males 21 years or older, many of whom took advantage of the opportunity and registered to vote.¹⁴ But the more urgent issue that had compelled

¹¹ Stacey L. Smith, *Freedom's Frontier: California and the Struggle over Unfree Labor, Emancipation, and Reconstruction* (University of North Carolina Press, 2013), Introduction www.jstor.org/stable/10.5149/9781469607696_smith.14 In 1850 approximately 36% of U.S.-born residents of California hailed from the South.

¹² Smith, *Freedom's Frontier*, 213.

¹³ Wolfley, Jeanette. "Jim Crow, Indian Style: The Disenfranchisement of Native Americans." *American Indian Law Review* 16, no. 1 (1991): 167-202. Accessed August 27, 2020. doi:10.2307/20068694

¹⁴ Ralph E. Shaffer, "California Reluctantly Implements the Fifteenth Amendment: White Californians Respond to Black Suffrage, March - June, 1870," (2020) Accessed 9/12/2020 <https://www.cpp.edu/class/history/faculty/documents/shaffer15thamend.pdf>

California to oppose the extension of voting rights regardless of “race, color, or previous condition of servitude” was animus toward the 49,310 Chinese residents in the census of 1870 – almost 9% of the population and including 36,890 males of voting age.¹⁵

Economic crises during the post-Civil War period had spurred xenophobia across the West and development of an anti-Chinese movement among white laborers, who feared their livelihoods would be undercut by Chinese immigrants willing to work for less. In California, this effort coalesced in the creation of the Workingmen’s Party, whose slogan was “The Chinese must go!” Violent attacks on Chinese workers and communities ensued, including a massacre of Chinese immigrants in downtown Los Angeles in 1871.

A State Constitutional Convention was held in 1878-79 with fully one-third of its delegates representing the Workingmen’s Party;¹⁶ the delegates drafted an entirely new Constitution for the state which was adopted by a vote of the people in May 1879. This new Constitution removed the words restricting suffrage to “white” citizens, while simultaneously providing that “no native of China...shall ever exercise the privileges of an elector in this State.” A new Article XIX, entitled “Chinese,” forbade the employment of Chinese by any government body or any corporation, and stated that “Asiatic coolieism is a form of slavery, and is forever prohibited in this State...”¹⁷ According to author Stacey L. Smith, racially discriminatory measures passed in California during the Reconstruction era were cast as anti-slavery laws. Instead of excluding Chinese on the basis of race or national origin, lawmakers “...claimed to break up the transpacific slave

¹⁵ Shaffer, “Black Suffrage,” 3; also Campbell Gibson and Kay Jung, “Historical Census Statistics on Population Totals by Race,” U.S. Census Bureau Population Division, September 2002. Table 19, California – Race and Hispanic Origin: 1850 to 1990. Accessed 9/12/2020 <https://www.census.gov/content/dam/Census/library/working-papers/2002/demo/POP-twps0056.pdf>

¹⁶ Kauer, Ralph. “The Workingmen's Party of California.” *Pacific Historical Review* 13, no. 3 (1944): 278-91. Accessed August 24, 2020. doi:10.2307/3635954.

¹⁷ Constitution of 1879 Article II Section 1, Article XIX. One year after this Constitution was ratified, a Federal Court founds portions of Article XIX unconstitutional, but it was not removed until 1953.

trade and to guarantee that only free laborers and voluntary emigrants came to the nation's shores."¹⁸

Chinese immigrants were not permitted to become naturalized U.S. citizens. Even as Federal law was revised during the Reconstruction Era to grant former slaves citizenship and to allow Black immigrants to naturalize, it prohibited the naturalization of Chinese and other Asian immigrants.¹⁹ But even if they had been allowed to naturalize, they still would have faced discrimination under California law. The 1879

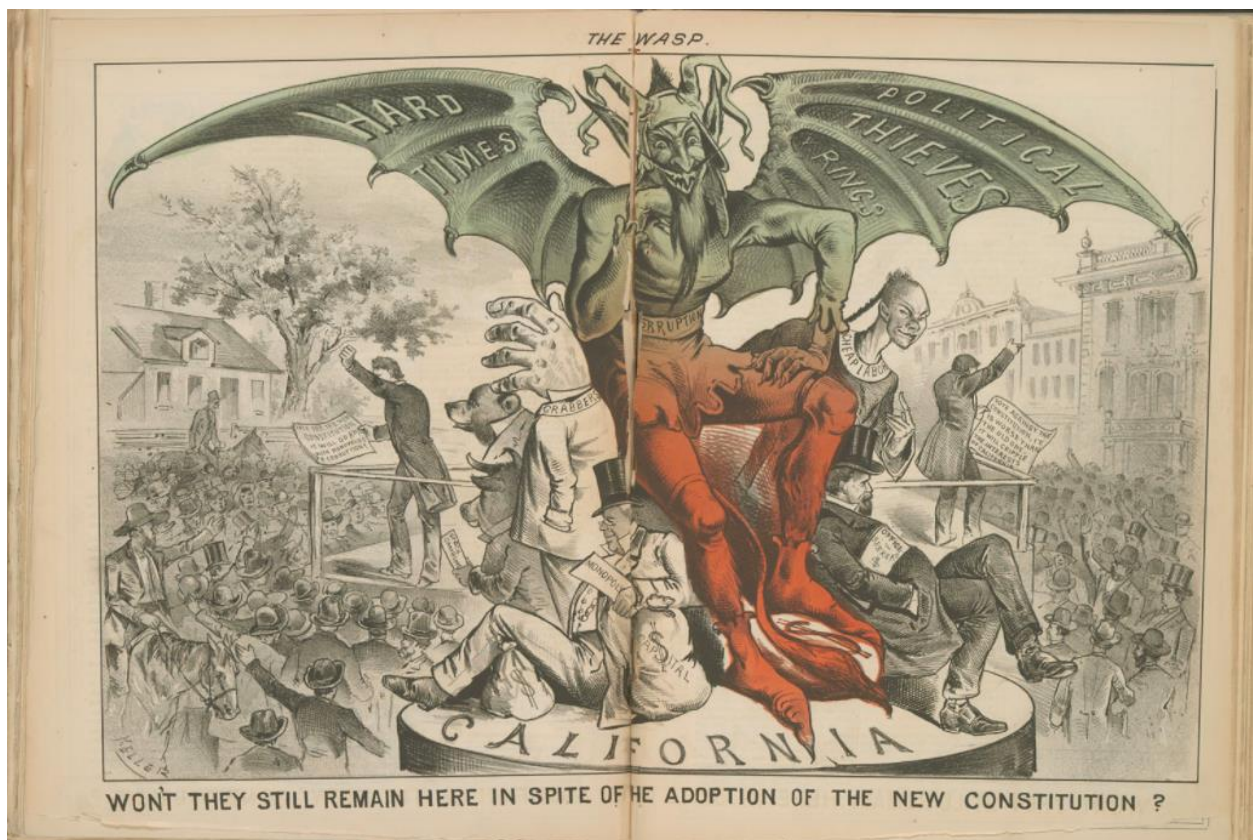


Figure 1. Demonized figure of political corruption protecting Chinese cheap labor, dirty politicians, capital, financiers, etc.; "Won't They Remain Here in Spite of the New Constitution?" Aug.1878- July 1879, Chinese in California, UC Berkeley Bancroft Library No. 143: 616-617.

¹⁸ Smith, *Freedom's Frontier*, Chapter Seven.

¹⁹ Marian L. Smith, "Race, Nationality, and Reality: INS Administration of Racial Provisions in U.S. Immigration and Nationality Law Since 1898," *Prologue Magazine of the National Archives* 34, No. 2 (Summer 2002).

Constitution drew a distinction between native-born and naturalized citizens' voting rights.²⁰

California also had a poll tax, although its history is ambiguous. The poll tax was adopted by the very first California legislature, whose members "...were convinced that there was in California a large floating population, with no real estate and very little personal property liable to taxation" who nonetheless enjoyed the benefits of residence in the state. The tax was set at \$5, at that time the equivalent of one half-day's wage.²¹ The 1879 Constitution baked this into California law, imposing a poll tax on all males between the ages of 21 and 60 and exempting "paupers, idiots, insane persons, and Indians not taxed."

Many Southern states used poll taxes to suppress the Black vote beginning in the 1890s, enacting laws that required payment of the tax in order to register and vote. The Nevada Legislature passed such a measure in 1898, but it was quickly struck down by that state's Supreme Court.²² California considered a similar measure much earlier – in 1865 – but it was rejected by a vote of the people.²³ Nonetheless, in California payment of the poll tax was regularly linked to the exercise of the franchise in various ways. In his report for 1871 the state controller compared the percentage of poll tax payers to the total number of voters in each county, and reported that overall, less than 76% of the voting population paid the tax.²⁴ The Santa Clara County Board of Supervisors had an

²⁰ New citizens could not vote unless they had been naturalized for 90 days prior to Election Day. Constitution of 1879 Article II Section 1

²¹ W.C. Fankhauser, *A Financial History of California* (Univ. Calif. Pub. Econ., vol 3 (1913), quoted in Commonwealth Club of California, *Transactions*, 9 (1914), 255-258. In later years the amount of the tax was adjusted to remain equivalent to one-half day's wage.

²² "Poll Tax Law Void," *San Francisco Call*, June 28, 1898. Retrieved from California Digital Newspaper Collection, UCR Center for Bibliographical Studies and Research, 9/12/2020

<https://cdnc.ucr.edu/?a=d&d=SFC18980628.2.124&srpos=2&e=-----189-en--20--1--txt-txIN-Nevada+AND+poll+AND+tax-ARTICLE-----1>

²³ Fankhauser, *Financial History*, 256.

²⁴ *Ibid.*

informal discussion about poll taxes in 1896, with one Supervisor commenting that “...he knew young men of age and past who would not register because the tax collector would then get their ages and they would have to pay the poll tax.”²⁵ Newspaper advertisements for the opening of voter registration were regularly linked to announcements that poll taxes were due.²⁶ However, it appears that while paying a poll tax was considered an obligation of citizenship, it did not function as an absolute determinant of voting rights. This is evidenced by an article that appeared in the *Chico Record* of October 1911, shortly after women won the right to vote. The author noted that a number of laws would have to change to accommodate women voters, and said:

...it may be assumed that the opponents of universal suffrage will insist that inasmuch as women have been granted all the privileges of full citizenship they should as well be compelled to bear its full obligations, and among these is paying poll taxes and sitting upon juries.²⁷

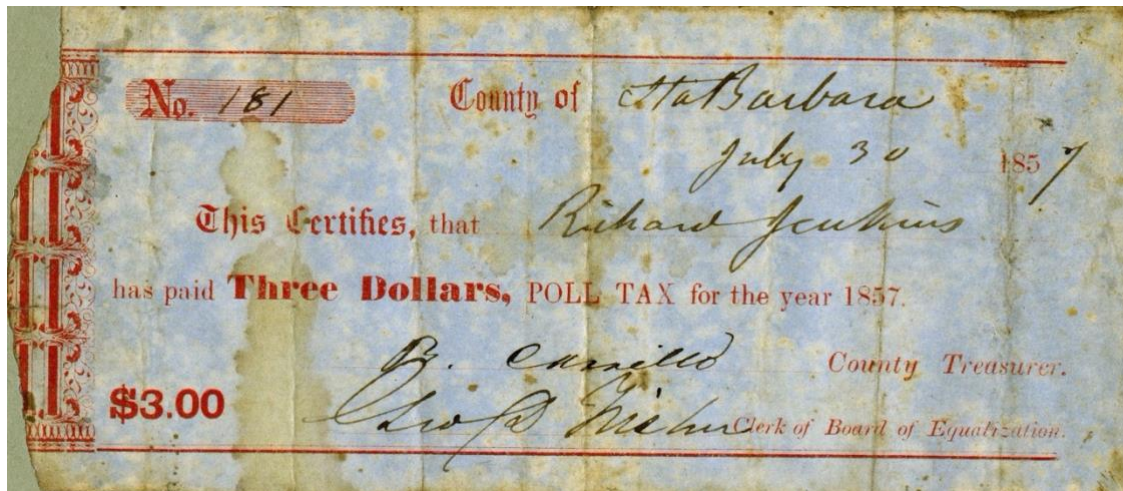


Figure 2. Poll tax receipt dated July 30, 1857, issued to Richard Jenkins from the County of Santa Barbara for \$3.00. Edson Smith Photo Collection no. 25. Santa Barbara Public Library.

²⁵ “THE SUPERVISORS. Native Californians Who Can Not Read or Write. They Never Pay Poll Tax – Why They Do Not Register.” *San Jose Herald*, August 11, 1896. Retrieved from California Digital Newspaper Collection, UCR Center for Bibliographical Studies and Research (CDNC), 9/12/2020

<https://cdnc.ucr.edu/?a=d&d=SJH18960811.2.63&srpos=1&e=-----189-en--20--1--txt-txIN-Native+AND+Californians+AND+Who+AND+Can+AND+Not+AND+Read-ARTICLE-----1>

²⁶ See for example <https://cdnc.ucr.edu/?a=d&d=SN19100730.2.17.3&srpos=1&e=-----en--20--1--txt-txIN-Poll+AND+tax+AND+register+AND+vote-ADVERTISEMENT-----1> and

<https://cdnc.ucr.edu/?a=d&d=MCT19000324.2.7.2&srpos=30&e=-----en--20--21--txt-txIN-Poll+AND+tax+AND+register+AND+vote-ADVERTISEMENT-----1>

²⁷ “Poll Tax, Jury Duty, and Suffrage.” *Chico Record*, October 17, 1911. Retrieved from CDNC 9/12/2020

<https://cdnc.ucr.edu/?a=d&d=CR19111017.2.22&srpos=28&e=-----en--20--21--txt-txIN-Poll+AND+tax+AND+jury+AND+duty+-----1>

In 1914 Californians passed a ballot measure abolishing the poll tax, calling it “an injustice...a survival of despotism and a denial of democracy” because it fell almost entirely on the working man.²⁸ But unlike Nevada, California never explicitly tied voting and poll taxes together. In fact, during the 1910s and 1920s Californians considered a “slacker tax” on those who failed to vote.²⁹

The poll tax also appears in California history as a means of oppressing the Chinese. Various forms of head taxes aimed only at “foreigners” and individuals “ineligible for citizenship” were enacted, including the Foreign Miners’ License Tax Act of 1852, the Chinese Police Tax Law of 1862, and the Alien Poll Tax of 1920 which was quickly struck down as unconstitutional.³⁰ Poll taxes of any sort were fully and finally prohibited in California by Proposition 16 of 1946,³¹ and poll taxes as a condition of voting were prohibited in Federal elections through passage of the Twenty-Fourth Amendment to the U.S. Constitution in 1964 and in all other elections through a Supreme Court decision of 1966.³²

In 1890, southern states began amending their constitutions to require literacy tests for voting – another key element in the disenfranchisement of former slaves. Racist and nativist attitudes carried this movement across the country, to California and beyond. In 1894 an English literacy requirement for voting was added to the California

²⁸ Abolition Of Poll Tax California Initiative 1914-a-1 (1914).

https://repository.uchastings.edu/ca_ballot_inits/7

²⁹ “Supervisor Urges Vote ‘Slacker’ Tax,” *Los Angeles Herald*, August 4, 1920. Retrieved from CDNC 9/12/2020

<https://cdnc.ucr.edu/?a=d&d=LAH19200804.2.385&srpos=1&e=-----en--20--1--txt-txIN-supervisor+urges+vote+%27slacker%27+tax-----1>

³⁰ Sue Yong; Rob Vosslamber, “Race and Tax Policy: The Case of the Chinese Poll Tax.” *Journal of Australian Taxation* 20, No.1 (2018): 147-164; Deering’s Political Code of the State of California: Adopted March 12, 1872, With Amendments Up to And Including Those of the Fifty-second Session of the Legislature, 1937. San Francisco: Bancroft-Whitney, 1937. Title IX, Revenue, Chapter IX, Poll Tax on Aliens (repealed). Accessed 9/12/2020

[https://babel.hathitrust.org/cgi/pt?id=uc1.\\$b693069&view=1up&seq=17](https://babel.hathitrust.org/cgi/pt?id=uc1.$b693069&view=1up&seq=17)

³¹ REPEAL OF EDUCATIONAL POLL TAX California Proposition 16 (1946).

https://repository.uchastings.edu/ca_ballot_props/468

³² *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966)b

Constitution, mandating that every voter be able to read the U.S. Constitution in the English language and to write his name. This amendment was approved by an overwhelming 84% of the voters. Newspaper editors joined in support, railing against the “hosts of immigrants pouring in from foreign countries” (*Los Angeles Times*) and “the crop of Chinese children growing up” and nearing voting age (*Oakland Times*). Others stressed the good-government aspects of the literacy requirement and considered it a reform that would elevate the state of political debate in California. “Yet despite this high moral tone,” wrote scholars Roger Daniels and Eric F. Petersen in 1968, “it is clear that the anti-foreign climate of opinion, in the state and the nation, contributed to this change.”³³

The “Chinese children growing up” were benefitted by the case of Wong Kim Ark, a California native born to Chinese parents in San Francisco who was refused re-entry to the United States on the grounds that he was not a citizen. In 1898 the U.S. Supreme Court found for Wong and established the principle of birthright citizenship under the Fourteenth Amendment. But many Chinese-Americans did not reap the benefit of this decision. The census of Chinese residents in California declined by 24% from 1890 to 1900, and the Chinese share of the state’s population dropped from almost 9% in the 1870s and ‘80s, to 6.1% in 1890 and only 3.8% in 1900.³⁴ It has been estimated that anti-Chinese xenophobia drove half the Chinese-American population of the United States to emigrate to the land of their parents during the early 20th century.³⁵ California also received immigrants from Japan, Korea and other East Asian countries during this

³³ Roger Daniels and Eric F. Petersen, “California's Grandfather Clause: The “Literacy in English” Amendment of 1894.” *Southern California Quarterly* 50, no. 1 (1968): 51-58.

³⁴ Gibson and Jung, *Historical Census Statistics*.

³⁵ Charlotte Brooks, *American Exodus: Second-Generation Chinese Americans in China, 1901–1949*, University of California Press, c. 2019.

period, but like the Chinese they were not allowed to naturalize under Federal law. All such immigration was choked off by Federal legislation of 1917 and 1924.³⁶

California's First Hundred Years: Barriers of Class

During the mid-19th century California began limiting access to the franchise in myriad other ways. Prior to 1866, an eligible voter could simply present himself at the polls and demand a ballot: "...and if there be no objection to the qualification of such person as an elector" by any legal voter or poll worker, he could cast a vote.

In many countries today, it's almost that simple: information supplied to one's motor vehicle department, or the draft, or the equivalent of Social Security is automatically ported to a voting database, and everyone is registered to vote.³⁷ But America is different. According to The Brennan Center for Justice, "(t)he United States is one of few democratic nations that place the entire burden of registering to vote on individual citizens."³⁸ That burden has fallen on California voters since The Registry Act of 1866, which required a would-be voter to prove his eligibility to elections officials in order to be registered and thenceforth entitled to vote.

California enacted voter registration at this time alongside many other states, especially those in the northeast that were heavily impacted by Irish and German Catholic immigration. Voter registration was considered "a good government reform, especially for the growing cities..."³⁹ Indeed, voter registration was enacted by

³⁶ The Asiatic Barred Zone Act of 1917 and the Immigration Act of 1924, which banned immigration of any "aliens ineligible for citizenship."

³⁷ David Litt, "The Racist History of Voter Registration," *Time*, June 18, 2020.

³⁸ Jennifer Rosenberg and Margaret Chen, EXPANDING DEMOCRACY: VOTER REGISTRATION AROUND THE WORLD. Brennan Center for Democracy and Justice, 2009.

³⁹ "To Assure Pride and Confidence in the Electoral Process," National Commission on Federal Election Reform, 2001. Accessed on 9/12/2020 <file:///G:/Absentee%20Voting%20Report/Ford-Carter%20Commission%202001.pdf>

Pennsylvania and New York – but only for voters in Philadelphia and New York City.⁴⁰ This bias against urban areas suggests suppression of poor, immigrant and minority votes. Author David Litt has written of “The Racist History of Voter Registration” which, he says, was “among the earliest forms of voter suppression.”⁴¹

From 1873 until 1898 the law provided that once a person was registered, he remained registered, although the standards for identifying voters were tightened: in 1895 a would-be voter had to provide not only name, age, address and date and place of birth and/or naturalization; he also had to describe his business or occupation, his height, complexion, eye color, hair color and the location of any “visible marks or scars.” That same year, in counties with large populations, every landlord was required to deliver lists of tenants to elections officials,⁴² “the purpose being to check colonization and defeat attempts at unlawful registration and voting.”⁴³ “Colonization” was the term of art for packing people into rooming houses for the purpose of fraudulent voting.⁴⁴

Residency requirements were also tightened up. The 1879 Constitution increased the requirement for voting eligibility from six months to one year’s residence in the state, and from 30 days to 90 in the county. They even added a requirement of 30 days’ residence in one’s precinct. The stated purpose was to ensure that voters had a good sense of community issues, but the effect was to exclude the mobile and the poor.

Then in 1899 the law changed to require that every citizen re-register to vote every two years; that is, instead of being permanent, registration now had to be renewed

⁴⁰ Gregory Downs, “Voter Suppression in the 19th Century North: The Other Disenfranchisement – and What It Tells Us About Voter Rights Today.” Humanities in Class Webinar, National Humanities Center, 10/15/2019.

⁴¹ Litt, “Racist History.”

⁴² Chapter CLXXXVI, California Statutes of 1895.

⁴³ Sacramento Daily Union, Volume 96, Number 149, 18 January 1899

⁴⁴ Los Angeles Herald, Volume XLII, Number 26, 1 December 1916.

for every election cycle.⁴⁵ Thus by the turn of the 20th century voting required a great deal of economic stability. A citizen had to be willing and able to travel to the County Clerk's Office every two years to sign and swear to facts establishing his eligibility. One suspects that only the most motivated of would-be voters could possibly have exercised what we consider to be a fundamental right during the *fin de siècle* period.

One more 19th-century change bears discussion. In 1891 California amended its constitution to require use of the "Australian ballot." Previously, ballots consisted of strips of paper bearing the names of one's preferred candidates which a voter would bring to the polling place, having procured them from friends and associates. Under the Australian ballot system, the government printed ballots with the name of every candidate, and citizens would mark their choices in the privacy of the voting booth. This change was adopted in reaction to rampant fraud and corruption in late-19th century electioneering, which included the buying and selling of votes and egregious violence at the polls. But adoption of this system effectively disenfranchised anyone who could not read English, including immigrants and the uneducated poor. It also fundamentally changed the way Americans experienced elections, as Jill Lepore writes in *The New Yorker*: "Beyond effectively restricting suffrage...the Australian ballot dampened popular enthusiasm for voting by prohibiting the staging, at the polls, of heated political debates and ending the celebration of Election Day as a boisterous public holiday."⁴⁶ Voter turnout plummeted as a result.

By 1892 most states had adopted the Australian ballot as well as voter registration laws. According to U.S. Census data, voter turnout at presidential elections

⁴⁵ Chapter LIII, California Statutes of 1899.

⁴⁶ Jill Lepore, "How We Used to Vote," *New Yorker*, October 13, 2008.

as a percent of the voting-age population fell steadily from around 80% in the 1890s to only 49% in 1924.⁴⁷ Economists and political scientists conclude that adoption of these two innovations are responsible for much of the decline, with the drop caused by the switch to secret balloting calculated at 7%.⁴⁸ A 1967 article in the American Political Science Review concluded that turnout may have declined over this period “...not because of changes in the *interest* of voters in elections, but because of changes in the *interest demanded* of them.”⁴⁹

In 1911 California passed its signature Progressive Era reforms, the initiative, referendum and recall. State voters in that year also approved a ballot measure giving women the vote, nine years before the Nineteenth Amendment established this right in all fifty states. This doubled the eligible voting population overnight.

Three years later efforts began to amend the constitution to allow for absentee voting. Opposition to this measure was fierce, and proponents had to bring it to the ballot four times before they succeeded – in 1914, 1918, 1920 and finally, 1922 when Proposition 22 was approved by a razor-thin majority of 50.9%. At that point 27 other states had already adopted absentee balloting. It was thought that forty to sixty thousand voters (less than 4% of total registration) would likely avail themselves of this option. Absentee voting was restricted to those who could show they would be absent from their home precincts on election day by reason of their occupation, “particularly traveling men, railroad men, soldiers and sailors.”⁵⁰ These citizens could either vote in advance at the office of the County Clerk, or obtain their ballots in advance, vote on

⁴⁷ Census data quoted in Wikipedia, “Voter turnout in the United States presidential elections.”

⁴⁸ Jac. C Heckelman, The Effect of the Secret Ballot on Voter Turnout Rates. Public Choice, Vol 82 No. 1/2 (1995).

⁴⁹ Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." The American Political Science Review 61, no. 2 (1967): 359-79. Accessed September 12, 2020. doi:10.2307/1953251.

⁵⁰ ABSENT VOTERS California Proposition 22 (1922).
https://repository.uchastings.edu/ca_ballot_props/172

election day in the office of the Clerk of another county, and mail it in. Either way, some election authority had to certify one's eligibility to vote.

The Legislature refined the standard for absentee voter eligibility throughout the 1920s, asking voters to approve minor changes to the Constitution in 1924, 1926 and 1929. In 1930 the detail on eligibility was removed and the class of citizens allowed to vote absentee was broadened, to voters "who expect to be absent from their respective precincts or unable to vote therein, by reason of physical disability, on election day."⁵¹ The absentee voting law was a major improvement in voting procedures, but it required a great deal of planning ahead and seems to have primarily served the well-educated, the settled, and the professional and wealthy classes.

In 1930 another initiative measure eliminated biennial registration and returned the state to permanent registration of voters as had been the case prior to 1898.⁵² Like absentee voting in the prior decade, permanent registration was at that time under consideration across the country. Supporters were forced to go the initiative route when previous efforts to amend the law through the legislature failed, according to an article by Joseph P. Harris from 1928 in the *American Political Science Review*, "because it would have affected adversely the salary of the county clerks, who are paid a fee for each new registration."⁵³ This measure called for a new, complete registration of all voters beginning January 1, 1932. Registration would then be permanent unless the voter died, moved, or became ineligible to vote. However, beginning on the first of January in every odd-numbered year, clerks were required to cancel the registration of any voter who had

⁵¹ SUFFRAGE California Proposition 25 (1930).

https://repository.uchastings.edu/ca_ballot_props/276

⁵² REGISTRATION OF VOTERS California Proposition 14 (1930).

https://repository.uchastings.edu/ca_ballot_props/265

⁵³ Harris, Joseph P. "Permanent Registration of Voters." *American Political Science Review* 22, no. 2 (1928): 349–53. doi:10.2307/1945461.

not voted in either the primary or general election of the preceding year. Under what became known as the “purge,” these non-voters were to receive notice of their removal from the list but had to re-register if they wished to vote again.

The County Clerks Association opposed the measure, claiming it would “open the door to fraud”; they said the whole purpose of the biennial registration law of 1898 had been to defeat fraud in the voting system. Supporters included the chief elections officials of the state’s largest cities, Los Angeles and San Francisco, who wrote that biennial registration “...entails extravagance, inaccuracy, and is a nuisance...We have a whoop and hurrah campaign to get the voters registered and then another crusade to get them to vote...”⁵⁴ The measure was approved, but opponents tried to overturn it in 1936; they were repulsed by voters who responded to proponents’ message: “You like the Permanent Registration Law. Keep it as it is.”⁵⁵

The text of, and arguments for and against the 1930 measure show how despite a huge broadening of the rules, under permanent registration the suffrage would still be closely limited. The “colonization” provision had been extended to every county, and county clerks were now required to compare the registered voter list with the landlords’ lists of tenants. If they didn’t match, polling place officials were instructed to challenge all voters who had registered to vote using presumably fraudulent addresses.⁵⁶ The authors of the “no” argument quoted official figures showing that 30% of registered electors failed to vote at each general election, and that 40% moved every two years. These would be purged, leaving only “a small minority that would benefit by permanent

⁵⁴ REGISTRATION OF VOTERS, Proposition 14 of 1930, ballot arguments

⁵⁵ REGISTRATION OF VOTERS California Proposition 8 (1936).

https://repository.uchastings.edu/ca_ballot_props/351

⁵⁶ This section of the law was repealed in 1939.

registration.” These two vignettes demonstrate the unspoken truth of voting in this era: the franchise belonged not to everyone, but to an elite. Tenants, casual voters and undoubtedly many minority citizens found the system inhospitable and oblivious to their needs.

The Post-War Era: Broadening Voter Access

As of 1930, the rules of suffrage in California were set. 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. However, things changed during and after World War II. Japanese-Americans were forced into internment camps where, ironically, Nisei were able to request absentee ballots and vote in their home precincts in the elections of 1942 and 1944.⁵⁷ America’s



wartime alliance with China caused a reconsideration of anti-Chinese legislation, and after 1943 Chinese were able to immigrate to the U.S. and to become citizens; in 1952

Figure 3. Alice Fujinaga of Seattle and other incarcerated at Tule Lake concentration camp have their absentee ballots notarized; November 2, 1942. Photographer: Stewart, Francis ; Newell, California. UC Berkeley, Bancroft Library.

⁵⁷ Natasha Varner, “Japanese Americans incarcerated during World War II could still vote, kind of.” October 20, 2016. PRI The World. Accessed 9/1/2020 <https://www.pri.org/stories/2016-10-18/japanese-americans-incarcerated-during-world-war-ii-were-still-allowed-vote-kind?amp>. 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 in order to preserve their voter registrations, per Varner.

this privilege was extended to immigrants from elsewhere in Asia. In 1953 the noxious anti-Chinese Article XIX of the California Constitution was repealed.

In the late 1950s California voting practice began to pivot towards inclusivity. This may be due to the influence of the early civil rights movement, or to the Democratic Party's 1959 ascension to a dominant position in the Legislature, which it has largely retained ever since.⁵⁸ In 1957, wording was added to the Elections Code encouraging county clerks to establish convenient locations for voter registration countywide, "in order to promote and encourage voter registrations."⁵⁹ In 1961, the Legislature provided for citizen deputy registrars,⁶⁰ paving the way for voter registration 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, not just worrying about fraud - the State of California began steadily increasing its citizens' voting rights. Some voting system innovations were challenged on the grounds that they would increase fraud, but courts repeatedly sided with the state, agreeing that reasonable measures could be taken to increase the exercise of the right to vote. The period between 1961 and the present day has been characterized by this balancing act between expanding voter rights and ensuring vote system integrity.

At first these measures focused solely on making absentee voting (AV) easier. Eligibility was expanded to cover religious obligations and people who lived far from the nearest polling place in 1959, and to those voters in a hospital or nursing home in

⁵⁸ 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*, September 20, 2020, <https://www.bloomberg.com/amp/opinion/articles/2020-09-20/california-burnin-a-warning-against-one-party-rule>

⁵⁹ Chapter 1240, Statutes of 1957.

⁶⁰ Chapter 392, Statutes of 1961.

1967.⁶¹ Seven years later, county registrars were directed to include an absentee ballot application in the sample ballot booklet.⁶² In 1978, the state eliminated the language specifying eligibility for absentee voting altogether, declaring instead that “The absentee ballot shall be available to any registered voter.”⁶³

This change created “a new frontier in California’s electoral politics” according to the *California Journal* of August 1983. Using more than a touch of hyperbole, journalist Hal Stemmler declared that “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.”⁶⁴ As the article explained, the new law allowed campaigns to distribute AV applications to voters, collect the filled-in applications and mail them to voting officials themselves, a process derisively known as “ballot harvesting.” This was a key part of the strategy that won the governorship for George Deukmejian in 1982. By mailing AV ballot 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 vote his way.⁶⁵

In 1980, Anna Beatie lost her re-election race for the Sanger, California 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

⁶¹ Chapters 29 and 962, Statutes of 1959, Chapter 182, Statutes of 1967.

⁶² Chapter 945, Statutes of 1974.

⁶³ Chapter 77, Statutes of 1978

⁶⁴ Hal Stemmler, “Absentee ballots, a new frontier in California electoral politics,” *California Journal*, August 1983.

⁶⁵ Raphael J. Sonenshein, “Can Black Candidates Win Statewide Elections?” *Political Science Quarterly* 105, no. 2 (Summer, 1990), 229.

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 “possibility of wrongdoing,” the Legislature might wish to take another look at these provisions of the law.⁶⁶ The law was in fact 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 1978.⁶⁷

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.⁶⁸ 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.”⁶⁹ Peterson claimed that mail balloting is not secret, and that “...it opens the door to fraud, coercion, intimidation and undue influence..”⁷⁰ In 1983 the Supreme Court of California disagreed, saying “[w]e are satisfied that the secrecy provision of our

⁶⁶ *Beatie v. Davila*, Court of Appeals of California, Fifth Appellate District, 1982.

⁶⁷ The Heritage Foundation Election Fraud Database, accessed September 23, 2020
https://www.heritage.org/voterfraud/search?combine=&state=CA&year=&case_type=All&fraud_type=24489

⁶⁸ Mary Ann Barton, “Vote-by-mail: Cheaper, faster, so why isn’t it more popular?”, *County News*, National Association of Counties, March 4, 1996.

⁶⁹ Article II, Section 7 - the “Australian ballot.”

⁷⁰ Quoted in Stemmler, “Absentee ballots.”

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.”⁷¹

In 1992 the Legislature authorized two counties to conduct pilot all-mail ballot elections and report back to the Legislature on “the cost, rate of participation, and incidence of fraud involved...”⁷² Stanislaus County proceeded with the experiment and reported greatly increased turnout (8% above the state average, when the county usually ran 7% below); they 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, “[b]ut it got as far as the governor’s office.” She contended that all-mail voting was a “highly charged issue in political circles...They’re [politicians] concerned they can’t run campaigns in such a short time.”⁷³ But concerns about voter fraud also played a role. During the late ‘80s and ‘90s, both San Francisco and Los Angeles queried their voters on the question of switching to all-mail elections. Both cities rejected the concept by a 60 to 40 margin, with fraud the salient issue.⁷⁴

Another evolution was underway on the matter of 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...”⁷⁵ Indeed, at a hearing held by the Assembly Committee on Elections in 1974, one expert testified that

⁷¹ *Peterson v. City of San Diego*, Supreme Court of California, 1983

⁷² Chapter 527 of 1992, AB 1590 (Eaves).

⁷³ Barton, “Vote-by-mail.”

⁷⁴ John Mott-Smith, Secretary of State’s Office, quoted in transcript of Senate Elections, Reapportionment & Constitutional Amendments Committee Informational Hearing: “O Voter, Where Art Thou? - The move away from Elections Day Balloting,” February 18, 2005; Senator Debra Bowen, Chair. Accessed 9/12/2020 <https://selc.senate.ca.gov/february182005informationalhearingovoterwherearthouthemoveawayfromelectionsdayballoting>

⁷⁵ Kelley, Ayres, and Bowen, “Registration and Voting.”

California's registration law "...keeps somewhere from one-third to one-half of eligible persons from exercising their rights."⁷⁶ Danny Curtin, representing a youth-oriented voter registration organization of the AFL-CIO called Frontlash, 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.⁷⁷

Those who 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 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 wished to remain registered. Not surprisingly, fewer than one-quarter actually did so. In the 1960s and early '70s, the purge typically resulted in a net loss of 20% of registered voters every two years. Chapter 1197, AB 51 (Keysor) of 1975 fixed this problem by using the post office to let the county know that the voter had not moved. This amendment to the law was a game-changer:

⁷⁶ 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, October 16, 1974; Assemblyman Jim Keysor, Chair; p. 6. Accessed 9/12/2020 from Hathi Trust <https://catalog.hathitrust.org/Record/101733918>.

⁷⁷ Interim Assembly Committee hearing 1974, pp. 61-63.

after the 1976 election, even though over 1.8 million people had failed to vote, only 536,705 were purged – a decrease in overall registration of only 5.4%.⁷⁸

Modification of the purge chiefly benefitted Democrats, whose adherents were more likely to be infrequent voters. Other changes in this era benefitted them, as well. Chief among these was elimination in the early '70s of the English literacy requirement for voting. According to scholars Roger Daniels and Eric Petersen, writing in 1968, this mandate had not actually been enforced against immigrant groups including Italians, Yiddish-speaking Jews or even newly-naturalized Japanese. The only use of this law “...seems to have been against a group more native than the nativists themselves: the Spanish-speaking Mexican-Americans whose recent increased political activity has resulted in the first significant use of the Gilded Age voting restriction.”⁷⁹

Indeed, as large numbers of 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.”⁸⁰ After the 1960 presidential election, one 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.”⁸¹ In 1970 the English-language requirement was challenged by *Genoveva Castro, et al. v. State of California*, a

⁷⁸ Bruce C. Bolinger, *California Election Law During the Sixties and Seventies: Liberalization and Centralization* (St. Paul, MN: West Publishing Company, 1977), 113-119.

⁷⁹ Daniels & Petersen, quoted in Bolinger *California Election Law*, 60.

⁸⁰ Bolinger p. 60, fn 6

⁸¹ Bolinger p. 60, fn 7

lawsuit brought on behalf of citizens who were literate in Spanish, but not in English.

The Court found the English literacy requirement a violation of the 14th Amendment and



Figure 4; Cover Image. Student and barrio youth lead protest march in Belvedere Park. LA RAZA.Garza.1971: Photograph by Luis Garza. Student and barrio youth lead protest march, La Marcha por La Justicia, Belvedere Park. January 31, 1971. La Raza Newspaper & Magazine Records. Courtesy of the UCLA Chicano Studies Research Center.

it was struck down.⁸² 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 1988.⁸³

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 was ruled

⁸² Castro et. al. v. State of California, California Supreme Court, 1970. See also Don B. Kates, "California: An Unexpurgated History" *Noticiero CRLA*, January-February, 1970. Accessed 9/12/2020 <http://www.crla.org/sites/all/files/content/archive/crla-noticiero/California%20Rural%20Legal%20Assistance%20Inter%20Office%20NewsLetter,%20January-February,%201970.pdf>.

⁸³ "The Long Shadow of Jim Crow," People for the American Way, August 3, 2004. Accessed 9/12/2020 http://files.pfaw.org/pfaw_files/thelongshadowofjimcrow.pdf

illegal by the California Supreme Court;⁸⁴ 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 of these impediments to the franchise. Another constitutional amendment that same year eliminated the 90-day waiting period before newly-naturalized citizens could register. By the end of 1972 Article II of the California Constitution, “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.”⁸⁵

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.⁸⁶ 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.”⁸⁷ But while 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

⁸⁴ Bolinger, pp. 59-73, 75-89.

⁸⁵ NATURALIZED CITIZEN VOTING ELIGIBILITY California Proposition 6 (1972). https://repository.uchastings.edu/ca_ballot_props/753 and ELECTIONS AND PRESIDENTIAL PRIMARY California Proposition 7 (1972). https://repository.uchastings.edu/ca_ballot_props/754

⁸⁶ Christopher Uggen, Ryan Larson, and Sarah Shannon, “6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement,” The Sentencing Project, October 6, 2016

⁸⁷ Brennan Center for Justice, quoted in Sam Fulwood III, “At Long Last, A Wrong Righted for Disenfranchised Virginians,” Center for American Progress, April 28, 2016.

on Drugs era of the 1970s. This November, California voters will have the opportunity to in effect reverse that policy by voting “yes” on Proposition 17, which will restore voting rights to ex-felons currently on parole.



Figure 5. Bill Clinton signing the National Voter Registration Act of 1993 into law.

Toward the end of the 20th century elections administration became a national concern. In 1993 the National Voter Registration Act (NVRA) was passed and signed into law, requiring 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 was 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.

They noted that under NVRA, voter lists had become “swollen” with voters who had moved or died or become otherwise ineligible to vote, such that some jurisdictions found they had more registered voters than people. They expressed concern about no-excuse absentee voting, early voting and all-mail elections, contending that these

measures had not been proven to increase voter turnout and could present opportunities for fraud.⁸⁸ They noted, however, that elections administrators in states with the heaviest reliance on these measures expressed confidence in their security and integrity.⁸⁹

In California, both the courts and the elected officials expressed satisfaction with the integrity of absentee voting and vote-by-mail, and they continued moving ahead. In 1994 existing law was interpreted to allow early voting.⁹⁰ In 2001 anyone was allowed to become a Permanent Absentee Voter or PAV, to whom absentee ballots would be automatically sent. In 2003 all-mail elections were allowed in cities with populations of up to 100,000.⁹¹

In 2005, a State Senate Committee called an informational hearing to assess the progress and pitfalls of “The Move Away From Election Day Balloting.”⁹² 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...”⁹³

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 eight-fold. Both he and several county registrars expressed

⁸⁸ To Assure Pride and Confidence, pages 26-29, 43-44.

⁸⁹ John Mark Hansen, “Early voting, Unrestricted Absentee Voting, and voting by mail,” Task Force on the Federal Election System of the National Commission on Federal Election Reform.

⁹⁰ “O Voter” hearing of Senate Committee, 2005, John Mott-Smith testimony; see fn 77.

⁹¹ Chapter 922, Statutes of 2001, Chapter 401, Statutes of 2003.

⁹² See fn 80.

⁹³ “O Voter” hearing of Senate Committee, 2005, Freddie Oakley testimony; see fn 77.

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: not every mailed-in ballot gets counted. Elections professionals pointed out that by forgoing the assistance of the polling place, with its ballot scanners and knowledgeable poll workers, absentee voters are more likely to err in marking their ballots.⁹⁴ There was also testimony about 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% due to lateness, missing or bad signatures, etc. He testified that after two rounds of intensive voter education, the rejection rate came down to 1.3%. Then in 2004, Mr. Weir was stunned to experience an 11.5% absentee ballot rejection rate. After investigating, he learned that the problem was in the post office, where the clerk who ordinarily handled his business reply mail went on vacation the Monday and Tuesday of election week.

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 which found that many such voters were not familiar with absentee voting at all. 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

⁹⁴ A ballot scanner is a machine that checks for under-votes (failure to vote in every race) and over-votes (voting for too many candidates in any race).

Commission observed the same thing in 2001, writing that “[u]se of absentee ballots also has a class bias.”⁹⁵

Once again, the Legislature changed the law to make voting more accessible. Chapter 508 of 2007, AB 1243 (Karnette), changed the term “absentee voting” to “vote by mail” or VBM. This 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 valid 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 her ballot in one of several ways: through the mail, via drop boxes, voting early, or voting on Election Day.⁹⁶ As of 2020, fourteen counties are participating in this program (there are also three tiny Sierra Nevada counties that offer voting only by mail).⁹⁷

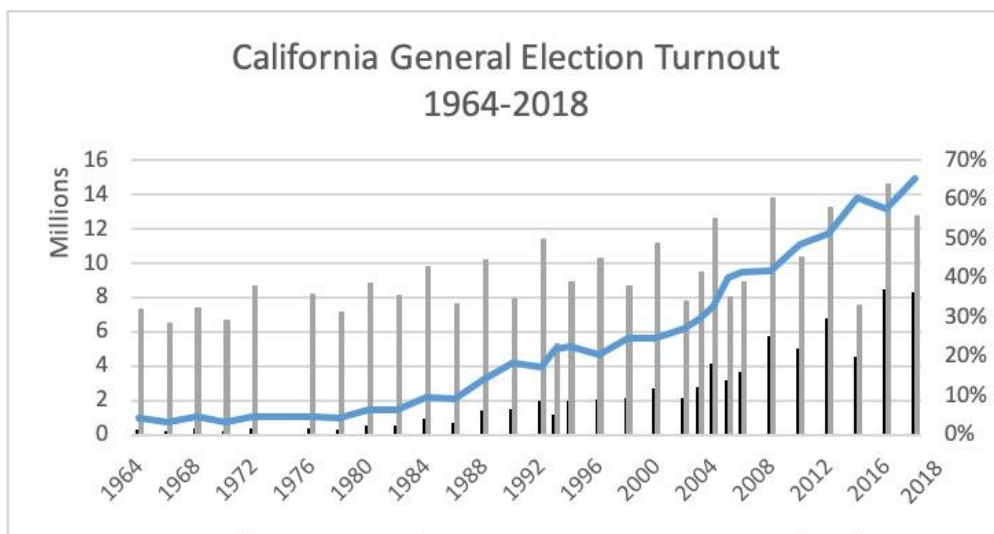


Figure 6. Chart by the authors tracking percentage of vote-by-mail ballots out of total votes.

⁹⁵ Hansen, “Early voting,” p. 3.

⁹⁶ Chapter 832, Statutes of 2016.

⁹⁷ Secretary of State website, <https://www.sos.ca.gov/elections/voters-choice-act/vca-counties/>

California has also 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 importantly, the “New Motor Voter Act” of 2015.⁹⁸ (Implementation of each of these was delayed until after “VoteCal,” California’s centralized voter registration database, came online in 2016). New Motor Voter 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.”⁹⁹ The initial rollout of the program was marred by errors and challenged by lawsuits. Nonetheless, as of a year ago it had assisted 5 million Californians in registering to vote, leading Secretary of State Alex Padilla to declare it a “transformative success for our democracy.”¹⁰⁰

Other changes have sparked controversy, too. California modified the “voter purge” in the mid-1970s, as discussed above, and again in accordance with Federal law to provide that non-voters who do not respond to address confirmation notices are placed on the “inactive file.” They 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.¹⁰¹ The following year, in a 5-4 decision, the U.S. Supreme Court reinterpreted the NVRA to speed up voter purges, and the Judicial

⁹⁸ Chapter 613 Statutes of 2008, Chapter 497, Statutes of 2012, Chapter 729, Statutes of 2015.

⁹⁹ Litt, “Racist History,” see fn. 41.

¹⁰⁰ Quoted in Kathleen Ronayne, “Audit finds problems with California 'motor voter' program,” KCRA 3, August 9, 2019.

¹⁰¹ Dawn Hodson, “Judicial Watch wins voter roll lawsuit in L.A.,” *Mountain Democrat*, Placerville, CA, 1/21/2019.

Watch case was settled in conformance with that ruling.¹⁰² According to a leading County official, “[n]othing in the (settlement) agreement jeopardizes even one eligible Los Angeles County voter;” moreover, Judicial Watch’s allegation was unsubstantiated in either the settlement or in voter registration statistics.¹⁰³ But this action by the Supreme Court will impede voter access as more voters are purged in the years ahead.

California elections administrators have also 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. They 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 ensure their votes will be counted.¹⁰⁴

Why do Members of Minority Groups Still Vote at Lower Rates than Whites?

As of 2020, it seems that the barriers thrown up by previous generations of California lawmakers to prevent nonwhite, 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 well-nigh automatic. Those who move frequently can easily re-register over the internet; those without cars or drivers’ licenses can apply for California Identification Cards and register to vote at

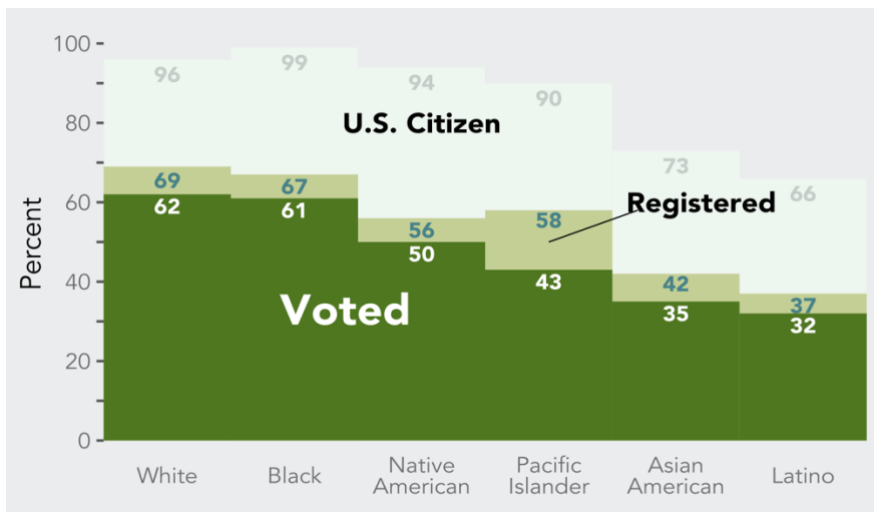
¹⁰² Settlement agreement in Judicial Watch v. Dean Logan <https://www.judicialwatch.org/wp-content/uploads/2019/01/JW-v-Logan-California-NVRA-settlement-08948.pdf>

¹⁰³ Statement of Dean Logan, Los Angeles County Registrar of Voters/County Clerk, January 3, 2019; email from Dean Logan, September 20, 2020.

¹⁰⁴ Chapter 446, Statutes of 2018 (SB 759, McGuire).

the DMV. Anyone may vote by mail, vote early, or vote in person at a convenient polling place or vote center. In November 2020 Californians will consider whether to extend voting rights to ex-felons who are on parole.

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% more votes than those with heavily Latinx, working-class populations.¹⁰⁵ According to The Advancement Project/UC Riverside 2016 study, only 50% of Native Americans, 43% of Pacific Islanders, 35% of Asian Americans and 32% of Latinos voted in the 2012 presidential election.¹⁰⁶ 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 than do whites and Blacks. For example, only 66% of adult Latinos were citizens

Figure 7. Gaps in Voting Across Race and Ethnicity. Analysis of U.S. Census Bureau’s 2012 Current Population Survey Voter Supplement. Reproduced with permission from the Advancement Project and UC Riverside’s “Unequal Voices” Report.

¹⁰⁵ Data provided 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 and 793,547 ballots cast in the 3rd.

¹⁰⁶ “Unequal Voices: California’s Racial Disparities in Political Participation,” The Advancement Project and U.C. Riverside School of Public Policy, June 2016. Accessed 8/21/2020. Figure 7 reproduced from page 7 of the report. <https://www.advancementprojectca.org/what-we-do/political-voice/unequal-voices-part-i>

in 2012, and slightly more than half of these were registered to vote, as compared to whites (96% citizens, 2/3 of them registered) and Blacks (99% citizens, 2/3 of them registered). Blacks turn out to vote slightly less frequently than whites in presidential elections (65% vs. 68%), and far less frequently in midterm elections (38% to 53%). 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.¹⁰⁷ A study of 2014 election statistics by the California Civic Engagement Project at the UC Davis Center for Regional Change (CCEP) 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. Latinx people utilized VBM at significantly lower rates than the population as a whole (50% vs. 61%), while Asian-American use was much higher – 72%.¹⁰⁸ 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 Latinx voters) to conducting transactions

¹⁰⁷ R Michael Alvarez and 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, and J. Andrew Sinclair, “Making Voting Easier: Convenience Voting in the 2008 Presidential Election,” *Political Research Quarterly* 65, no. 2 (June 1, 2012): 248–62, <https://doi.org/10.1177/1065912911398048>; Matt Barreto, “Do Absentee Voters Differ from Polling Place Voters? | Public Opinion Quarterly | Oxford Academic,” accessed July 9, 2020, <https://academic.oup.com/poq/article/70/2/224/1912438>; A. J. Berinsky, N. Burns, and M. W. Traugott, “Who Votes by Mail?: A Dynamic Model of the Individual-Level Consequences of Voting-by-Mail Systems,” *Public Opinion Quarterly* 65, no. 2 (June 1, 2001): 178–97, <https://doi.org/10.1086/322196>; Mark DiCamillo, “The Continuing Growth of Mail Ballot Voting in California in 2008,” *California Journal of Politics and Policy* 1, no. 1 (March 10, 2009): 1–7, <https://doi.org/10.5070/P27S38>; Jeffrey A. Dubin and Gretchen A. Kalsow, “Comparing Absentee and Precinct Voters: A View over Time,” *Political Behavior* 18, no. 4 (December 1996): 369–92, <https://doi.org/10.1007/BF01499094>

¹⁰⁸ The California Voter Experience Study, Issue 1: Vote-by-Mail vs. the Polls, UC Davis Center for Regional Change, July 2016. <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/57ffe6bfe3df28f75af48b3b/1476388544252/UCDavisCCEPCVEBrief1.pdf>

via the post office;¹⁰⁹ 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.¹¹⁰

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.¹¹¹

She contends that despite these advances in legislation, California continues to suppress the vote through a lack of vote centers, frequent equipment failures and underpaid and undertrained poll workers. It should also 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.¹¹² While “motor voter” 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 are all issues that must be resolved.

The Advancement Project/UCR puts forward another pathway to reversing racial disparities in voter participation. They contend that beyond voting, “political participation” includes contacting public officials, attending public meetings, making

¹⁰⁹ Conversations with SOS Padilla and Los Angeles County Registrar of Voters Dean Logan, August 7 and 14, 2020.

¹¹⁰ 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, UC Davis Center for Regional Change, September 2016.

¹¹¹ Valerie Morishige, “Voter suppression is a California problem, too,” *Cal Matters*, July 15, 2020.

¹¹² Elections Code Section 14201.

campaign contributions, signing petitions and attending protests. Their 2017 study shows that minority persons are under-represented in most of these political activities. They conclude that “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.”¹¹³ They go on to recommend strategies like “integrated voter engagement” (an organizing tool used by grass-roots community groups), civic education programs for children and adults of color, enhanced efforts to mobilize people of color, expansion of the “Empowerment Congress” model pioneered by L.A. County Supervisor Mark Ridley-Thomas, and other tools.¹¹⁴

A Pandemic Update: The 2020 Election

In response to the coronavirus pandemic, all voters will receive a mailed ballot for the November 2020 election and will have the opportunity to vote by return mail, by depositing their ballots in secure “drop boxes,” or by casting their votes in person as early as October 5 and up through Election Day. Interest in this election is running high: voter registration as of June 2020 stood at 83.49% of those eligible, the highest since the World War II era.¹¹⁵

California is one of the few states that is well-positioned to run an election of this sort. According to L.A. County Registrar of Voters Dean Logan, California is ahead of the curve on VBM, having already developed the infrastructure and worked out the

¹¹³ “Unequal Voices: Who Speaks for California? Part II,” the Advancement project and U.C. Riverside School of Public Policy, February 2017. Accessed 9/21/2020. <https://www.advancementprojectca.org/wp-content/uploads/2017/02/APUnequalVoices2ExecutiveSummary1.pdf>

¹¹⁴ “Unequal Voices,” June 2016.

¹¹⁵ Secretary of State, 123-Day Report of Registration for the November, 2020 General Election <https://elections.cdn.sos.ca.gov/ror/123day-gen-2020/historical-reg-stats.pdf>

administrative kinks. While slowdowns at the post office may create a challenge, here in California ballots can be counted if they are received as late as 17 days post-election, so long as they are postmarked by November 3 (and if the post office did not affix a postmark, California will use the date the voter signed the ballot envelope). The signature on every VBM ballot will be compared to that which registrars have on file; if they don't match, the voter will have an opportunity to show that his or her signature is valid. Because California allows generous use of provisional ballots, it is likely that hundreds of thousands of these will have to be verified as well. This will surely mean that final results for close races will not be available on election night, or for some time; California law requires counties to certify election results within 30 days, and the counting could go on for nearly as long. We can expect pressure to finish the counting more quickly, but it seems California has decided that voter access and system integrity are more important than speedy election results.

By putting a mail-in ballot directly into the hands of every California voter, perhaps historical variations in attitudes towards mail voting will fade away, and VBM will come to be accepted by all demographic sectors as an equally valid, equally powerful, equally accessible way to vote. Of course, that alone will not bring true equality at the ballot box; many other barriers have continued to effectively limit the voices of minorities and poor people in our state.

Danny Curtin of the AFL-CIO told an Assembly committee just what is at stake at a hearing held in 1974:

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.¹¹⁶

Mr. Curtin's words ring true today. Until every American is able 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 those policies, but deeper structural inequities 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 so many other of society's goods help ensure that political power, too, is not equally distributed. These truths point 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.

¹¹⁶ Interim Assembly Committee hearing, pp. 62-65.

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