

May 21, 2019

The Honorable William Barr
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Washington, DC 20530-0001

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COMPLAINT: VOTER SUPPRESSION IN CALIFORNIA

Dear Attorney General Barr, Acting Secretary McAleenan, Mr. Dreiband, and Mr. Gore:

California's new electoral process is fatally flawed in both design and implementation. Elections are held to determine the will of the people. Yet the will of the people cannot be known under California's broken system of voter registration and Election Day regulations. It allows, if not encourages, noncitizen voter registration. It prohibits voter registration officials from taking simple measures to ensure that only eligible citizens are on the voter rolls. Landmark Legal Foundation documented these two failings in complaints submitted to your offices in February and September, 2018.¹

The November, 2018 elections provided overwhelming statewide evidence of the chaos and voter suppression Landmark feared. Together with the Election Integrity Project California

¹ Exhibit 1, Landmark Legal Foundation Letter Complaint, February 14, 2018; Exhibit 2, Landmark Legal Foundation Letter Complaint, September 12, 2018. Both attached.

(EIPCa), Landmark submits this third complaint seeking an investigation into California's broken election system. The evidence presented demonstrates that California fails and refuses to comply with its National Voter Registration Act (NVRA) and Help America Vote Act (HAVA) obligations. Landmark respectfully requests an immediate and thorough investigation by both the Justice Department and the Department of Homeland Security.

I. INTRODUCTION

California's electoral system broke down in 2018. The election officials in California's state and local government failed to ensure its voter rolls were accurate. Their voter registration system did not accurately record voting preferences. As a result, there were thousands of Election Day errors. The Election Day confusion confirms that election officials failed to comply with federal statutory mandates for proper training and education.² To make matters worse, it appears that the State of California is either unable or unwilling to remedy the situation.

News reports and eyewitness accounts document the systemic voting problems in California. On June 6, 2018, well in advance of the election, *The Los Angeles Times* reported that "more than 118,000 people were left off the voter rosters" in Los Angeles County.³ Election officials failed to correct this error in a timely manner. By November 6, 2018, the problems had compounded. Registration failures occurred throughout the state. Hundreds of individuals arrived to vote in person at their designated polling locations only to be informed, without any prior notice or action on their part, that their status had changed to vote by mail (VBM). Thousands of individuals who had changed their designation to VBM never received their ballots. Thirty-five precincts utilized their full allotment of provisional ballots. In Ventura County, there was a report of 16 provisional voters turned away due to lack of provisional supplies. Untrained election officials distributed regular ballots to individuals not on voter lists.⁴

In addition to the news reports in *The Los Angeles Times*, Landmark and EIPCa compiled eyewitness reports of rampant voter registration irregularities. According to these accounts, chaos reigned on Election Day:

My husband I had to vote provisionally. It said we were registered to VBM [vote by mail], which we weren't and never received anything in the mail. I just check [sic] the (lavote.net) website that was posted and it said our ballots were received and counted back in October. So did someone else vote for us?!⁵

I just checked my status on lavote.net and it says I am NOT registered VBM, yet the poll worker showed me on the sign in sheet that it says I was. In the Nov 2016 election, I learned I had been inexplicably put on vote-by-mail status sometime in April. I am actually opposed to voting by mail and like to vote at the poll. Luckily, I had my ballot to surrender and was able to vote. This election, I had reregistered after moving in July

² 52 U.S.C. §§ 20501 *et seq.* and 52 U.S.C. §§ 20901 *et seq.*

³ Exhibit 3.

⁴ See, "Failure in California's 2018 Midterm Election Demand Serious Investigation" Exhibit 4.

⁵ Exhibit 2.

and, again, did NOT check the VBM status. I got my registration card but no ballot. Went to polls Tuesday and was told I was on VBM and had to vote provisionally.⁶

I received a vote-by-mail package but have no idea why as I didn't request it. I voted at the polling site with no problems, thankfully. Despite having a mail ballot, I was not asked to surrender it.⁷

Three major issues in voter registration became evident from witnesses on Election Day: 1) individuals appeared to vote in person, only to be informed their voting status had changed to VBM; 2) election officials informed individuals their names did not appear on the voter rolls; and 3) individuals who properly registered to VBM never received their ballots.

Recently, *The Los Angeles Times* stated that Election Day registration errors “may be attributable to the fact that multiple state government teams were involved [in designing and implementing the registration system] with no clear leadership structure.”⁸ Landmark submits that the fault lies clearly at the feet of California election officials. They failed in their duty to ensure voter rolls are accurate and up-to-date. VBM irregularities are rampant. Hundreds of thousands of individuals cast provisional ballots. In short, California’s voter rolls do not accurately reflect the voting eligible electorate. California’s failure to comply with federal law had serious consequences. Individuals who never receive their VBM ballot face disenfranchisement.

The federal government must conduct an investigation and direct corrective measures. Both the California Secretary of State and relevant registrars must address their inaccurate voter rolls, adequately train election officials, and follow federal requirements when handling and processing provisional ballots. Continued mismanagement threatens the entire process, as the U.S. Supreme Court warned:

Confidence in the integrity of our election process is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.⁹

II. LEGAL FRAMEWORK AND ANALYSIS

The NVRA requires federal, state and local governments to take reasonable steps to promote fair and open elections. This involves protecting the fundamental right to vote and protecting the integrity of the electoral process by ensuring that accurate and current voter registration rolls are maintained. To that end, states must “ensure that any eligible applicant is registered to vote in an election” and “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters.”¹⁰ Registrars

⁶ Exhibit 2.

⁷ Exhibit 2.

⁸ Exhibit 1.

⁹ *Purcell v. Gonzalez*, 548 U.S. at 4 (2006).

¹⁰ 52 U.S.C. § 20507(a).

must ensure that the names of eligible voters are on the voter rolls. This entails conducting programs that confirm voter registration.¹¹

Voter eligibility under federal law requires U.S. citizenship.¹² Both the California Constitution and California Elections Code require U.S. citizenship to be eligible to vote.¹³ In addition, an individual must be 18 years of age and a California resident to vote in federal elections in California.¹⁴ County registrars are tasked with ensuring voter rolls are accurate and that the names appearing on their voter rolls are residents of the respective counties. Election officials are further obligated to ensure a voter's preference for voting, in-person or by mail, is accurate.

A correct account of a voter's preference is crucial to ballot integrity. After all, vote by mail systems are particularly vulnerable to fraud. Ballots are mailed to an address with no controls in place to ensure the identified individual casts his/her ballot. Any individual with access to the unused ballots has the means to cast a vote fraudulently in another person's name.

California has also recently enacted a law that permits "ballot harvesting." While not illegal, ballot harvesting increases the chances that VBM ballots are unsecured and vulnerable to tampering. Previously, only a family member or an individual living in the same household could return mail ballots for a voter. The new law, AB 1921, permits anyone to collect and return ballots. This practice is vulnerable to fraud as outside organizations can improperly alter or cull votes. Again, to ensure integrity in this environment, election officials at both the county and state levels must exercise diligence. Otherwise, the entire election system becomes susceptible to fraud.

Evidence collected by EIPCa and presented in this Complaint shows that the California Secretary of State and county registrars have failed to ensure voter rolls are accurate. Evidence further shows that California election officials are not properly trained to identify and correct foreseeable errors that occur on Election Day. Election related violations from the November 2018 election fall into four general categories:

- Widespread change in VBM designation. In numerous cases, individuals report a change in their VBM designation from one where they were registered to vote in person to a VBM designation. These individuals appeared on election day at their designated polling location and were informed that the voting records indicated the individual's registration as VBM. In other instances, VBM registrants report they never received their ballot.
- Widespread provisional voting. The November election saw an inordinately high number of provisional ballots. This is most likely because of registration failures such as change in VBM designation.

¹¹ 52 U.S.C. § 20507(b)(2).

¹² 18 U.S.C § 611.

¹³ Cal. Const. Art. II § 2; Cal. Elec. Code § 2000(a).

¹⁴ Cal. Elec. Code § 2000(b).

- Election Day registration and voting at polling locations. California law permits Election Day registration. Registrations completed on election day, however, must be completed at the individual's respective county's registrar office or officially designated satellite locations. Evidence collected and presented in this complaint indicates non-registered individuals appearing at non-designated polling locations on election day, were permitted to register and permitted to vote provisionally, and in certain instances, non-provisionally.
- Miscellaneous HAVA violations. Evidence collected and presented in this complaint indicates instances of failure to secure ballots, failure to ensure secured chain of possession of ballots, and failure to ensure working voting machines.

Registration violations such as changes in VBM designation and high numbers of provisional voting is indicative of systematic errors in the voter registration system. These registration errors demonstrate that California election officials have failed to uphold their duties under the NVRA. Voter registration on election day and additional miscellaneous violations of HAVA are indicative of failures by California election officials to adequately train poll workers and failure to ensure working voter machines. Landmark will address these issues in turn.

A. Widespread Unauthorized Changes in VBM Designation

Reports from Election Day indicate two types of improprieties pertaining to VBM. First, instances where individuals who had previously voted in person (sometimes for years) appeared to vote at their designated polling location on Election Day and were informed their registration was vote-by-mail. Second, instances where individuals had registered to VBM but never received their ballots.

EIPCa has catalogued:

- 1,304 incidents in 165 precincts in eight counties where individuals registered to vote by mail, did not receive their ballots and were obligated to travel to polls to vote.¹⁵
- 57 signed witness statements and nine complaints to the EIPCa website from VBM voters who did not receive their ballots. These witnesses skew Republican.¹⁶
- 496 incidents in 112 precincts in eight counties of in-person voters who attempted to vote at their designated precincts but were informed (on Election Day) their status had changed to VBM. These individuals were forced to cast provisional ballots.¹⁷

The frequency and breadth of both these reports indicates the Secretary of State and county registrars had failed to take adequate steps to ensure voter registrations are accurate.

¹⁵ Exhibit 4.

¹⁶ Exhibit 4.

¹⁷ Exhibit 4.

EIPCa only assigned poll watchers to a small sampling of precincts. One could reasonably conclude the registration inaccuracies are significantly larger than those catalogued.

California election officials have failed to implement necessary protocols to ensure a given individual's voter registration correctly labels that voter as VBM or in person voting.

The following narratives from eyewitnesses are indicative of VBM problems:

My husband and I were told we were sent mail in ballots and we would have to fill out provisional ballots. The facts are, we were not sent and did not request mail in ballots but because of this incorrect information we filled out and voted provisionally. I worry this will affect my vote and my husband's counting [sic]. While we were dealing with this issue we heard multiple voters being told the same story.¹⁸

Voter came in and found that her voter preference had been changed to "mail in" and she never changed it. Last election she had voted in person. She was given provisional, had to wait in long line and almost left without voting. She was very frustrated.¹⁹

I am a mail in voter but I did not received [sic] my ballot in the mail and came in to vote. They were not able to locate my name and I had to refill out a form. Then received a regular ballot.²⁰

Reports of unauthorized changes to VBM status occurred throughout the state. This suggests problems at the state level rather than issues with any one county registrar. This further supports a federal investigation into state-wide registration protocols used to ensure compliance with the NVRA's requirement that voter rolls are accurate.

B. Widespread Provisional Voting

Registration failures forced individuals who had their VBM status improperly changed to vote provisionally on Election Day. Individuals also cast provisional votes because their names did not appear on the voter rolls at all. The high number of provisional ballots cast in California, particularly in comparison with the number of provisional ballots cast nationwide indicates California election officials are failing to take reasonable steps to ensure voter rolls are accurate.

Consider the numbers. In 2018, individuals in Los Angeles County cast approximately 400,000 provisional ballots.²¹ For comparison, in the 2014 mid-term election, individuals cast 100,000 provisional ballots. EIPCa observers documented 248 precincts where excessive numbers of individuals cast provisional ballots.²²

Election observer reported the following:

¹⁸ Exhibit 5.

¹⁹ Exhibit 6.

²⁰ Exhibit 7.

²¹ Exhibit 4.

²² Exhibit 4.

*I observed [three times] between 7:00 AM – 9:30 AM voters getting upset their names were not on the register. They each said they had been voting there for many years. One left upset, the others voted provisionally.*²³

Other election observers reported polling sites that ran out of provisional ballots. Polling locations 4356, 4358, 4340 and 4342 used their allocation of provisional ballots before closing.²⁴

Hundreds of thousands of provisional ballots cast are indicative of incomplete and inaccurate voter rolls. This can be attributed to several causes. First, the automatic voter registration process has failed to be properly implemented. California election officials have admitted as much. In a September 5, 2018 letter to Secretary of State Alex Padilla, California Department of Motor Vehicles stated that approximately 23,000 individuals “did not complete an affidavit of registration to vote.”²⁵ Second, failures in VBM designation add to provisional ballots. EIPCa has gathered numerous reports of incidents where registration failures incorrectly designated in person voters as VBM. These individuals voted provisionally. EIPCa has gathered additional reports of VBM voters who never received their ballots and thus voted provisionally.

Individuals not registered to vote but appeared in person on Election Day also cast provisional ballots. Individuals reported witnessing nonregistered individuals appearing at polling locations, completing registrations at the polling location and then casting a provisional ballot.²⁶

C. Election Day Registration and Voting at Polling Locations

California election law permits same-day voter registration.²⁷ Registration, however, must be completed at the individual’s respective county registrar’s office or at officially designated satellite locations.²⁸ This ensures accuracy and protects against voter fraud. Witness reports collected by EIPCa show numerous incidents of non-registered individuals appearing at non-designated polling locations on Election Day, registering and completing provisional ballots. More troubling, some election officials provided these newly registered individuals with regular ballots.

EIPCa catalogued 185 incidents of conditional voting at 39 precincts that are not authorized to accept these ballots.²⁹ Individuals not registered to vote received registration forms and provisional ballots at non-designated locations.³⁰

An election observer witnessed the following in Redlands (San Bernardino County):

²³ Exhibit 8.

²⁴ Exhibit 4.

²⁵ Exhibit 9.

²⁶ Exhibit 4.

²⁷ Cal. Elec. Code §§ 2170 -2173.

²⁸ Cal. Elec. Code § 2170(d).

²⁹ Exhibit 4.

³⁰ Exhibit 4.

Voter was not on list but was given regular ballot (not provisional). I asked about this but was told "it had been done correctly." Another helper said this was the second time they handled it this way. Another gentleman was filling out form to register (he had moved) was given regular ballot but not same time. Supervisor had called her authority and found out she was doing it incorrectly.³¹

Another election observer provided the following:

Man came in – [stated he registered outside jurisdiction] recently moved here. [Election officials] gave him a registration card and then a ballot/provisional.³²

D. Miscellaneous HAVA violations

Along with violations of the NVRA, California has failed to uphold its HAVA responsibilities. HAVA requires election officials to take precautions to ensure orderly and legal voting. It makes federal funds available to states provided those funds are used (among other things) to:

- Improve the administration of elections for federal office.
- Educate voters about voting procedures, voting rights and voting technology.
- Train election officials, poll workers, and election volunteers.³³

HAVA title III requires states to adopt uniform and nondiscriminatory election technology and voting administration procedures. Section 302 applies to provisional voting procedures. It provides directions to election officials when an otherwise eligible individual's name does not appear on the official voter list. In these cases, election officials are directed to notify the individual he/she may cast a provisional ballot provided he/she provides a written affirmation stating:

- He/she is a registered voter in the jurisdiction.
- He/she is eligible to vote in that election.³⁴

Section 302 then directs the election official at the polling place to "transmit the [provisional] ballot" to appropriate state or local election officials.³⁵ When the individual casts a provisional ballot, election officials must also provide written directions on how the individual can determine whether his/her ballot was counted. In addition, either the state or local election

³¹ Exhibit 10.

³² Exhibit 11.

³³ 52 U.S.C. 20901(b)(1).

³⁴ 52 U.S.C. 21082(a)(2).

³⁵ 52 U.S.C. 21082(a)(3).

officials should establish a free access system for provisional voters to determine whether their vote counted and, if applicable, reasons why their provisional vote was not counted.

HAVA also requires election officials to publicly post voting information on the day of the election. This includes posting a sample ballot, information about the date of the election, hours of the polling location, and instructions on how to vote (including how to cast a provisional ballot). Election officials must also provide instructions for vote by mail registrants and general information of voting rights. Finally, information on voter fraud and misrepresentation should be provided. Counties throughout the state apparently failed to follow these requirements.

Reported HAVA violations include:

- Distribution of unsecured ballots at polling location in Riverside County.³⁶
- Distribution of new ballots by poll volunteers at the direction of election inspectors to individuals on VBM lists who appeared at polling locations on Election Day, claiming they had never received their ballot via mail.³⁷
- Failure to properly secure completed ballots at polling locations in Riverside County.

*Witness stated, "a woman pulling the ballots out of the box and counting them and the other poll workers were hunting for cardboard boxes to put them in."*³⁸

- Failure to secure demo/emergency ballots in Los Angeles County.³⁹
- Failure to maintain a properly working voting machine in Los Angeles County.

*Witness stated that when she and her family arrived to vote, poll workers stated that machines were down. Election officials distributed yellow demo/emergency ballots instead of regular ballots.*⁴⁰

- Failure to deliver voter rolls on Election Day in Los Angeles County.

*Witness reports stated that at vote precinct 625-00948 (St. Paul's Lutheran Church) officials "failed to deliver the books that show the voter rolls at this precinct." Election officials at this precinct informed voters that provisional ballots cast will be counted along with the regular vote.*⁴¹

- Failure to secure ballots in Los Angeles County.

³⁶ Exhibit 4.

³⁷ Exhibit 4.

³⁸ Exhibit 4.

³⁹ Exhibit 4.

⁴⁰ Exhibit 4.

⁴¹ Exhibit 4.

Witness reports that absentee ballots left unsecured in mobile home recreation room.⁴²

Witness reports that a ballot box at precinct # 6450005A was broken and that poll workers stuffed ballots in the bottom of the machine.⁴³

These incidents appear to violate provisions of HAVA and require investigation. At a minimum, election officials throughout California are not properly trained in election procedures. This failure has resulted in confusion at polling locations and the inability to secure ballots.

Thus, it appears California has failed to ensure HAVA's three goals. The state has failed to adequately administer the 2018 election, failed to educate voters about voting procedures and failed to properly train election officials.

III. CONCLUSION

California has failed to ensure its voter rolls are accurate resulting in numerous provisional ballots and VBM failures. Almost one million of provisional ballots cast and the thousands of incidents presented in this complaint prove that California's voter rolls are not accurate and up-to-date. EIPCa's compilation and analysis of Election Day irregularities further demonstrates the need for federal intervention. Individuals who registered and voted on Election Day at polling locations abused California law permitting same-day registration.

An immediate investigation will begin to rectify these problems prior to the 2020 election.

Respectfully submitted,



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Linda Paine
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Election Integrity Project California

⁴² Exhibit 4.

⁴³ Exhibit 4.

