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September 11, 2017

CITIZENS' OVERSIGHT PROJECTS
CitizensOversight.org

To: Assembly Committee on Elections and Redistricting
c/o: Lori Barber
Email: Lori.Barber@asm.ca.gov
RE: Assembly Bill AB-840, as revised on 2017-09-07

POSITION: OPPOSE

On August 24, 2017, this bill was amended in the Senate to include a vast change to the requirements for the 1% manual tally, and severely reduces the quality of this important audit process. The Sept 7 revision of the bill does nothing improve the bill or remove these defects. We strongly oppose this bill because it guts the appropriate audit process and puts our elections at risk of election fraud.

1. PROCESS INAPPROPRIATE -- BILL CHANGED SUBSTANTIALLY ON AUGUST 24
The original purpose of this bill was related only to Election Code section 3019 related to how a voter can provide a signature on vote-by-mail (VBM) ballot envelope if one is missing or if it does not match. This is a change which we do not oppose.

On August 24, the bill was changed substantially to also include how the one-percent manual tally is conducted, and now applies also to Election Code section 15360. This fact alone should be enough to conclude that the bill was substantially changed, and thus should not proceed without allowing the public to request hearings and appropriate process. We believe that the actual changes in the one-percent manual tally are also substantial and thus on that additional count, it must be turned back for appropriate processing. We are dismayed to hear that the legislative analyst believes the changes are minor from the earlier version. Just because only a few words are changed does not mean that the result of the bill is not substantial and should be processed with all the appropriate hearings and public review.

2. "SEMI-FINAL OFFICIAL CANVASS" MEANING HAS CHANGED -- SHOULD NOW BE CALLED THE "PRELIMINARY CANVASS"

The use of VBM ballots has grown dramatically in recent years, now over 60% in many elections in California in many districts, and growing.

Before this rise of the popularity of VBM voting, elections were comprised overwhelmingly by ballots cast at polling places ("Polls" ballots) and a very few absentee ballots and very few provisional ballots. Once the Polls ballots were tabulated, elections officials prepared the "Semi-final Official Canvass." This name made sense because there were very few ballots to be included in the tally prior to the preparation of the "Final Official Canvass" -- only a very few absentee ballots and very few provisional ballots.

Since VBM voting has become popular, a great many VBM ballots (frequently 30% or more of all ballots cast) are NOT tabulated until AFTER the end of the election night totals. In addition, the number of provisional ballots has increased as well, due to an increase in two main factors: 1) VBM voters who do not have their ballot to turn in at the polling place, and 2) any voter who chooses to vote at a non-home precinct. Now, the number of provisional ballots is quite substantial, perhaps 10% of the vote.

Thus, the tabulation after election night will omit about 40% of the ballots appropriately cast in the election. We believe the canvass results after election night SHOULD be more appropriately called the "PRELIMINARY CANVASS" and once all VBM ballots are included, then the semi-final canvass terminology could be used, so that the Semi-Final canvass would only exclude the provisional ballots. But even then, the number of provisional ballots is so large that these should not be excluded from the manual tally audit.

The use of this terminology is what we believe is behind legislators not understanding the impact of AB-840, and believing it will only affect the provisional ballots.

AB-840, as amended on August 24, 2017 and then on Sept 7, eliminates all the Later VBM and Provisional ballots from the 1% manual tally audit. This could comprise 40% to 70% of the ballots, and that proportion is increasing. **THIS CHANGE EXCLUDES TOO MANY BALLOTS FROM THE AUDIT PROCESS.**

3. LARGE BLOCKS OF UNAUDITED BALLOTS INVITES ELECTION FRAUD
In the 2016 primary election in San Diego county, there were 285,000 unprocessed ballots as of the end of election day, and those were omitted from the "semi-final official canvass." These are the Later VBM and Provisional Ballots. The Democratic Primary race between the two front runners of Hillary Rodham Clinton and Bernie Sanders (in San Diego County), the final margin of victory was only about 16,000 votes, or 3.75%.

With 285,000 ballots not included in the election night results, it would be an easy task for a compromised employee or hacker to flip 8,000 votes and make up this margin out of 285,000 ballots in the unaudited set. The type of hacking we are envisioning here is a central-tabulator hack, where 8,000 ballots flipped could be hidden in perhaps 1,000 precincts, flipping only 8 votes per precinct so it would not be noticeable unless one of those precincts are chosen to be audited. Leaving out 40% or more of the election reduces the strength of an important check on the election integrity.

4. VIOLATES THE INTENT OF THE RANDOMIZED AUDIT
The reason a random sample is used in the election is to avoid the possibility that any fraudster may be able to predict which blocks of ballots to manipulate. AB 840 would designate large blocks of ballots that everyone knows in advance are not audited. We believe this violates the original intent of the randomized 1 percent manual tally audit.

Originally, the 1 percent manual tally was applied to polls ballots when virtually all ballots were cast at the polls. When VBM voting became more prevalent, 15360 was amended to include all ballots cast including VBM ballots. We agree that the current law is unclear if validated provisional ballots are to be included in the random draw, but we disagree that the solution is to omit both later VBM and provisional ballots.

5. SUPERIOR COURT JUDGMENT SUPPORTED INCLUSION OF VBM BALLOTS

This issue was brought before the court in the case Lutz vs. Vu, case number 37-2016-00020273-CL-MC-CTL. You can access all documents for this case here: http://www.copswiki.org/Common/M1658

In this case, plaintiffs (Lutz and Citizens Oversight) prevailed on the question of whether all the VBM ballots, both Early and Later VBM ballots should be included in the sampling process for the 1% manual process. The court did not rule in favor of the plaintiff on the question of whether validated and accepted provisional ballots should also be included in the audit. However, we contend that the court improperly ruled on this point based on the (untrue) argument that our position was to include all provisional ballots cast, even those which were NOT validated and accepted. Since that has not been our position, both parties have appealed this. After being processed by the appellate court, it will appropriately apply to all counties.

The testimony of Dr. Philip Stark, professor of statistics at the University of California, Berkeley, a recognized expert in statistics and in election auditing, said "it's like performing a final safety inspection on an automobile before the rear brakes have been installed. You can do it, but you're leaving something out."

6. ROBUST AUDITS IMPROVE ELECTION CONFIDENCE

Our elections in our democracy depend on the confidence the public has in the outcome. Automated counting of ballots introduces two types of errors: 1) the possibility that bugs or errors could be introduced in the result due to machine error, and 2) the possibility that the result could be modified by hackers and/or compromised employees. Election officials claim that they can find all types of error by only inspecting a small portion (1%) of part (perhaps 60%) of the election (Early VBM and Polls ballots only).

Their claim may only be true for type (1) error described above, and only part of the time. If a machine makes an error in any portion of the ballots processed, then they claim that the same error will also be evident in all other portions, and it is only necessary to test one or two portions. If you have only one machine involved and there is only one root cause of the error, then that may be true. However, it is not necessarily true if there is more than one machine involved, unless the result of all machines is sampled. Also, it is not true if some portions use one set of machines and other portions use another set of machines.

But the claim is absolutely not true for type (2) error described above. If a hacker or compromised employee knows that certain ballots -- the later VBM and provisionals -- will not be included in any audit, then that hacker would simply target those unaudited portions of the election, and the audit process would not detect it.

AB840 is a bad idea as it undermines the effectiveness of the 1 percent manual tally, making it just theater rather than an honest attempt to thwart election fraud.

7. SB-1235 and AB-985 both supported including ALL VBM ballots in the audit process

SB-1235 (2005) initially proposed changed Election Code 15360 on the manual tally audit by adding the words "including VBM ballots and provisional ballots." During the amendment process, SB-1235 was amended to omit the words "and provisional ballots." We argue that this change was made not to indicate that it would be appropriate to exclude provisional ballots, but because those ballots are already included in "ballots cast at precincts," since they are indeed ballots provisionally cast at polling places and later validated and accepted. Thus, it does not make sense to call those out as a special case.

In fact, a letter from CACEO to the governor on September 15, 2006, after the bill was passed by the legislature and sent to the governor for his signature, stated that it was their interpretation that they did not support the bill because the result would be the inclusion of both VBM ballots and provisional (accepted) ballots in the one percent manual tally audit.

Any review of the legislative history of SB-1235 will show that the original intent was to include ALL VBM and ALL Provisional ballots in the one percent manual tally audit.

AB-985 (2011) changed Election Code section 15360 by allowing an incremental method of processing, providing that elections officials can first process polls ballots and then later complete the later-arriving VBM ballots. This bill again supports the notion that all (or nearly all) VBM ballots would be included in the one-percent manual tally, most specifically, it specifically provides that the VBM ballots could be processed incrementally as they are received and the manual tally audit performed in spurts.

## 8. ALL BALLOTS SHOULD RECEIVE AUDIT COVERAGE

No matter how or when a voter may cast their vote, we believe it is only fair that all ballots be treated equally, in terms of being covered by the audit process. Leaving certain ballots out makes these voters "second-class citizens" with unequal treatment. We believe this is counter to the intent of all election laws that all voters should be treated equally.

PLEASE DO NOT PASS AB-840!

We would be happy to work with the committee to craft changes to Election Code 15360 because the audit process is an important part of our ability to provide critical citizens' oversight of our elections process. AB-840 severely reduces the effectiveness of this audit process and MUST BE STOPPED!

We are very disappointed in the California Association of Clerks and Election Officials for sponsoring this late change to AB-840. We are also disappointed that the legislative analysis did not regard this as a late and substantial change, which it is.

Sincerely,
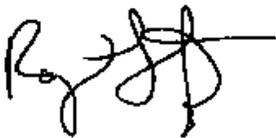
Raymond Lutz
Founder, Citizens' Oversight Projects