

## Citizens' Oversight Projects (COPs)

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June 10, 2019

Neal Kelley  
Orange County Registrar of Voters  
P.O. Box 11298  
Santa Ana, CA 92711-1298

Re: Your letter of March 26, 2019 in response to our request of March 17, 2019

On March 17, 2019, we requested ballot images for the November 2018 Election. You responded in the letter of March 26, 2019 that ballot images could not be released due to

1. the notion that voters have the right to a secret ballot as guaranteed by Election Code section 2300 (a) (4), and
2. that voter signatures on affidavits are "confidential" and therefore ballots are exempted from disclosure by the California Public Records Act per code section 6254.4.

This rationale is without merit, as described below:

1. Proposition 59 of 2004 made disclosure of public records a constitutional amendment.

[https://en.wikipedia.org/wiki/2004\\_California\\_Proposition\\_59](https://en.wikipedia.org/wiki/2004_California_Proposition_59)

Similarly, it strengthens the case for access in cases where, under existing statutory exemptions, records can be withheld when the public's interest in non-disclosure clearly outweighs the public's interest in disclosure.[4] This is so because most interests in non-disclosure are not constitutionally based and thus will be of significantly less importance when weighed against a now-constitutional right of access.

2. Election Code 14287 defines personal information

14287 No voter shall place personal information upon a ballot that identifies the voter. "Personal information" includes all of the following:

- (a) The signature of the voter.
- (b) The initials, name, or address of the voter.
- (c) A voter identification number.
- (d) A social security number.
- (e) A driver's license number.

3. Election code 15154 concerns whether ballots are rejected for personal information, and they are not:

15154: (a) Any ballot that is not marked as provided by law shall be rejected. The rejected ballots shall be placed in the package marked for voted ballots or in a separate container as directed by the elections official. All rejected ballots shall have written on the ballot the cause for rejection and be signed by a majority of processing board members who are assigned by the elections official to process ballots.

(b) The following ballot conditions shall not render a ballot invalid:

- (1) Soiled or defaced.
- (2) Two or more impressions of the voting stamp or mark in one voting square.
- (3) Contains personal information, as defined in Section 14287.

(c) If a voter indicates, either by a combination of both marking and writing in, a choice of more names than there are candidates to be elected or nominated for any office, or if for any reason the choice of the voter is impossible to determine, the vote for that office shall not be counted, but the remainder of the ballot, if properly marked, shall be counted.

(d) This section applies to all ballots counted pursuant to this chapter and Chapter 4 (commencing with Section 15300 ).

4. Election Code Section 15208 provides that any ballots that contain personal information shall be duplicated as soon as it is received so as to remove the personal information (i.e. prior to the creation of ballot images).

SB 183, Correa. Ballots: identifying information. (2011)

[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201120120SB183](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB183)

Existing law prohibits a voter from placing any mark upon a ballot that will make the ballot identifiable. Under existing law, a ballot that is not marked as provided by law or that is marked or signed by the voter so that the ballot can be identified by others is required to be rejected. If a ballot is marked in a manner so as to identify the voter, the ballot is required to be marked "Void" and placed in a container for void ballots.

This bill would instead prohibit a voter from placing personal information, as defined, upon a ballot that identifies the voter. The bill would provide that a ballot that contains personal information is not invalid. The bill would delete the requirement that a ballot marked in a manner so as to identify the voter is void and instead require a ballot that contains personal information to be segregated in a specified manner and would require that a duplicate ballot be prepared. By adding to the duties of local elections officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

SEC. 4. Section 15208 of the Elections Code is amended to read:

15208. (a) Each container of ballots shall be opened and its contents removed. The ballots shall be checked to ascertain if the ballots are properly grouped and shall be arranged, if necessary, so that all similar ballots from the precinct are together.

(b) Any ballot that contains personal information, as defined in Section 14287, or is torn, bent, or mutilated shall be segregated in the manner directed by the elections official and a duplicate shall be prepared as provided in Section 15210.

Therefore, ballots, once received and duplicated as provided in Election Code 15208 will not include any personal identifiable information. Of course, this includes that any signatures will also be expunged by that statutory procedure. Accordingly, ballot images will not have any such information either. Therefore, your reliance on the need for voter privacy is not supported.

The fact that the legislature included this change as reflected in SB 183 implies also that there was an appreciation that ballots are not exempted by the California Public Records Act (Cal Code 6250 et seq), and the legislative intent was not to exempt them from disclosure. The legislature could have handled the voter privacy issue by instead clarifying that ballots were exempted from disclosure, but they did not, instead making sure that they could be disclosed without any risk to the voter's privacy through this method of expunging any voter-identifiable information.

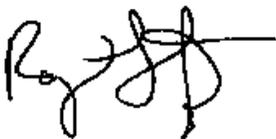
Please answer the following questions:

1. Are you in compliance with Election Code Section 15208 as amended by Senate Bill 183 of 2011?
2. And if so, then why is there any voter-identifiable information on ballots and ballot images?

Our request for the ballot images from 2018 still stands, as your arguments are without merit.

Please provide within 10 days of this letter, answers to the questions above and the ballot image data. We prefer to handle this issue without the need for the cost of litigation in court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ray Lutz', with a long horizontal stroke extending to the right.

Raymond Lutz  
National Coordinator, Citizens' Oversight Projects

CC: Alan Geraci, CARE Law Group