

The Evolution of Voter Access in California

By Alisa Belinkoff Katz



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Elections have consequences. Thus, the democratic imperative to ensure that every eligible person is able to cast a ballot is often countermanded by fear of fraud. Throughout its first century of existence, California came down hard on the side of preventing voter fraud, to the detriment of transient, poor, and non-white citizens. Since the late 1950's, the drive to ensure vote system integrity has been matched by an equivalent effort to expand voter access. But despite these efforts to broaden the electorate, California's voters do not reflect the diversity of its people.

The first California constitution (1849) limited the franchise to white males. After adoption of the 15th Amendment to the U.S. Constitution, extending the vote to former slaves, Black men were enfranchised — but their numbers were tiny. The much larger contingent of immigrants from China (nearly 9% of California's population in 1870) spurred adoption of anti-Chinese legislation, including a state constitutional prohibition on voting by natives of that country. Chinese immigration to the U.S. was foreclosed by Federal legislation in 1882. Native Americans retaining ties to their tribes were also excluded from the franchise, and many Latinos were barred by an English literacy requirement im-

posed by State constitutional amendment in 1894. California women were precluded from voting until 1911 (nine years before the establishment of women's suffrage nationwide).

California lawmakers also fought hard to prevent voter fraud. This effort often took the form of limiting working-class and transient people's access to the franchise. Prior to 1866, an eligible voter could simply present himself at the polls and demand a ballot — and if there were no objection, he could cast a vote. In many countries today, it's almost that simple: information supplied to one's motor vehicle department or the equivalent of Social Security is automatically ported to a voting database, and everyone is registered to vote. But the California Registry Act (Stats. 1866, ch. 265) placed the entire burden of registration *on the voter*. Registering to vote required a visit to the county seat in an age before Internet, telephones, or cars. According to David Litt, who has written extensively on voter access issues, voter registration systems were “among the earliest forms of voter suppression.”

California also instituted strict residency requirements, which had the effect of excluding low-income renters who moved frequently. The State demanded that landlords deliver lists of tenants to elections officials, to

guard against “colonization” or the packing of people into rooming houses for the purpose of fraudulent voting. In 1899 the law changed to require that every citizen re-register to vote every two years — again, without the benefit of Internet, telephones, or cars. Permanent voter registration was re-instituted in 1930, but with a catch: clerks were required to cancel the registration of voters who failed to vote in the prior year’s primary or general election. This “voter purge” alone removed as many as 30% of registered voters each election cycle.

Racist restrictions on voting began to be removed in the mid-20th century. Native Americans were given the franchise in 1924, and Chinese immigration and citizenship rights were restored in the post-World War II period. In the late 1950’s, California voting practice began to pivot towards race and class inclusivity. This may be due to the influence of the early civil rights movement, or to the Democratic Party’s ascension to a dominant position in the Legislature, which it has largely retained ever since. In 1957, wording was added to the Elections Code encouraging county clerks to establish convenient locations for voter registration countywide. In 1961, the Legislature provided for citizen deputy registrars, 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 — California began steadily increasing its citizens’ voting rights.

One of the first big changes was the end of the voter purge. By 1959, a person was allowed to skip the primary election without being purged, but the burden was on the nonvoter to inform the county that he wished to remain registered. Not surprisingly, fewer than one-quarter actually did so, and during the 1960’s and early 1970’s the purge typically

resulted in a net loss of 20% of registered voters every two years. Assembly Bill 51 (Stats. 1975, ch. 1197) fixed this problem by using the post office to inform the registrar that a person who failed to vote had not moved. This amendment to the law was a game changer: 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 just 5.4%.

A series of changes to the California and U.S. Constitutions, brought about by lawsuits and legislation, swept away numerous barriers to the exercise of the franchise during the 1970’s. In 1970, the English literacy requirement was challenged on behalf of citizens who were literate in Spanish but not in English. The California Supreme Court struck it down as a violation of the 14th Amendment. California’s extensive residency requirement was also ruled illegal by the State high court, while amendments to the California and U.S. Constitutions lowered the voting age to 18 and eliminated a waiting period before naturalized citizens could register. The disqualification of convicted felons, which dated back to the 1849 California Constitution, was modified in 1974 to permit ex-felons who had completed their sentences, including parole, to vote; this was again modified in 2020 to include ex-felons who are still completing their parole.

The act of voting became easier, too. California had implemented an absentee voter program in the 1920’s, allowing citizens who could show they would be absent from their home precincts on election day, or unable to vote due to physical disability, to vote in advance or by mail. This program began to expand in the late 1950’s. In 1959, eligibility was extended to cover religious obligations and people who lived far from the nearest polling place, and in 1967 to voters in

hospitals or nursing homes. Seven years later, county registrars were directed to include an absentee ballot application in the sample ballot booklet. In 1978, the State eliminated the language specifying eligibility for absentee voting altogether, declaring instead that “[t]he absentee ballot shall be available to any registered voter.”

This decoupling of the absentee ballot from the rationale changed California elections in significant ways. The new law allowed campaigns to distribute absentee voter applications to voters, collect the filled-in applications, and mail them to voting officials themselves, a process derisively known as “ballot harvesting.” California also began experimenting with all-mail elections. The nation’s first such election was held in Monterey County in 1977 and was considered a huge success — voter participation doubled and the county saved a reported \$10,000 in election costs.

The expansion of voting outside the polls continued. In 1994, existing State law was interpreted to allow early voting. In 2001, anyone was allowed to become a Permanent Absentee Voter, to whom absentee ballots would be automatically sent. In 2003, all-mail elections were allowed in medium-sized cities. In 2007, Assembly Bill 1243 (Stats. 2007, ch. 508) changed the term “absentee voting” to “vote by mail.” 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. Thanks to the pandemic, ballots were mailed to every voter for the 2020 general election and the 2021 gubernatorial recall. This practice has now become permanent, thanks to Assemblymember Marc Berman’s Assembly Bill 37 (Stats. 2021, ch. 312) which was signed into law in September 2021.

California has also turned away from onerous voter registration requirements, and towards automatically registering every eligible citizen 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. New Motor Voter promises a transition to automatic voter registration, hopefully breaking the last barrier to universal suffrage. As of 2019, 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.” By November 2020, 87.87% of those eligible to vote in California were registered.

None of these steps was accomplished without consideration of the need to prevent voter fraud and ensure vote system integrity. Lawsuits were filed during the 1980’s against both ballot harvesting and all-mail elections, but in each case the California courts upheld the practice, with the Supreme Court ruling in 1983 that “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.” (*Peterson v. City of San Diego* (1983) 34 Cal.3d 225, 230.) But concerns of fraud persisted, even in liberal bastions of the state: during the late 1980’s and early 1990’s, the cities of San Francisco and Los Angeles both queried their voters on the question of switching to all-

mail elections. Each rejected the concept by a 60/40 margin, with fraud the salient issue.

After the 2000 national election and the “hanging chads” debacle in Florida, a bipartisan panel co-chaired by former presidents Jimmy Carter and Gerald Ford was convened to study election issues. Their 2001 report observed that with the demise of voter purges nationwide, 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. They added, however, that elections administrators in states with the heaviest reliance on these measures expressed confidence in their security and integrity.

Indeed, at a 2005 state hearing on “The Move Away From Election Day Balloting,” several California registrars expressed concern about the administrative complexity involved in elections that simultaneously offered early, absentee, and polling-place voting. They noted a new concern — not every mail-in ballot gets counted, due largely to voter error. They shared their constituents’ angst about the loss of the civic ritual of the polling place. Nonetheless, they all reported widespread public support for this amalgam of voting options.

The issue remains contentious. As indicated above, California modified the “voter purge” in the mid-1970’s. The idea was to purge the registrations of those who had died, moved, or otherwise become ineligible to vote, but otherwise allow infrequent voters to cast a ballot when they wished. In 2017, a conservative activist group sued Los Angeles County and the State, alleging that the coun-

ty had more registered voters than its entire adult population, which would inevitably lead to fraud. The case was settled in accordance with a 2018 U.S. Supreme Court decision that reinterpreted federal law to speed up voter purges. Reflecting this debate, Assembly Bill 37 (the new law making all-mail voting permanent) forbids the mailing of ballots to “inactive” voters — those who have not cast ballots in recent elections but may still be eligible to vote. But these setbacks to voter access are largely mitigated by new laws allowing voter registration on Election Day.

Despite this history of ever-increasing access to the franchise, California’s voters do not yet reflect the full diversity of its people. The electorate is wealthier, older, and whiter than the population at large. Universal voter access must remain a priority, but efforts to achieve it are frequently accompanied by allegations of fraud. The challenge facing California is to preserve and expand confidence in democratic election systems while continuing to make them accessible to all.