


LAWYERS' COMMITTEE FOR  
**CIVIL RIGHTS**  
OF THE SAN FRANCISCO BAY AREA

---



Voting Rights Barriers &  
Discrimination in Twenty-  
First Century California:  
2000-2013

March 2014

## ABOUT LCCR

Lawyers' Committee for Civil Rights of the San Francisco Bay Area, founded in 1968, works to advance, protect and promote the legal rights of communities of color, low-income persons, immigrants, and refugees. Assisted by hundreds of pro bono attorneys, LCCR provides free legal assistance and representation to individuals on civil legal matters through direct services, impact litigation and policy advocacy.

## ABOUT LCCR's VOTING RIGHTS WORK

LCCR's voting rights work seeks to remedy twenty-first century voting rights violations in jurisdictions throughout California. LCCR assists voters, community members and community-based organizations with impact litigation to protect and advance equal voting rights for communities that have historically been disenfranchised. We work with communities to help identify community-based solutions in compliance with voting rights protections for greater transparency, participation, accountability and diversity in municipal governance. LCCR collaborates with civil rights legal organizations, community organizations, law schools and the private bar to provide legal and community education regarding voting rights protections. We also work in collaboration with the Lawyers' Committee for Civil Rights Under Law in Washington, D.C., and the National Election Protection Coalition during elections, training attorneys and other mobile legal volunteers to ensure that no eligible voter is turned away from the polls.

## ACKNOWLEDGEMENTS

This report was written by **Rachel Evans**, Georgetown Law Fellow, and **Joanna E. Cuevas Ingram**, Equal Justice Works Voting Rights Fellow, of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR). The authors would like to thank LCCR Executive Director, Kimberly Thomas Rapp, and Legal Director, Oren Sellstrom, for their review and feedback in the development of this report.

Published: March 2014

# TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>1</b>
<b>I. RESEARCH PROJECT &amp; DESIGN.....</b>	<b>2</b>
<b>II. THE FINDINGS: DOCUMENTING VOTING DISCRIMINATION IN CALIFORNIA</b>	<b>4</b>
Vote Dilution: At Large Elections.....	4
Disenfranchisement of Currently & Formerly Incarcerated Californians.....	8
Vote Suppression.....	15
Barriers to Language Accessibility.....	21
Barriers to Disability Accessibility.....	24
<b>III. CHALLENGES, LIMITATIONS &amp; WHY WE NEED REFORM.....</b>	<b>27</b>
Federal Reform.....	27
State Reform.....	29
<b>CONCLUSION .....</b>	<b>33</b>

***[R]acial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions.***

– *Bartlett v. Strickland*, 556 U.S. 1, 25 (2009) (plurality).

## INTRODUCTION

The strength of our democracy is measured by the ability of citizens to vote. The right to vote should not be contingent on a citizen’s race, ethnicity, national origin, English-language proficiency, disability, criminal status or jurisdiction where one resides. Over the past 50 years, the United States Congress has passed groundbreaking laws aimed at ending discrimination in elections and ensuring that every citizen has equal opportunity to vote. The Voting Rights Act of 1965 (VRA),<sup>1</sup> is one of the most important of these laws, and is often referred to as the “crown jewel” of U.S. civil rights protections.<sup>2</sup>

The VRA prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.”<sup>3</sup> Section 2 of the VRA bans such practices nationwide. Section 5 of the VRA requires certain states and jurisdictions that have had a history of voting rights violations to obtain prior approval (“preclearance”) from the U.S. Department of Justice (DOJ) or a federal court before implementing any new election law or policy. A coverage formula in section 4 determines which jurisdictions are subject to the provisions of section 5.<sup>4</sup> Preclearance is designed to prevent discriminatory laws from going into effect; in other words, to stop discrimination *before* it occurs.

***Although poll taxes and literacy tests have long been abolished, discriminatory policies and practices continue to burden California voters of racial, ethnic, and language minority groups, as well as voters with disabilities.***

In 2013, the U.S. Supreme Court struck down the VRA’s coverage formula, in effect nullifying preclearance and thus significantly eroding the federal protections against election discrimination. In *Shelby County v. Holder*,<sup>5</sup> the Court held that section 4’s formula was out of date and was not based on “current burdens and justified by current needs.”<sup>6</sup> The Court left open the possibility for Congress to develop a new coverage formula to replace section 4; however, the Court held that “while any discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.”<sup>7</sup>

As a result of *Shelby County*, jurisdictions with long histories of voting rights violations, including three counties in California, are no longer subject to section 5 preclearance provisions.<sup>8</sup> Without the preclearance formula, most VRA challenges to discriminatory election laws or practices will only occur *after* a person or group of people have suffered discrimination.<sup>9</sup>

On January 16, 2014, U.S. Congressional Representatives James Sensenbrenner (R-WI), John Conyers (D-MI) and Senator Patrick Leahy (D-VT) introduced the Voting Rights Amendment Act of 2014 (VRAA),<sup>10</sup> which responds to the *Shelby County* Court’s call

**“While any discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.”**

– *Shelby County, Alabama v. Holder*, 570 U.S. \_\_\_, 133 S.Ct. 2612, 2619 (2013).

for voting rights legislation that reflects “current needs” and “current conditions.”<sup>11</sup> The VRAA includes a new proposed section 4 coverage formula, which would subject states and local jurisdictions to section 5 preclearance if they have violated federal voting rights law over the last 15 years.<sup>12</sup>

This report responds to *Shelby County’s* call for evidence of current burdens suffered by California voters. Although a web of federal and state voting rights laws are in place in California, the evidence compiled in this study and its accompanying database demonstrates that these laws have been insufficient to alleviate the burden of voting discrimination statewide. Structural vote dilution and discrimination continue to plague California. These voting rights violations are just as real today as they were when the VRA was first enacted in 1965; these harms continue to impact protected classes and underrepresented communities statewide. As this study documents, even in the twenty-first century, many California voters are being deprived of their constitutional guarantee of one-person, one-vote; are disenfranchised; face

intimidation and deception at the polls; and remain unable to vote secretly due to disability or limited-English speaking ability.

Part I of this report outlines the research design of this study. Part II reviews the research findings, providing an in-depth look at how structural voting rights barriers and discrimination continue to plague California voters in the twenty-first century. Part III then discusses the challenges and limitations of the current state and federal legal frameworks, and why legal reform is necessary to prevent further violations and ensure that voting rights abuses do not continue unabated in California.

## I. RESEARCH PROJECT & DESIGN

This research project was designed based on the methodology and format of the 2006 report by Ellen Katz, entitled *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982* (The Katz Report).<sup>13</sup> The accompanying searchable database, which compiles and organizes the data that informs much of the analysis in this report, is an adaptation of the database created for The Katz Report.

This study aims to take a comprehensive look at voting discrimination in California over the past 13 years. A comprehensive study requires more than a basic review of cases litigated under the federal Voting Rights Act (VRA). To reveal a more complete picture of the current burdens facing California voters, this study seeks to access as much documentary evidence of voting rights violations as possible. As detailed below, this study examines voting rights cases and settlements, reports from non-profit organizations that monitor voting in California, and reports of calls to a nonpartisan national voting hotline on Election Day. All of this information has been compiled into an interactive, searchable database.<sup>14</sup>

## CASES & SETTLEMENTS

The database records all cases about which there was a published opinion on voting rights law in California state courts, California federal courts, the Ninth Circuit, and the Supreme Court between 2000 and 2013. The cases include suits under the federal Voting Rights Act (VRA), the California Voting Rights Act (CVRA), the California Constitution, the Help America Vote Act (HAVA), the National Voter Registration Act (NVRA), and California Accessible Voting Technology Act. The database also documents CVRA cases that resulted in settlement, as well as those jurisdictions, such as cities and school districts, that sought to voluntarily change their method of election to come into compliance with the CVRA. All told, the database catalogs a total of 216 cases, settlements and voluntary changes.

## NON-PROFIT ORGANIZATION REPORTS

The database catalogs 66 state-specific and nationwide reports by non-profit organizations documenting and describing voting discrimination in California. Non-profits have direct access to constituent communities and infrastructure for reporting violations and barriers, and thus are well positioned to document the issues faced by voters. While not intended to be an exhaustive list of all reports on these issues, we collected reports from numerous well-known non-profit organizations across the United States that study relevant voting rights issues and that address common barriers and discrimination faced by voters.

## CALLS TO THE 1-866-OUR-VOTE HOTLINE

The nonpartisan Election Protection Coalition and the Lawyers' Committee for Civil Rights Under Law maintain a nationwide 1-866-OUR-VOTE and the Spanish language 1-888-VE-Y-VOTA hotlines year-round where voters, monitors and poll workers can call in to ask questions regarding voting and to report issues or problems they observe at polling places on Election Day. Since 2010, caller reports have been cataloged in a searchable database at OurVoteLive.org.<sup>15</sup> The LCCR database records all reports and calls to the national hotline documenting instances where voters faced discrimination. In total, the database catalogs 244 calls reporting instances of discrimination in California.

-----

***To download the  
2014 LCCR Voting  
Rights Project  
Database  
visit [www.lccr.com](http://www.lccr.com).***

This data is considered collectively in order to derive a more nuanced understanding of the character and extent of discrimination faced by California voters in the twenty-first century. In doing so, we are also mindful of the fact that even a comprehensive database such as the one compiled for this report is incomplete; most notably, there are doubtless many instances of voting discrimination that go unreported altogether. The report that follows discusses the findings and analyzes the frequency and intensity of the barriers and discriminatory harms documented. Together, the cases, reports and individual testimonies tell a compelling story of the current burdens that California voters continue to confront when seeking to exercise the fundamental right to vote.

## II. THE FINDINGS: DOCUMENTING VOTING DISCRIMINATION IN CALIFORNIA

Discrimination in voting persists even in a progressive state such as California. Structural forms of discrimination endure at both the local and state levels. Although poll taxes, literacy tests, and other Jim Crow-era policies have long been abolished, discriminatory polices, systems and practices continue to plague California voters from historically underrepresented racial, ethnic and language groups, as well as voters with disabilities. In the twenty-first century, Californians are being deprived of an equal vote; eligible voters are disenfranchised; intimidation and deceptive practices are being used suppress or coerce voters; and many polls remain inaccessible to voters who are disabled or are of limited English-speaking proficiency.

This study found evidence of five main categories of voting discrimination: (1) vote dilution through the use of at-large elections, (2) disenfranchisement of currently and formerly incarcerated citizens, (3) voter intimidation and deception, (4) language access barriers, and (5) disability access barriers. Below, this report defines each category of voting discrimination, and then discusses the evidence this study uncovered in California.

### *Vote Dilution: At Large Elections*

The Constitutional principle of “one-person, one-vote”<sup>16</sup> guarantees that each person has the right to have his or her vote counted equally. That is, every citizen has the right to an undiluted vote. Ideally, “the size and makeup of a polity’s population shape its government’s agenda and the resources available to address [its particular needs, priorities, and] problems.”<sup>17</sup> Where racially polarized voting exists, and a method of election deprives a minority group of equal opportunity to elect their candidate of choice, the voting strength of that minority group has been diluted.

The right to an undiluted vote is protected under both the federal Voting Rights Act (VRA)<sup>18</sup> and the California Voting Rights Act (CVRA).<sup>19</sup> The VRA prohibits election practices that result in the denial or abridgment of the vote based on race, color or membership in a language minority.<sup>20</sup> Section 2 of the VRA prohibits election practices that cause minority groups to “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”<sup>21</sup> The CVRA protects against vote dilution by providing a private right of action for voters to challenge vote dilution caused by racial polarized voting in an at-large method of elections.

Racially polarized voting occurs when a majority of “non-minority” voters, and a majority of “minority,” or historically marginalized, voters in a given jurisdiction vote opposite each other or are otherwise divided in their preferences for different candidates, propositions or measures.<sup>22</sup>

The basic characteristic of an at-large election is that “voters of the entire jurisdiction elect the members to the governing body.”<sup>23</sup> At-large elections are not *per se* prohibited under the CVRA. The CVRA prohibits at-large elections that “impair[] the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.”<sup>24</sup>

The at-large method of elections carries with it the high risk of diluting the voting strength of protected groups, such as race, color and language minority groups—particularly where racially polarized voting exists. Elections in the United States are usually winner-take-all. That is, the candidate that receives the most votes wins. Take, for example, an at-large election system where 60 percent of the electorate is white and tends to vote as a bloc together, and 40 percent of the electorate is Latino, also tends to vote as a bloc, and prefers different candidates than white voters. In this example, white voters could always elect candidates of their choice for every position in the government body. Latino voters would almost never have the opportunity to elect their candidate of choice, even if they comprise a

***The at-large method of elections carries with it the high risk of diluting the voting strength of protected groups, such as race, color and language minority groups—particularly where racially polarized voting exists.***

significant percentage of the population. In this case, Latino voters' votes are diluted; as individuals and as a group, Latino voters in this example are not able to change or influence the outcome of any election in almost every election scenario.

While no silver bullet exists to cure vote dilution, other election systems may be preferable to at-large election systems, such as district-based elections. In district-based elections, candidates for office must reside in a given election district and are only elected by voters who reside within that district.<sup>25</sup> Although district-based elections are not immune to vote dilution, they at least tend to minimize that possibility, since district lines may be drawn in ways that ensure vote dilution does not occur. District elections also allow minority groups to form coalitions with other voters in order to elect the groups' candidates of choice, particularly where minority-majority districts are drawn.<sup>26</sup>

However, district-based elections are not immune to vote dilution. In the redistricting context, line-drawers can divide or over-concentrate minority populations in a way that dilutes their voting strength, causing further harm to already underrepresented communities.<sup>27</sup> Vote dilution in district elections most often occurs where racially polarized voting exists and voting districts are created that either (1) divide members of a racial, ethnic or language minority group between a number of districts, reducing the group's ability to influence elections, or (2) place artificially high percentages of members of a racial, ethnic or language minority group into a small number of districts, minimizing the total influence that the group would otherwise have.<sup>28</sup>

Vote dilution infringes on the rights of minority communities and can result in serious, long-lasting harms. Voters experiencing vote dilution are robbed of the right to an equal vote and of a representative government that is responsive to their interests and needs. When minority communities are continuously out-voted, minority candidates become discouraged from running, and minority voters become less likely to turn out to the polls, decreasing the likelihood of a truly representative government accountable to the full diversity of the electorate.



## VOTE DILUTION THROUGH AT-LARGE ELECTIONS IN CALIFORNIA

California is often referred to as a “minority-majority” state. In 2012, non-whites comprised 61 percent of California’s population.<sup>29</sup> Nearly 40 percent of California’s population is Hispanic or Latino.<sup>30</sup> Yet, despite California’s large Latino population, in many counties, cities, school districts and local municipalities, Latinos have rarely or never been elected to office. A majority of these local jurisdictions conduct at-large elections.<sup>31</sup> Enforcement of the California Voting Rights Act (CVRA) from 2002-2013, clearly illustrates that vote dilution is a current problem affecting California voters throughout the state.

Even in cities with large Latino populations, many cities had never or rarely elected a Latino to the city council prior to a CVRA lawsuit. In the City of Whittier’s 115-year history, no Latino had ever been elected to the city council, even though Latinos comprised 65.7 percent of the population in 2012.<sup>32</sup> In Palmdale, Latinos comprised approximately 60

***In the City of Whittier’s 115-year history, no Latino had ever been elected to the city council, even though Latinos comprised 65.7 percent of the population.***

percent of the population and African-Americans comprised 15 percent in 2013, yet only one Latino and one African-American had been elected to the city council since the 1970s.<sup>33</sup> In the history of Visalia, only one Latino had ever been elected to the city council, yet Latinos comprised more than 46 percent of the city’s population in 2012.<sup>34</sup> Each of these cities maintained potentially dilutive at-large election systems prior to a CVRA lawsuit.

These current challenges build on a decade of cases brought under the CVRA that have led to numerous California jurisdictions transitioning from at-large to district-based election systems. Out of the 21 cases filed under the CVRA since 2003, 16 were either successfully settled by the plaintiffs or were successful on the merits, and no case has been resolved on the merits in favor of a defendant jurisdiction.<sup>35</sup>

In *Sanchez v. City of Modesto*, the first case to result in an appellate decision under the CVRA, a group of Latino voters residing in Modesto brought suit against the city alleging that their votes were being diluted in the at-large city council election system, due to racially polarized voting.<sup>36</sup> Latinos made up 25.6 percent of the city’s population, but only one Latino had been elected to the city council since 1911.<sup>37</sup> In *Sanchez*, the California Court of Appeal upheld the constitutionality of the CVRA.<sup>38</sup> In addition, the *Sanchez* Court recognized that the CVRA encompassed stronger protections against vote dilution than the federal Voting Rights Act (VRA), noting that plaintiffs “do not need to show that members of a protected class live in a geographically compact area or demonstrate an intent to discriminate on the part of voters or officials.”<sup>39</sup> Modesto settled the case in 2008, and switched to a six-district election system. As a result of the change, Dave Lopez (2007) and Tony Madrigal (2013) became the second and third Latino Modesto city council members in more than 100 years.<sup>40</sup>

Similarly, *Rey v. Madera Unified School District* prompted the Madera Unified School District (MUSD) to switch to trustee-area elections in November 2008.<sup>41</sup> Although Latinos comprised 82 percent of the student body, only one Latino sat on the Board of Education at the time the case was filed.<sup>42</sup> Robert Garabay, the lone Latino board member in 2009, noted that Latinos became discouraged from running for office in MUSD.<sup>43</sup> Those who had run and lost expressed similar sentiments.<sup>44</sup> However, since the instatement of district-based

elections, Latinos now make up a five-member *majority* on the seven-member Board of Education.<sup>45</sup> The outcome of the Madera case has reportedly led dozens of school districts to voluntarily change to district or district-based elections.<sup>46</sup>

Over the past 13 years, CVRA lawsuits have prompted numerous jurisdictions to seek to change from at-large to district-based elections. In the face of a CVRA lawsuit,<sup>47</sup> Whittier is holding a special election in June 2014 to determine whether to establish district-based city council elections.<sup>48</sup> In July 2013, a judge found Palmdale’s at-large method of electing its city council in violation of the CVRA,<sup>49</sup> and in December, a court ordered the Palmdale to hold district-based elections.<sup>50</sup> In February 2014, Visalia settled its CVRA lawsuit, and is slated to switch to district-based elections in November 2016.<sup>51</sup>

California counties are also not immune to potential vote dilution. San Mateo County was the last county in California to change from a discriminatory at-large system to a district-based election system for its Board of Supervisors. Due to the pressure of a CVRA lawsuit,<sup>52</sup> the San Mateo County Board of Supervisors submitted the question of district-based election systems as a proposed amendment to the county charter on the November 2012 General Election Ballot. The measure passed with the support of a majority of voters in San Mateo County. After San Mateo County settled the CVRA lawsuit in 2013, LCCR and the Asian Law Caucus, together with coalition and community partners, monitored implementation of the settlement and community-based redistricting process. The newly approved five-district election map—the “Community Unity Map”—designed by a diverse coalition of residents, now provides greater access to accountability and fair representation for the full diversity of over 700,000 residents of San Mateo County.

These successful CVRA court actions, documented fully in the accompanying database, are just the tip of the iceberg; many more jurisdictions have opted to voluntarily change their method of election.<sup>53</sup> This study identified 140 jurisdictions that voluntarily sought to change from at-large to district-based elections between 2001 and 2013—most of them school districts that applied for waivers from the California Department of Education to change their method of election.<sup>54</sup> For example, in November 2013, the Coachella Valley Water District (CVWD), an all-white Board of Trustees governing a population more than 36 percent Latino, had not seen a Latino elected to sit on its Board over the last decade, despite

***This study identified 140 jurisdictions that voluntarily sought to change from at-large to district-based elections between 2001 and 2013.***

several viable candidates running for office during that time. CVWD voted to change to district-based elections in response to a demand letter under the CVRA, which had challenged the dilutive at-large system on behalf of Latino voters.<sup>55</sup> The CVWD is now placing the question before its voters.<sup>56</sup>

Thanks to these hard-won efforts, Asian, African-American, Latino and Pacific Islander voters throughout California may now have a meaningful opportunity to vote for a candidate who reflects their choices in future district-based elections. The trend away from at-large elections has resulted in the restructuring of local elections systems designed to facilitate the opportunity for historically underrepresented Californians to share an equal vote and voice with some meaningful influence in local government elections.

However, although a number of jurisdictions have changed from at-large election systems, this change does not signify the end of vote dilution in California. A number of at-large jurisdictions still exist, and single-member districts may continue to suffer from vote dilution if they are drawn in ways that further marginalize historically

underrepresented communities in smaller district-based elections. The recent history of successful challenges to at-large elections indicates that racially polarized voting and vote dilution remain a widespread problem throughout California. The CVRA has only begun to address the issue.

## *Disenfranchisement of Currently & Formerly Incarcerated Californians*

Disenfranchisement occurs when otherwise eligible voters are prohibited from voting. Otherwise eligible voters can be disenfranchised by force of law. This phenomenon is called *de jure* disenfranchisement. In addition, eligible voters can be disenfranchised because they are deceived, receive wrong information, or for some other reason are led to believe they are not eligible to vote. This phenomenon is called *de facto* disenfranchisement. Currently and formerly incarcerated Californians are subject to both types of disenfranchisement.

### DE JURE DISENFRANCHISEMENT

One of the main types of *de jure* disenfranchisement is felony disenfranchisement, *i.e.*, legal bars that prohibit individuals convicted of felonies from voting. Felony disenfranchisement laws prevent an astounding 5.8 million Americans from voting.<sup>57</sup> In some states, the right to vote is automatically restored upon completion of the sentence, or after a set waiting period.<sup>58</sup> In other states, a felony conviction permanently takes away an individual's right to vote. In these states, citizens who are living and working in their communities are denied the right to vote.<sup>59</sup>

Felony disenfranchisement laws disproportionately impact people of color. In the United States, one out of every thirteen voting-age African-American men has lost the right to vote due to a felony conviction; in some states, that number increases to more than one-in-five.<sup>60</sup>

***Between 2000-2013, de jure felony disenfranchisement and de facto disenfranchisement prohibited hundreds of thousands of California citizens from voting.***

Michelle Alexander, Professor of Law and author of *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*,<sup>61</sup> has noted that more black men are denied the vote today due to felon disenfranchisement laws than were denied the right to vote at the time the Fifteenth Amendment was passed in 1870.<sup>62</sup> As Professor Alexander notes, bureaucratic mazes that create barriers for ex-felons to regain the right to vote have become the "modern-day equivalent of poll taxes and literacy tests—'colorblind' rules designed to make voting a practical impossibility for a group defined largely by race."<sup>63</sup> At the current rate and pattern of incarceration across the nation, Human Rights Watch estimates that three in ten of the next generation of black men can expect to be disenfranchised at some point in their lifetime.<sup>64</sup>

The Supreme Court has upheld felony disenfranchisement laws as constitutional. Under section 1 of the Fourteenth Amendment to the U.S. Constitution, a state may only restrict voting rights if it has a compelling state interest to do so. However, section 2 of the Fourteenth Amendment expressly allows states to disenfranchise citizens "for participation in rebellion or other crime."<sup>65</sup> In *Richardson v. Ramirez*,<sup>66</sup> the Supreme Court held that the

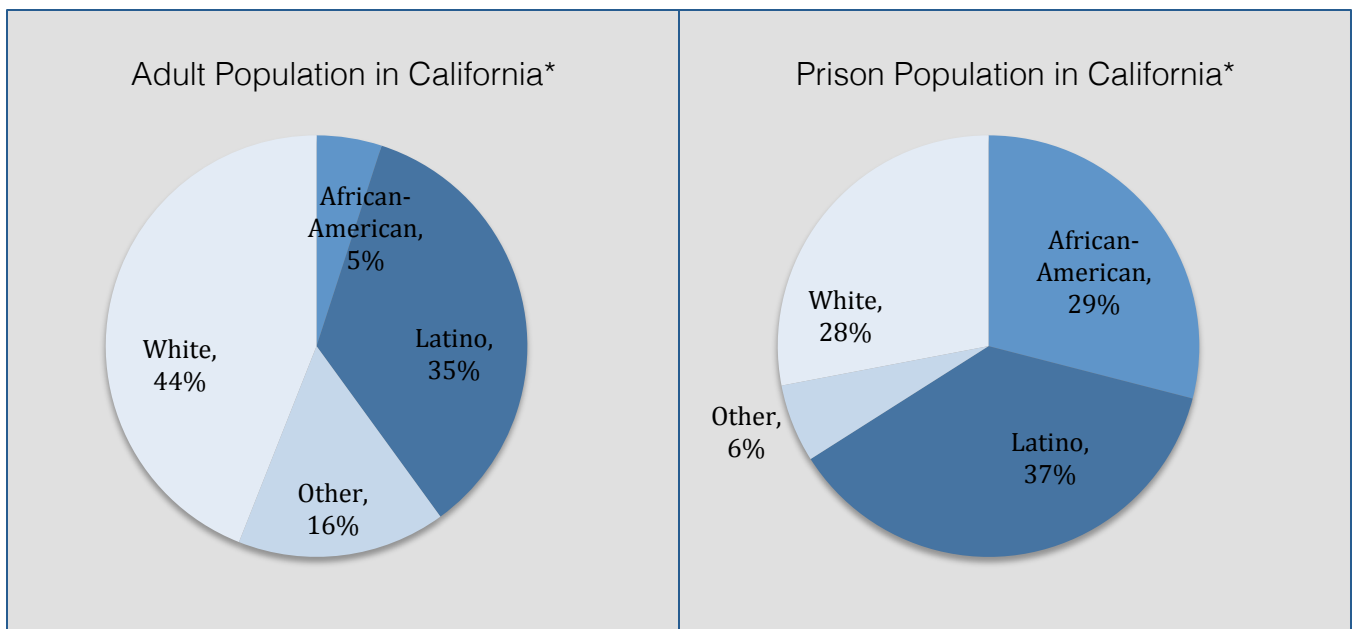
disenfranchisement of felons was exempted from the equal protection guarantees in section 1 of the Fourteenth Amendment.<sup>67</sup> This means those convicted of felonies are not constitutionally guaranteed equal access to the vote, absent a showing of racial discrimination.<sup>68</sup>

Both *de jure* felony disenfranchisement and *de facto* disenfranchisement, discussed *infra*, have devastating, long-term effects across communities—communities of color in particular. These practices have consequences beyond isolating and humiliating disenfranchised citizens with criminal convictions. The ability to cast votes for representative officials and on laws and policies that affect one’s community is a fundamental right and a key component to a functioning democracy. The communities of the one-in-thirteen African-Americans who are legally barred from voting are denied an equal voice in governance.<sup>69</sup>

### De Jure Disenfranchisement in California

African-Americans, Latinos and other nonwhite populations make up 76 percent of California’s jail and prison population, yet they comprise only 56 percent of California’s adult male population.<sup>70</sup> Among incarcerated males, Latinos make up 41 percent and African-Americans 29 percent.<sup>71</sup> These populations, which together constitute a vast majority of California’s incarcerated population, are populations that have faced a long history of barriers to voting.<sup>72</sup>

Like many states, California’s laws impose *de jure* disenfranchisement on individuals who are serving sentences in state prison or who are on parole for felony convictions.<sup>73</sup> These citizens’ voting rights are automatically restored upon completion of their sentences. California citizens need only re-register with a local county registrar of voters in one’s county of residence in order to vote upon release from state prison or parole.



\*Source: Public Policy Institute of California<sup>74</sup>

California's first constitution, adopted in 1849, disenfranchised all persons "convicted of any infamous crime."<sup>75</sup> In 1972, voters approved a proposition amending the language to include persons "convicted of embezzlement or misappropriation of public money."<sup>76</sup> The California Supreme Court struck down the entire felony disenfranchisement provision in the California Constitution, concluding that disenfranchising any person who had been convicted of an "infamous crime" violated the Fourteenth Amendment of the U.S. Constitution.<sup>77</sup> California voters passed Proposition 10 in 1974, which amended the felony disenfranchisement clause to the language it bears today:

The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the *conviction* of a felony.<sup>78</sup>

This provision disenfranchises persons only "while serving a sentence of imprisonment or while undergoing an unexpired term of parole."<sup>79</sup>

New challenges to California's felony disenfranchisement law were brought in 2006 and 2009. In *League of Women Voters of California v. McPherson*<sup>80</sup> in 2006, the California Court of Appeal held that the California Constitution does not disenfranchise *every* individual serving a sentence for a felony conviction: those who are incarcerated in local jails as a condition of felony probation or who receive trial court sentences other than state imprisonment are eligible to vote.<sup>81</sup>

***"The impact of felony disenfranchisement on modern communities of color remains both disproportionate and unacceptable."***

– Eric Holder, *United States Attorney General*

In 2009, advocates attempted to limit the definition of what qualifies as a "felony" under article II, section 4 of the California Constitution. In *Legal Services for Prisoners with Children v. Bowen*,<sup>82</sup> a California Court of Appeal rejected an attempt to limit the definition of "felony" in the felony disenfranchisement provision to include only those crimes that were categorized as felonies at common law.<sup>83</sup> The Ninth Circuit Court of Appeals adopted a similar interpretation in *Harvey v. Brewer* in 2010, a challenge to Arizona's felony disenfranchisement law.<sup>84</sup>

Between 2003 and 2010, a challenge to Washington's felony disenfranchisement law unfolded in the Ninth Circuit, which significantly limited how future federal challenges to California's felony disenfranchisement laws are litigated.<sup>85</sup> In *Farrakhan v. Gregoire*, the Ninth Circuit Court of Appeals held that all challenges to felony disenfranchisement laws under section 2 of the VRA must prove that the laws were passed with the *intent* to discriminate, or

that the laws are *intentionally* being implemented in a discriminatory manner.<sup>86</sup> The Ninth Circuit found that felony disenfranchisement laws that have a discriminatory *effect* are not necessarily in violation of section 2 of the VRA. The Ninth Circuit also held that discriminatory intent cannot be proved by statistical evidence of racial disparities in the criminal justice system; however, such evidence is probative of whether the law is discriminatory.<sup>87</sup> The Ninth Circuit decision in *Farrakhan* created a higher legal bar that currently and formerly incarcerated Californians must now meet in order to bring successful voting rights claims under section 2 of the VRA.<sup>88</sup>

Adding yet another barrier, in December 2011, California Secretary of State (SOS) Debra Bowen issued a directive in a memorandum, asserting that individuals who have been convicted of certain low-level felonies and who have been sentenced to community supervision under the Public Safety Realignment Act of 2011 are ineligible to vote under California’s felony disenfranchisement scheme.<sup>89</sup>

In February 2014, the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area (LCCR), the ACLU of Northern California, and Legal Services for Prisoners with Children filed suit in *Scott v. Bowen* on behalf of three Californians, two state taxpayers, All of Us or None and the League of Women Voters California, charging the Secretary of State with allegedly unconstitutionally disenfranchising nearly 60,000 California citizens in the directive issued by her 2011 memorandum.<sup>90</sup> The case is currently pending.

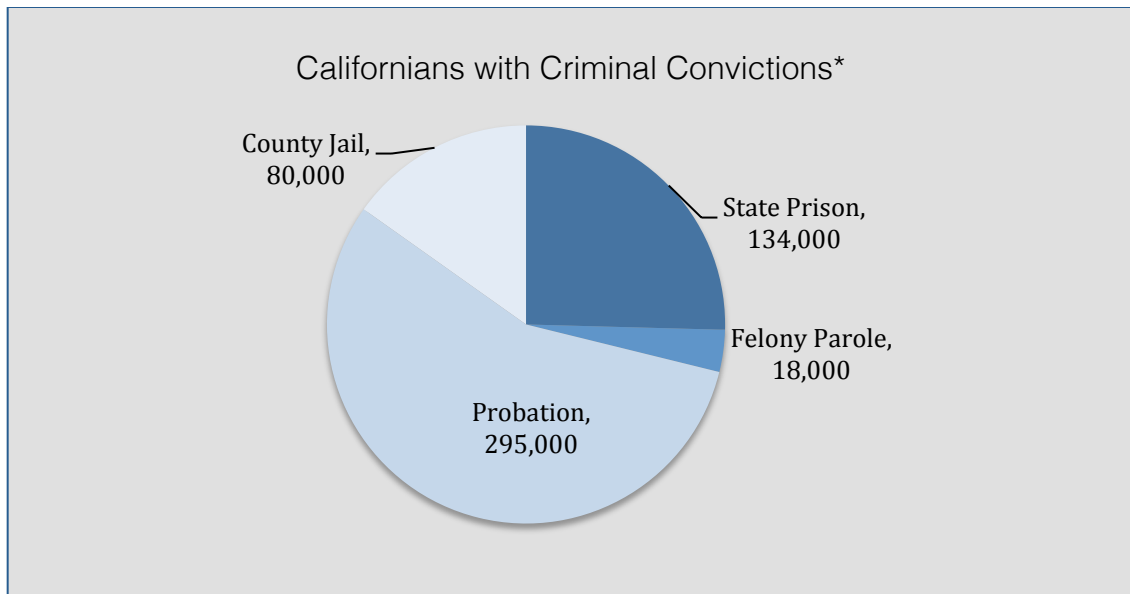
Approximately 180,000 Californians are in state prison or on parole for a felony conviction.<sup>91</sup> Hundreds of thousands of Californians in state prison or on parole for a felony conviction remain deprived of their right to vote as a matter of law under article II, section 4 of the California Constitution. Moreover, as with felony disenfranchisement laws nationwide, California’s laws disproportionately impact minority populations.

The U.S. Attorney General recently spoke out against these laws, stating, “Although well over a century has passed since post-Reconstruction states used these measures to strip African-Americans of their most fundamental rights, the impact of felony disenfranchisement on modern communities of color remains both disproportionate and unacceptable.”<sup>92</sup> *De jure* felony disenfranchisement in California hurts both those who are disenfranchised and also their communities. For the length of their term, these citizens’ communities are deprived of their voices in local, state and federal governance.

## DE FACTO DISENFRANCHISEMENT

*De facto* disenfranchisement occurs when otherwise eligible voters refrain from voting—or “are denied the right to vote”—due to misinformation, confusion, deception, or lack of access to voting or voter registration. The risk of *de facto* disenfranchisement is especially high for individuals with a criminal conviction, who face structural and informational barriers not faced by the general public.<sup>93</sup>

For example, elections officials may be confused about voter eligibility rules and provide incorrect information to a voter with a criminal conviction. Oftentimes, “[e]lection officials receive little or no training on these laws, and there is little or no coordination or communication between election offices and the criminal justice system.”<sup>94</sup> Election officials may refuse to answer questions about voter eligibility or refer callers to other offices that are unable to answer such questions.<sup>95</sup> If an eligible voter believes he is not eligible due to a criminal conviction, or is told that he is not eligible by an official, that eligible voter generally will not seek to register to vote.<sup>96</sup>



\*Source: California Department of Corrections & Rehabilitation; California Department of Justice <sup>97</sup>

Dorsey Nunn, Executive Director of Legal Services for Prisoners with Children and Co-Founder of All of Us or None, observes, “It is common knowledge that the system is absolutely broken when it comes to the voting rights of incarcerated and formerly incarcerated people in California. There is no real fundamental difference between benign neglect, deliberate indifference and thievery. Especially, when people in power refuse to invest in staff trainings, public education, adequate distribution of registration forms and a meaningful communication strategy among government officials.”<sup>98</sup> This confusion and dissemination of misinformation (or no information) results in the *de facto* disenfranchisement of numerous eligible voters.

The *de facto* disenfranchisement of countless Californians significantly dilutes the voting strength of the entire community, whose voices, concerns and preferences are stifled by their members’ inability to participate equally in the political process. As a result these citizens’ communities have an unequal “say in matters that impact the quality of their lives, such as how their taxes are spent or education issues that affect their children.”<sup>99</sup>

### *De Facto* Disenfranchisement in California

More than 350,000 Californians were on probation or incarcerated in county jail in 2012.<sup>100</sup> In California, all persons on probation, incarcerated for misdemeanor convictions, or who are awaiting a criminal conviction or sentencing are eligible to vote. As noted *supra*, only persons in prison or on parole for a felony conviction are disqualified from voting.<sup>101</sup> Therefore, an estimated 295,000 Californians on probation and 81,000 incarcerated in county jails were otherwise eligible to vote in 2012.<sup>102</sup> Eligible voters with criminal convictions face a high risk of *de facto* disenfranchisement, as significant information costs and procedural hurdles to voter registration result in widespread *de facto* disenfranchisement of individuals with criminal convictions.

**Information Barriers.** Information costs faced by individuals with criminal convictions can result in the *de facto* disenfranchisement of a large number of California citizens. Californians who are incarcerated or on probation depend on their local sheriff's offices, probation departments and local election offices for information regarding their voting rights. In reality, however, many of these officials have not been uniformly trained or equipped to answer these questions correctly.

***“It is common knowledge that the system is absolutely broken when it comes to the voting rights of incarcerated and formerly incarcerated people in California.”***

*– Dorsey Nunn, Executive Director of Legal Services for Prisoners with Children, co-founder of All of Us or None*

Between 2005 and 2008, the ACLU of Northern California (ACLU) conducted a statewide phone survey to determine the awareness of state and local officials about the voting rights of individuals with criminal convictions.<sup>103</sup> The ACLU found that a majority of California's sheriff's offices, probation departments, and local election officials provided incorrect or no information when asked about the voting rights of Californians with criminal convictions.<sup>104</sup>

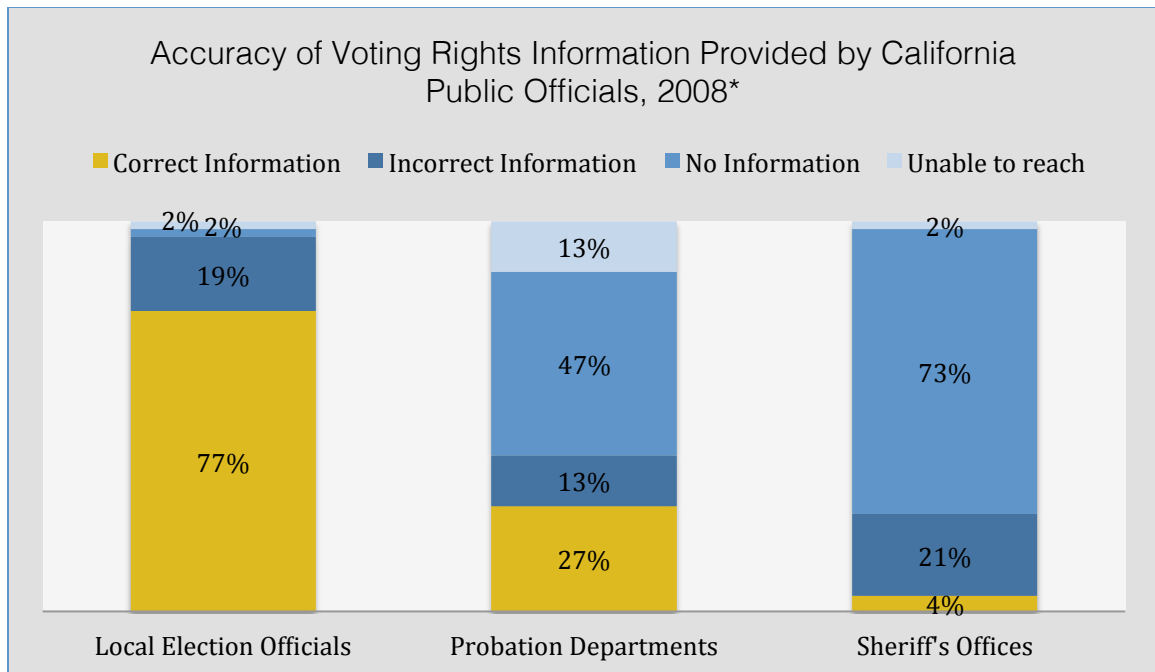
In the Spring of 2005, the ACLU found that, when asked whether a person can vote if she has a criminal conviction, 77 percent of local elections officials and 52 percent of probation departments provided *incorrect* information.<sup>105</sup> Moreover, not a single sheriff's office provided correct information. 85 percent of sheriff's offices provided *no* information and referred the caller elsewhere; the remaining 15 percent provided incorrect information.<sup>106</sup> Many offices failed to distinguish the important difference between felonies and misdemeanors, and between probation and parole.<sup>107</sup> By 2008, as a result of local advocacy, the awareness of these officials improved; however, incorrect information was still provided much of the time.<sup>108</sup> A staggering 69 percent of sheriff's offices still provided *no* information to callers who requested

information on the voting rights of those under their supervision, as did nearly one-third of probation offices.<sup>109</sup> Only 4 percent of sheriff's offices and 27 percent of probation departments provided *correct* information.<sup>110</sup>

In addition, the ACLU observed instances where Spanish translators incorrectly translated information from these offices regarding voting eligibility. For example, a sheriff's office translator incorrectly interpreted, “He cannot vote if convicted of a felony,” to, “He cannot vote if convicted of a *crime*.”<sup>111</sup> This presents a great risk of disenfranchising eligible voters who speak languages other than English.

The ACLU's 2005-2008 findings demonstrate the significant information hurdles that voters with criminal convictions face when seeking to exercise their right to vote. An eligible voter with a criminal conviction who is incorrectly told that she is ineligible by a California official is unlikely to register to vote. If she does not seek out information or receives no information, the eligible voter may mistakenly believe that she is ineligible. Many otherwise eligible citizens who are misinformed, confused or otherwise disillusioned about their voting rights may fail to even ask about their rights due to fear of prosecution and future jail or prison time for registering or voting illegally.<sup>112</sup>





\*Source: Maya Harris, *Making Every Vote Count* (ACLU of Northern California)<sup>113</sup>

**Procedural Barriers.** Incarcerated individuals also face significant procedural hurdles to voting and registering to vote. California county jails and correctional facilities house a large population of eligible voters; yet, it is often difficult for these citizens to register to vote.<sup>114</sup> Although the National Voting Rights Act of 1993 (NVRA)<sup>115</sup> requires the Department of Motor Vehicles (DMV) and public assistance agencies to provide voter registration services to make it easy for under-served populations to register to vote, incarcerated voters are unable to access these two means of registration.<sup>116</sup>

Incarcerated individuals rely on the services provided to them by the facility in which they are incarcerated. Corrections offices, such as sheriff's offices, probation departments and county jails, are not currently listed as designated public assistance agencies under the NVRA, and therefore they are not required to automatically offer voter registration to those who seek their services. Often in California, the only means for incarcerated individuals to register is to affirmatively request a mail-in voter registration application through their correctional facility and local elections office,<sup>117</sup> and many often do not receive assistance filling out the registration form.<sup>118</sup>

Mail-in registration for incarcerated Californians is problematic for two reasons. First, as discussed, *supra*, many inmates are misinformed and as a result, may adhere to misconceptions about their voting rights; these inmates will not seek out mail-in registration at all. Second, in enacting the NVRA, the U.S. Congress recognized that mail-in registration alone is ineffective even for non-incarcerated citizens. "While mail registration procedures make registration convenient, in communities where resources are limited, it has been demonstrated to be ineffective in registering those who have been historically left out of the registration process."<sup>119</sup>

**Although mail registration makes voter registration convenient, ... it has been demonstrated to be ineffective in registering those who have been historically left out of the registration process.**

In 2011 and 2012, San Francisco County took a big step forward to break down the procedural barriers to voter registration in its county jails. San Francisco Sheriff Ross Mirkarimi partnered with the San Francisco Department of Elections to institute a department-wide voter registration program.<sup>120</sup> The program reported a 90 percent inmate-voting rate in November 2011 and registered a total of 432 inmates to vote in the November 2012 elections.<sup>121</sup> As the San Francisco Sheriff's office observed in 2012, "For much of [San Francisco's] incarcerated population, this registration drive is the first time that they have been engaged in the voting process."<sup>122</sup> If all 58 counties were to follow this example, it would remedy one of the largest causes of *de facto* disenfranchisement in California.

The families and communities that support these Californians are the unseen victims of *de facto* disenfranchisement. As the family members, spouses, partners, children, grandparents and grandchildren of currently and formerly incarcerated Californians are deprived of a voice, the diverse communities they remain a part of are also deprived of a full voice in the democratic process. *De facto* disenfranchisement should be an easy problem to fix. Information barriers can be eased by public education and statewide standards for the education of government officials. Procedural barriers can be broken down by providing materials in county jails and ensuring that criminal justice agencies and election officials are informed about voter eligibility. In California, both felony disenfranchisement, discussed *supra*, and *de facto* disenfranchisement increasingly provide community members less opportunity "than other members of the electorate to participate in the political process and to elect representatives of their choice."<sup>123</sup>

## Vote Suppression

Vote suppression "seeks to decrease the number of eligible voters and, generally, take the electoral power away from individuals or groups."<sup>124</sup> It is an umbrella term that includes a number of practices that have the intent or effect of preventing people or a group of people from voting. Historically, people of color have disproportionately borne the brunt of laws and practices designed to remove their voices from the political process.<sup>125</sup> In the Jim Crow era, poll taxes and literacy tests resulted in the widespread, government-sanctioned disenfranchisement of people of color. In addition, violence and threats intimidated eligible voters and kept them away from the polls.<sup>126</sup> These government and third-party tactics "were so effective that between 1896 and 1924 ... the black vote dropp[ed] from 44 percent to essentially zero percent."<sup>127</sup> Even after the enactment of the federal Voting Rights Act (VRA), eligible citizens have had to navigate "a complicated maze of local laws and procedures," creating obstacles to voting sometimes "as restrictive as the outlawed practices."<sup>128</sup> "[V]oter suppression tactics today are often less violent and less overt, but minority communities are still targeted."<sup>129</sup>

Vote suppression can be divided into two categories of practices, which often overlap: voter intimidation and voter deception.

Voter *intimidation* involves a wide range of conduct, including the use of threats, such as violence, incarceration, force, or threat of force to intimidate a person in a manner that coerces voter behavior. Specifically, voter intimidation seeks to either force a person to vote a certain way or dissuade a person from voting at all.<sup>130</sup>

In the decades following the U.S. Civil War, violence and threats of violence were common and pervasively practiced by both public officials and third parties to prevent African-Americans from voting. Today, voter intimidation appears in more subtle forms, and often takes the appearance of election security tactics.<sup>131</sup> Common voter intimidation tactics include the presence of law enforcement, the presence of election observers who are not members of the community, verbal or physical confrontation of voters by people dressed in official-looking uniforms, flyers threatening jail time against persons who vote, photographing or videotaping voters, an employer threatening an employee with lost wages or other penalties unless she votes in a particular manner, and “[a]ny other conduct that

***Vote suppression seeks to decrease the number of eligible voters and, generally, take the electoral power away from individuals or groups.***

might cause voters to believe they may face legal or other problems if they attempt to exercise their right to vote.”<sup>132</sup> Voter intimidation comes not only from third parties but also law enforcement, poll workers and poll observers. Racial and language minority groups are often the targets, facing racial slurs and other acts that “can intimidate voters and dissuade them from casting a vote or returning for future elections.”<sup>133</sup>

Voter *deception* practices seek to suppress or manipulate the votes of “minority, elderly, disabled, and language-minority voters” through the dissemination of misleading information, or the withholding of information, with the intent or effect of distorting, deceiving or confusing voters that an individual or group wants to prevent from voting.<sup>134</sup> During the Civil Rights movement, Dr. Martin Luther King, Jr. described “conniving methods” that were used to prohibit African-Americans from voting.<sup>135</sup> “Conniving

methods” continue today, often targeting minority communities, and often in the form of phone calls, mailings, and emails that provide incorrect information about voter registration status or the time, place and manner of elections.<sup>136</sup>

Deceptive information may seem to be from a trusted source—such as an official government agency or a candidate—and the information may be plausible—such as the date of the election, or information about a candidate.<sup>137</sup> Sometimes voter deception and intimidation tactics are used together; for instance, when a targeted mailing falsely states that one will be arrested if they vote.<sup>138</sup> The recipients of this misinformation may be discouraged from voting, or else may be robbed of their ability to exercise a free vote, due to incorrect information about candidates, ballot measures, voter eligibility, voting day logistics and fear of possible penalties for voting.

Since 2000, deceptive practices have increasingly benefitted from confusion regarding voter identification requirements. States have seen a wave of new voter ID laws, trending toward requiring more restrictive forms of identification in order to vote. Voter ID laws vary widely state-to-state. For example, in most cases California does not require identification in order to vote,<sup>139</sup> whereas Texas requires all voters to present photographic identification or an election identification certificate at the polls.<sup>140</sup> Voters may be unaware of the identification requirements of their state, making voter ID an easy target for voter deception. Voter ID

deception almost always states that more identification is needed to vote than is required by law.

Strict voter ID requirements disproportionately affect people of color, senior citizens, people with disabilities and low-income voters. Approximately 25 percent of African-Americans and 16 percent of Latinos nationwide do not have a current, government-issued photo ID.<sup>141</sup> Due to historical and socioeconomic barriers, these populations are less likely to possess government-issued photo ID and the documentation required to obtain government-issued photo ID. For many, it is expensive to obtain the necessary documents, and many are unable to travel to DMVs and other designated voter registration state agencies, some of which may be more than 100 miles away and only open at limited times.<sup>142</sup> Moreover, voter ID requirements may be enforced unevenly. “Selectively asking for identification may also be an indication of larger discrimination or voter suppression efforts based upon language or ethnicity.”<sup>143</sup>

Suppression of the right to vote via intimidation or deception not only leads to the disenfranchisement of the individual citizen or a group of citizens, but also undermines their confidence in the democratic process and their government representatives.<sup>144</sup>

## VOTER INTIMIDATION IN CALIFORNIA

Voter intimidation no longer takes the form of what many recognize as the extreme overt violent and threatening tactics of the past. In the twenty-first century, voter intimidation often takes a more subtle form. Over the last thirteen years, California voters have reported experiencing both overt and subtle forms of intimidation—from verbal threats and name-calling, to the presence of law enforcement to threats of arrest and third-party challenges to a voter’s eligibility at the polling place.

***In 2012, a San Bernardino polling place supervisor said that he did not want poll observers who did not speak English at the polling station, and “he had a shotgun” if anybody wanted to do anything about it.”***

In 2001, the nonpartisan Election Protection Coalition was created and led by the Lawyers’ Committee for Civil Rights Under Law in Washington, D.C., to monitor and mitigate election-related problems on and before Election Day.<sup>145</sup> The organization is a nationwide coalition of more than 100 community partners that together provide information to voters and maintain the 1-866-OUR-VOTE hotline, which operates year-round to answer voter questions and receive reports about election issues from voters and election observers. Election Protection logs records of the hotline calls in a database and drafts a yearly report of the state of elections nationwide. A review of the reports gathered from individuals who witnessed and suffered intimidation are compelling and provide useful insight into the issues plaguing California’s elections, including personal accounts of discrimination in California. Much of the information below comes from these reports.

This study found that, from 2000-2013,<sup>146</sup> California voters experienced harassment and intimidation by poll workers, law enforcement and third parties. Although voters and poll observers reported incidents of voter intimidation statewide, a number of reports involved harassment and intimidation of voters in predominantly Latino precincts.

From 2000-2013, callers from California reported that voters experienced various forms of harassment and **intimidation by poll workers**:

- In 2006, a poll worker reportedly harassed voters for allegedly taking too long to vote, even though the lines were not long.<sup>147</sup> That same poll worker questioned an elderly man about who he was going to vote for and told him that he “might as well leave.” The elderly voter left without voting.<sup>148</sup>
- In another Los Angeles precinct in 2006, a poll worker was asking voters their party affiliation and dividing the voting lines accordingly. The poll worker told voters from one line to leave before their ballots were put in the box and that she “would sign them later.”<sup>149</sup>
- In the 2008 primaries, a poll worker alleged a student no longer lived at her reported address and refused to let the student vote.<sup>150</sup>
- In San Diego County in 2012, a Latino voter was called a “wetback” by a poll worker.<sup>151</sup>
- In San Bernardino County in 2012, “the polling place supervisor ordered two Latino Election Protection volunteers to be removed from the premises, stating that he did not want anyone who did not speak his language there. The supervisor then stated that if the volunteers wanted to do anything about it “he had a shotgun.”<sup>152</sup>
- Voters in Fresno reported feeling intimidated by a poll worker “who was primarily targeting Latino voters and telling them, ‘I hope you are voting for the right person.’”<sup>153</sup>

Between 2000-2013, callers from California reported that voters faced **intimidation by law enforcement** while voting:

- In 2006, a deputy sheriff was stationed in a San Francisco polling place. When asked, he said he was there to “protect the voters.”<sup>154</sup>
- At a Los Angeles county polling place in 2012, security workers were scanning voters with a metal detection wand before they could enter the polling place.<sup>155</sup>
- At another Los Angeles polling place in 2012, a caller reported that a parking enforcement officer was “deliberately” making it difficult for voters to park at the polling place.<sup>156</sup>
- The Election Protection Coalition received six reports of law enforcement intimidation during the November 2012 elections from Southern and Central California.<sup>157</sup>

Between 2000-2013, callers from California reported that voters faced **intimidation by third parties** while voting. A large number of these accounts reported intimidation by polling observers from the “Election Integrity Project” (EIP), an organization affiliated with True The Vote, a Tea Party affiliated group.<sup>158</sup>

- At a polling place in Fresno in 2012, voters felt intimidated by individuals who were standing less than 100 feet from the polling place and were telling individuals not to vote for one of the candidates.<sup>159</sup>
- In Redlands in 2012, EIP observers were reportedly telling the polling place supervisor that several African-American voters should not be allowed to vote.<sup>160</sup>
- In 2012, voters at one Fresno County polling place reported feeling intimidated by the presence of four-to-seven EIP observers. An Election Protection volunteer who requested that the number of observers be limited was “threatened with imprisonment and fines.”<sup>161</sup>
- In Orange County in 2012, EIP observers “positioned themselves right over voters and watched how the voters were marking their ballots, creating an intimidating atmosphere.”<sup>162</sup>
- A 2012 hotline caller from Orange County reported that EIP observers were standing two-to-three feet from voters and taking notes as nurses were helping disabled people vote.<sup>163</sup>
- In San Diego County in 2012, a caller reported EIP observers questioning individuals who were providing language assistance as to why they are helping voters.<sup>164</sup>
- Another 2012 report from San Diego County reported that EIP observers were telling poll workers that voters who said their name “hesitantly” should be made to vote provisionally.<sup>165</sup>

Even in the twenty-first century, many voters in California are the victims of voter intimidation. Because of these second-generation intimidation practices, some California voters have been turned away from the polls and prevented from voting at all.

## VOTER DECEPTION IN CALIFORNIA

California voters in the twenty-first century have also been the targets of deceptive practices. Voters have been targeted by misleading phone calls and mailings, preventing them from exercising an informed vote. Voters have been wrongly informed of their rights, voter eligibility, and registration status, causing numerous voters to cast provisional ballots instead of regular ballots, and preventing some voters from voting at all.

Voter deception in California has often come from poll workers who required voters to present identification in order to vote. California law does not require the presentation of ID at the polls in order to vote.<sup>166</sup> Pursuant to the Help America Vote Act of 2002 (HAVA) and California law, ID can only be requested if, and only if, the voter rolls list the voter as a new voter who mailed in the registration form without ID.<sup>167</sup> In addition, several forms of proof of ID are acceptable, and need not include a photo.<sup>168</sup> Yet, between 2000-2013, a significant number of Californians were forced to vote provisionally and some were even turned away from the polls for failing to present adequate identification.<sup>169</sup> It is unclear how much of this misinformation is intentional—provided by people who know that ID is generally not

required in California—or the unintentional result of a systemic procedural problem: poorly-trained poll workers who are unaware of state law on correct voting procedures.

Over the last decade, the Election Protection Coalition also received a number of reports from callers that poll workers and third parties unlawfully demanded that voters present identification in order to vote:

- In 2006, Election Protection received reports that poll workers in San Francisco and Los Angeles counties were asking voters for ID in order to vote.<sup>170</sup> One poll worker stated “that he was checking ID contrary to California law because he wanted to be sure no ‘foreign nationals’ voted.”<sup>171</sup>
- In 2008, poll workers in a Baldwin Park polling station demanded that voters present identification in order to vote.<sup>172</sup>
- In 2012, poll workers throughout Corona, Escondido, Fresno, Los Angeles, San Diego and Riverside demanded that voters present ID in order to vote.<sup>173</sup>
- In 2012 in Compton, Los Angeles, and La Habra, poll workers turned voters away if they could not present ID, not allowing them to vote.<sup>174</sup>

In addition, California voters reported receiving phone calls and printed materials containing false or misleading information:

- In 2012, a Santa Clara voter received a phone call stating there was a problem with her registration.<sup>175</sup>
- In 2012, two-dozen Spanish-speaking voters in Los Angeles received Spanish-language robo-calls and mailers “instructing them to vote on the day *after* Election Day.”<sup>176</sup>

Between 2000-2013, many California voters were forced to cast provisional ballots even when they should have been permitted to cast normal ballots. Excessive provisional balloting was a problem, particularly in predominantly Latino and African-American precincts.<sup>177</sup> Provisional ballots are permitted under HAVA and California law to ensure no voter who may otherwise be eligible is turned away.<sup>178</sup> However, they have been criticized as inefficient at best,<sup>179</sup> and as a “second class” ballot at worst. This is particularly true when used in predominantly African-American and Latino precincts at excessively high rates, and where it is unclear whether or not the provisional ballot will even be counted.<sup>180</sup>

California voters continue to be the victims of voter deception. Voter deception threatens the integrity of our democratic processes. The dissemination of misleading phone calls, mailings, and other advertisements can rob voters of the ability to accurately express their electoral preferences, and may even prevent some from voting at all. Without greater protections under law, and consistent enforcement of existing protections, perpetrators of voter suppression will continue to use deceptive practices to unlawfully influence the outcome of California elections.

## Barriers to Language Accessibility

More than 60 million people in the U.S. speak a language other than English at home.<sup>181</sup> Spanish is the primary language spoken at home for more than 37 million of these individuals.<sup>182</sup> Voters with limited-English proficiency (LEP) have an equal right to vote. State and federal laws work to ensure that those with limited English-speaking abilities can exercise this fundamental right.

**More than 43% of Californians speak a language other than English at home.**

The federal Voting Rights Act (VRA) has been instrumental in both protecting and increasing the electoral participation of LEP voters.<sup>183</sup> The VRA requires that voting materials be translated and that language-minority citizens receive the language assistance they need to exercise their right to vote. Specifically, section 203 requires that certain “covered” jurisdictions provide all “voting materials”—such as “registration or voting notices, forms, instructions, assistance, or ... ballots”—in the languages commonly spoken by the local population.<sup>184</sup>

A state or political subdivision is covered if the voting-age citizens of a language minority group comprise 5 percent of its citizen voting age population, or total more than 100,000.<sup>185</sup> California courts have interpreted section 203 to require translation of voting materials “provided by” the county.<sup>186</sup> However, section 203 does not require translation of any voting materials provided by private parties.<sup>187</sup>

Section 208 entitles LEP voters to receive “assistance by a person of the voter’s choice,” provided that person is not an officer or agent of the voter’s employer or labor union.<sup>188</sup>

Although the VRA is intended to ensure equal access to the polls, language barriers continue to persist even in covered jurisdictions, and the VRA often remains unenforced. Although a large number of U.S. citizens use some form of language assistance on Election Day,<sup>189</sup> studies have shown that jurisdictions nationwide fail to provide required translated materials; display translated materials, such as signs designating polling place locations, and often fail to provide bilingual voter assistance at the polls.<sup>190</sup>

Lack of access to assistance and materials in a voter’s language prevents eligible voters from being able to engage meaningfully in the electoral process. Where elections are made inaccessible, LEP voters may not be able to express their true political preferences and electoral choices, and this may discourage voters from going to the polls.<sup>191</sup>

## BARRIERS TO LANGUAGE ACCESSIBILITY IN CALIFORNIA

More than 43 percent of Californians, and over 2.6 million eligible California voters, speak a language other than English at home, predominantly Spanish and a number of Asian languages.<sup>192</sup> From 2000 to 2013, the number of Latino voters in California nearly doubled, and the number of Asian voters increased by two-thirds, while the white voting population fell 13.5 percentage points.<sup>193</sup> Many Latino and Asian voters in California also speak languages other than English at home. In California, a large number of households in major metropolitan areas speak a language other than English at home.<sup>194</sup> See Table 1.



**Table 1: Percent of population speaking a language other than English at home<sup>195</sup>**

<b>Metropolitan Area</b>	<b>% Population spoke a language other than English at home</b>
El Centro	72.8%
Los Angeles-Long Beach-Santa Ana	54.3%
Salinas	53.7%
Visalia-Porterville	50.7%
San Jose-Sunnyvale-Santa Clara	50.5%
Merced	50.1%
Fresno	44.3%
Modesto	41.9%
San Francisco-Oakland-Fremont	40.5%
San Diego-Carlsbad-San Marcos	37.7%

From this population comes large numbers of California voters who require language assistance. According to a 2013 report by Asian Americans Advancing Justice,

Election Day surveys confirm that language assistance is important to Asian American voters from various ethnic communities. For example, 30 percent of Chinese Americans, 33 percent of Filipino Americans, 50 percent of Vietnamese Americans and 60 percent of Korean Americans in Los Angeles County used some form of language assistance in the 2008 presidential election. More than 60 percent of Vietnamese voters surveyed in Orange County for the 2004 presidential election used language assistance to vote.<sup>196</sup>

Election Day surveys confirm that language assistance is important to Asian American voters from various ethnic communities. For example, 30 percent of Chinese Americans, 33 percent of Filipino Americans, 50 percent of Vietnamese Americans and 60 percent of Korean Americans in Los Angeles County used some form of language assistance in the 2008 presidential election. More than 60 percent of Vietnamese voters surveyed in Orange County for the 2004 presidential election used language assistance to vote.<sup>197</sup>

Twenty-five California counties are required to provide bilingual voting materials under section 203 and assistance by a person of the voter's choice under section 208 of the VRA.<sup>198</sup> Language access provisions of the California Election Code cover another set of languages spoken by 3 percent or more of the voting age population in precincts in more than 8 counties.<sup>199</sup> In addition, the California Secretary of State provides election-related materials and voter hotline assistance in English, Spanish, Chinese, Hindi, Japanese, Khmer, Korean, Tagalog, Thai and Vietnamese.<sup>200</sup> Thus, in theory, language assistance should be widely available to limited-English speaking Californians. However, between 2000-2013, our study found that LEP voters in California continued to face adversity on Election Day, as cities and counties failed to fulfill their obligations under state and federal law.

Beginning in the early 2000s, the U.S. Department of Justice (DOJ) identified a number of California jurisdictions in violation of their obligations under section 203 of the VRA.<sup>201</sup> As of 2013, the DOJ has filed complaints alleging that nine jurisdictions failed to provide equal access to the electoral process for limited-English speaking citizens: Ventura County (2004), San Diego County (2004), San Benito County (2004), City of Rosemead (2005), City of Paramount (2005), City of Azusa (2005), City of Walnut (2007), Riverside County (2010) and Alameda County (2011).<sup>202</sup> These findings resulted in federal court consent decrees in seven jurisdictions, a stipulated federal court order in one jurisdiction, and memorandums of agreement in two jurisdictions, in order to address continued violations.<sup>203</sup>

Although the DOJ has attempted to enforce sections 203 and 208, violations continue to persist throughout California. A number of language access issues were reported in California on Election Day in 2010 and 2012. One Panorama City polling place did not have any bilingual poll workers.<sup>204</sup> In that same polling station, “the headset intended by the county to provide Spanish translation ... was not functional.”<sup>205</sup> A caller reported that LEP voters faced unusually long lines at a Los Angeles polling place, which had only one bilingual election official; “[w]hen the [election official] went on a lunch break, Spanish-speaking voters were left without any assistance.”<sup>206</sup>

In San Francisco and Sacramento Counties, poll monitors observed poll workers illegally preventing a LEP voter from bringing a helper into the voting booth.<sup>207</sup> In addition, incidents of rudeness toward voters needing language assistance were observed in Los Angeles, Orange, Santa Clara and San Mateo counties.<sup>208</sup> One Los Angeles County polling place was closed on Election Day, and the only sign directing voters to the new location was in English.<sup>209</sup> Polling places in Los Angeles and San Mateo counties also ran out of multilingual ballots and voting materials.<sup>210</sup>

Asian Americans Advancing Justice conducted a nationwide poll monitoring effort to assess counties’ compliance with section 203 of the VRA during the November 2012 elections.<sup>211</sup> Of the California precincts monitored, an alarming number had “at least one missing or poorly displayed translated material.”<sup>212</sup> See Table 2.

**Table 2: Selection of California precincts with missing or poorly displayed translated election materials<sup>213</sup>**

<b>Jurisdiction</b>	<b>% Precincts with at least one missing or poorly displayed translated material</b>
Los Angeles County	57%
San Mateo County	37%
Sacramento County	36%
San Diego County	36%
Santa Clara County	36%
Orange County	33%
Alameda County	29%
San Francisco County	9%

In 2013, California enacted AB 817, which expands language access by enabling legal permanent residents to serve as bilingual poll workers.<sup>214</sup> However, other legislative efforts have proven repeatedly unsuccessful, including efforts to reform the English-only limitations of the statewide ballot initiative summary, title and signature process for statewide initiatives and referenda, an integral part of the state's election code.<sup>215</sup>

It is evident that these and other problems faced by limited-English speaking voters in California are significant and far-reaching. California cities and counties are failing to fulfill their legal obligation to ensure that all citizens, no matter their English-language status, have equal access to the electoral franchise. The lack of proper language assistance can significantly impact the ability of language-minority populations to elect their representatives of choice and to have a say in the governance of their communities.

### *Barriers to Disability Accessibility*

The U.S. Census Bureau reports that there are more than 57 million people with disabilities living in the United States.<sup>216</sup> Persons with disabilities face significant physical and systemic barriers to voting. Physically, if a polling place is not accessible or if disability-accessible voting machines and ballots are not available, a disabled voter is unable to exercise the right to vote. Systemically, if voters are not informed of available voting accommodations, or if poorly trained poll workers deny a disabled voter access to the accommodations to which they are entitled, such as assistance by the voter's person of choice, then the disabled voter is unable to fully engage in the electoral process.

Every citizen has the right to a secret vote in an accessible place. An extensive set of federal laws set forth standards and protections to ensure that the right to vote is not contingent on one's disability status.

The federal ***Voting Rights Act (VRA)*** protects the right of every "voter who requires assistance to vote by reason of blindness, disability or inability to read or write may be given assistance by a person of the voter's choice."<sup>217</sup>

The ***Help America Vote Act (HAVA)*** provides federal funding to states to make polling places accessible to individuals with disabilities "in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters."<sup>218</sup> HAVA funding is contingent on states providing individuals with disabilities appropriate information regarding the accessibility of polling places, as well as appropriate training of election officials, poll workers and election volunteers on how to assist disabled voters to ensure their rights are protected.<sup>219</sup>

The ***Voting Accessibility for the Elderly and Handicapped Act (VAEHA)*** requires that each state and political subdivision ensure that polling places are accessible to each disabled and elderly voter, and that, upon voter request, the voter be provided with alternative means of casting a ballot.<sup>220</sup> In addition, voting aids must be provided to disabled and elderly voters, including materials printed in large type and telecommunications devices for the deaf; further, the public must be notified of the availability of these aids.<sup>221</sup>

The ***Americans with Disabilities Act (ADA)*** requires that public programs and public places ensure that every person has equal enjoyment of their facilities, services and privileges by requiring them to be physically accessible and to provide auxiliary aids and

services where possible.<sup>222</sup> Under the ADA, voters with disabilities have the right to assistance in registering to vote, the right to an accessible polling place, and the right to an accessible means of voting that ensures the secrecy and privacy of the vote.

The *National Voter Registration Act (NVRA)* makes it easier to register to vote by creating universal mail-in voter registration<sup>223</sup> and requiring state and federal agencies that provide public assistance, including agencies that provide services to persons with disabilities, to provide for accessible voter registration through their offices.<sup>224</sup>

Despite these extensive protections, physically inaccessible polling places and absent or nonfunctioning disability-accessible voting equipment continue to compromise the voting rights of California citizens. If any component of voting is inaccessible, disabled Californians lose the integrity and secrecy of their fundamental right to vote.

## BARRIERS TO DISABILITY ACCESSIBILITY IN CALIFORNIA

The state of California has enacted an extensive set of laws, policies and procedures to implement the federal law mandate to provide assistance to disabled voters. The California Accessible Voting Technology Act of 2002<sup>225</sup> requires each polling place to have at least one voting unit for individuals who are blind or visually impaired that is equivalent to the voting access that is provided for individuals who are not blind or visually impaired.<sup>226</sup> In addition, the California Secretary of State (SOS) maintains a number of policies designed to comply with HAVA's accessibility and training requirements.<sup>227</sup>

The SOS requires elections officials to ensure that polling places are accessible to voters with disabilities and has created "Polling Place Accessibility Guidelines."<sup>228</sup> Before every election, every registered voter is to be notified if his or her polling place is accessible.<sup>229</sup> In addition, a Statewide Voting Accessibility Advisory Committee advises the office of the SOS on ways to ensure that disabled voters can vote independently and privately.<sup>230</sup> The SOS also asks voters with disabilities to complete a confidential survey to help identify issues that continue to impact voters with disabilities that the SOS and local elections can address.<sup>231</sup>

Yet, despite all of these legal and procedural protections, California voters with disabilities continue to face significant, and often unnecessary, hurdles to exercising their right to vote.

In 2013, The California Council for the Blind (CCB) sued Alameda County for allegedly failing to provide adequately accessible voting machines on Election Day, in violation of the ADA.<sup>232</sup> CCB alleged that accessible voting machines were not fully operational at all polling sites, poll workers were not trained on how to set up and use the machines, the machines were not adequately tested, technical support was not available, and solutions were not implemented when problems with the machines were identified.<sup>233</sup> The suit is currently pending.<sup>234</sup>

In 2010 and 2012, the Election Protection Coalition hotline also received reports of non-functioning disability-accessible voting machines in Alameda, Contra Costa, Fresno, Los Angeles, and Orange counties.<sup>235</sup> In addition, poll monitors from Asian Americans Advancing Justice reported numerous instances of malfunctioning or non-functioning voting equipment in Alameda, Sacramento, San Diego, San Francisco, San Mateo, Los Angeles and Orange counties.<sup>236</sup>

***In one Los Angeles County polling station, blind voters were turned away because the audio technology to assist blind voters was not functioning.***

A number of disabled voters in California gave personal accounts of difficulties they faced while voting on Election Day. In 2010 and 2012, a number of voters reported issues with disability-accessible voting equipment not functioning. Because the only disability-accessible voting booth was broken in one Orange County polling station, disabled voters reported that they had to vote out in the open, sometimes with the aid of a nurse, compromising their right to a secret vote. Further, third party “Election Integrity Project” (EIP) observers were taking notes as the nurse assisted the disabled voters.<sup>237</sup> In one Los Angeles County polling station, blind voters reported that they were turned away because the audio technology to assist blind voters was not functioning.<sup>238</sup>

A blind voter in Contra Costa County reported that she had to return to her home to retrieve her own headphones, because the audio voting machine at her precinct did not have its own headphones, which were necessary for the equipment to function.<sup>239</sup> Similarly, it was reported that audio voting equipment was not set up in one Alameda County precinct 45 minutes after polls were opened. Once the equipment was set up, an observer reported, it did not function, and at least one voter was unable to cast an independent vote.<sup>240</sup>

Disabled and elderly voters reported a range of other issues while attempting to vote at polling sites during the 2010 and 2012 elections.<sup>241</sup> One Los Angeles County resident reported that she had attempted to assist her elderly mother to vote, but was challenged by a poll worker. The daughter felt that she and her elderly mother were mistreated by the poll worker; the mother ultimately voted without any assistance.<sup>242</sup> In Ventura County in 2012, a caller reported that a poll worker refused to allow a disabled voter to vote via curbside voting, and claimed that the voter was not disabled but merely did not want to wait in line.<sup>243</sup> In Los Angeles County, a voter who was more than 70 years old reported that she was not able to get to her polling place that was farther than two miles away, and was unable to get assistance to get to the polling place.<sup>244</sup>

In spite of the extensive protections enshrined within federal and state law, voters with disabilities in California continue to face barriers at the polls. Greater protections are necessary to ensure that the policies and procedures put in place to assist disabled and elderly voters *actually* assist these voters. The existence of accessible voting equipment at polling places is inadequate if the equipment is not functional; the legal right to assistance at the polls is not truly a right if poll workers are unaware or unwilling to protect it. Disabled voters are an extremely diverse population with a wide variety of priorities and opinions. More must be done to guarantee disabled Californians full and meaningful participation in the electoral process.

### III. CHALLENGES, LIMITATIONS & WHY WE NEED REFORM

Given the breadth and depth of voting rights barriers and violations, as well as the increasingly complex structural and systemic forms of voting discrimination at local and state levels found in this study, it is apparent that much work remains to be done, both legislatively and administratively, to address these continued harms today. Civil rights advocates and communities experiencing vote dilution, voting discrimination, disenfranchisement, intimidation and suppression must remain vigilant and continue to advocate together in coalition for stronger protections and reform under federal and state law.

#### *Federal Reform*

As noted in the introduction, the proposed Voting Rights Amendment Act of 2014 (VRAA) would help fill the gap that currently exists in the federal Voting Rights Act (VRA) by instituting a new rolling coverage formula designed to address current burdens. Clearly, Congressional action to respond to the Supreme Court's *Shelby County* decision is essential.

The VRAA could and should be strengthened, however, in a number of ways, and other federal reforms are equally necessary:

- 1. Adopt a “known practices” coverage formula in the proposed federal Voting Rights Amendment Act of 2014, to bring California within federal protection and oversight before common discriminatory election practices cause any further harm to California voters.**

The proposed new coverage formula in the VRAA does not count the use of commonly known discriminatory practices in diverse, growing, multilingual communities as evidence of the need for coverage; instead, only *final judgments* by a court would be counted to determine whether the requisite number of federal law violations had occurred in the preceding 15 years. Other forms of legal redress for voting discrimination and voting rights violations, such as those reviewed in this study, including temporary restraining orders, preliminary injunctions, settlements and consent decrees, would not trigger preclearance coverage under this formula.

Relying on final judgments alone is too narrow and does not adequately or accurately reflect whether voting rights abuses exist. For example, although more than 21 vote dilution cases have been filed under the California Voting Rights Act (CVRA), and no underrepresented community has lost thus far, only one CVRA case has been fully litigated to conclusion on the merits. Similarly, among more than 10 federal language access VRA cases filed and seven VRA consent decrees issued, there has been only one federal language access case litigated through to the merits, and only two published cases brought under the California Constitution that were decided on the merits within the last thirteen years.<sup>245</sup>

Due to this “final judgment” limitation in the coverage formula as currently drafted, only four states would be covered<sup>246</sup>—this would leave California without the protection that this report clearly demonstrates is needed.

This gap can be remedied by adding a “known practices” formula as recommended by national civil rights groups. With such an addition, federal oversight would be triggered not

only by states and jurisdictions with past violations, but by specific practices known to be used with the intent or effect of discrimination, or vote dilution, wherever they occur.<sup>247</sup> In other words, a “known practices” formula would automatically require federal oversight and preclearance of the most common voting practices found to be discriminatory in places with significant or rapidly growing, diverse populations. This would ensure that the definition of a voting rights violation in the proposed House and Senate bills matches the current reality on the ground. “Known practices” include the failure to provide sufficient voting materials in languages other than English, decreasing polling place resources, rapid changes in polling locations, or altering voting district lines in ways that may marginalize or dilute the power of voters of color.

The coverage formula as currently proposed under the VRAA would not take into account the severity or frequency of complaints regarding these known discriminatory practices; however, based on the findings in this report, a “known practices” formula would likely apply to many of the same jurisdictions where these cases are filed in California today.

**2. Pass the provisions of the Voting Rights Amendments Act that require notice and disclosure before, as well as federal monitoring after, any changes are made to election procedures and systems.**

The VRAA grants the U.S. Department of Justice increased authority to monitor jurisdictions that come within the new proposed preclearance formula and already established section 203 language access protections.<sup>248</sup> This increased federal authority will most certainly help identify and curb violations, such as those highlighted in this report that have been collected and reported by under-resourced non-profit organizations and coalitions such as the Election Protection Coalition. In addition, the notice and disclosure reforms proposed under the VRAA that require states and jurisdictions to publicly disclose data regarding voting-age population, the number of registered voters, available voting machines and poll workers, precincts, and any elections changes within 180 days of an election, will ensure greater availability and transparency of information regarding any elections changes before they happen.<sup>249</sup> Likewise, these reforms will ensure that no violation goes unnoticed, and, should litigation be necessary, preliminary injunctive relief for voter suppression and intimidation will be easier to come by for affected voters.

**3. Address the racial impacts of felony disenfranchisement laws by re-introducing and enacting the Democracy Restoration Act, and by introducing a constitutional amendment establishing an affirmative right to vote for all United States citizens.**

What the VRAA does not address, however, are the disparate racial impacts of felony disenfranchisement laws. Since *Farrakhan* all but foreclosed this avenue under section 2 of the VRA, a revitalized section 3 under the proposed VRAA that embraces claims addressing discriminatory effect, in addition to intent, in the criminal justice system, may prove to be a more effective remedy for this type of harm and its disparate impact and effect on the voting power of communities of color. In the meantime, communities across the country are taking Attorney General Eric Holder’s call to end felony disenfranchisement laws across the country<sup>250</sup> to the next level. Some of these efforts include building support for the reintroduction of a strengthened Democracy Restoration Act (DRA),<sup>251</sup> modified from its original format when it was originally introduced in 2009 and 2011.

The DRA of 2011 “declare[d] that the right of a U.S. citizen to vote in any election for federal office shall not be denied or abridged because that individual has been convicted of a criminal offense unless, at the time of the election, such individual is serving a felony sentence in a correctional institution or facility,”<sup>252</sup> and provided enforcement remedies for violations of the DRA. A strengthened DRA could instead read, “the right of a U.S. citizen to vote in any election for federal office shall not be denied or abridged because that individual has been convicted of a criminal offense.” Many civil rights groups are gearing up to engage a national movement for the restoration of voting rights to currently and formerly incarcerated U.S. citizens, seeking state-by-state as well as national reform, including a federal amendment guaranteeing the right to vote to all U.S. citizens,<sup>253</sup> and removing provisions from the Fourteenth Amendment that provide for the disenfranchisement of persons convicted of serious crimes.

## State Reform

At the state level, several actions should be taken to address voter discrimination and the voting barriers identified in this report. We make the following recommendations to California state elections officials, government officials and legislators:

- 1. Strengthen the California Voting Rights Act (CVRA) to address racial polarization and vote dilution of communities of color in single-member district-based election systems, and provide clearer, prescriptive remedies for violations.**

The CVRA has challenged racially polarized voting and vote dilution at the local level across the state, and seen marked success in over 16 cases and settlements. Yet, of the 140 jurisdictions that have voluntarily sought to switch to single-member district-based systems,<sup>254</sup> it remains to be seen whether these jurisdictions—school districts in particular—are working to engage previously underrepresented community members and groups in the restructuring of their election systems and in the drawing of new single-member district lines.

The risk of continued vote dilution, and the overconcentration or division of underrepresented groups in many of these racially polarized jurisdictions, may go unchecked due to the high evidentiary burdens and financial costs incurred in federal litigation under section 2 of the VRA. Communities that do not comprise a majority of a proposed single-member district are not necessarily able to make a *prima facie* claim of vote dilution under section 2.<sup>255</sup> State legislative expansion of the CVRA to address racial polarization in single-member district-based systems, in addition to at-large systems, would provide protections where little to none are currently available for historically marginalized communities who may not have the resources to bring a federal claim.

In addition, the CVRA should be reformed to enable courts to retain jurisdiction after a jurisdiction has moved to a district-based election system, to ensure community engagement and appropriate remedies. This would alleviate many of the burdens identified in this report. Given the success of the current CVRA thus far in encouraging settlement and voluntary compliance, this expansion would incentivize jurisdictions to proactively engage with their communities to increase diversity and fairness in representation. Expansion of the CVRA here would create stronger incentives and opportunities at the local levels for fair



representation and accountability that would prevent further vote dilution suits under both state and federal law.

**2. Ensure and protect the right to vote among 350,000 current and formerly incarcerated Californians. Designate California probation departments and county jails as voter registration agencies under the National Voter Registration Act.**

Systemic procedural barriers, including felon disenfranchisement and *de facto* disenfranchisement, can also be addressed at the state level. A pending court case is likely to resolve the issue of whether 60,000 formerly incarcerated individuals on new forms of post-release supervision—many of whom are African-American and Latino—can lawfully be disenfranchised by the Secretary of State.<sup>256</sup> The Secretary of State and/or the California State Legislature should also designate local county probation departments and sheriff's offices as "designated public service agencies" deputized with the authority to register eligible voters who utilize their services or are in their custody, under the National Voter Registration Act of 1993 (NVRA) ("Motor Voter Law").<sup>257</sup> California has discretion to designate these agencies as NVRA agencies, and could establish standard regulations for voter registration at these agencies based on best practices in Los Angeles and San Francisco County voter registration drives.

Additionally, the Secretary of State and the state Legislature should proactively address the lack of information and misinformation that currently could be disenfranchising upwards of 350,000 otherwise eligible voters. Specifically, they could develop a set of uniform regulations, guidance, training and voter education materials for local probation departments and sheriff's offices modeled on San Francisco City and County's successful voter registration efforts among these public agencies.

In addition, California should heed U.S. Attorney General Eric Holder's call to end felony disenfranchisement laws<sup>258</sup> and initiate a statewide petition for a state constitutional amendment, just as voters did in 1974, to limit the disenfranchisement of California voters. In fact, California voters could petition for a statewide constitutional initiative to amend article II, section 4 in its entirety, completely removing the disenfranchisement provision barring persons in state prison or on parole from voting, and restoring the right to vote to another estimated 180,000 Californians.

**3. Update the online registration and voter information system to find ways to identify eligible voters who are not registered and affirmatively ensure that they have the opportunity to register to vote, in compliance with the NVRA and the Help America Vote Act (HAVA).**

As estimated 5.8 million eligible California voters—nearly a quarter of all those eligible—are currently not registered to vote in California.<sup>259</sup> This may be due to a number of factors, not the least of which is the lack of a consistent, auditable voter registration database and eligible voter information management system. A 2013 report by the Pew Center on the States found that when it comes to availability of online voting information tools, the number of rejected voter registrations, the percentage of voters with registration or absentee ballot problems and voter turnout, California ranks 48th out of the 50 states, keeping company at the bottom of that list with Alabama and Mississippi.<sup>260</sup>

On November 2, 2005, the California Secretary of State (SOS) and the U.S. Department of Justice (DOJ) entered into an agreement that provided the SOS would immediately complete development and begin implementing an interim plan to develop a statewide online voter registration and election database, which was supposed to “utilize[] an enhanced CalVoter system, pending development and completion of the new VoteCal Statewide Voter Registration System. Included with the agreement were draft regulations designed to establish standards and procedures for processing, transmitting, and maintaining voter registration records in conformance with HAVA.”<sup>261</sup> The Memorandum of Agreement provided that the VoteCal system would be HAVA and NVRA-compliant by the end of 2006.<sup>262</sup>

To date, due to a number of extensions to the memorandum of agreement with the DOJ and the failure to comply speedily with its terms over the last ten years, California has remained substantially out of compliance with HAVA; the California Secretary of State has stated that VoteCal is not set to be operational until June 30, 2016.<sup>263</sup> California should heed the recommendations made by the California State Auditor in 2013, and an expert panel at a recent Informational Hearing before the California Senate Select Committee on Science, Innovation and Public Policy.<sup>264</sup> California must update the statewide online registration and voter information system to find ways to identify eligible voters who are not registered and affirmatively ensure that they have the opportunity to register to vote, in compliance with the NVRA and HAVA.

#### **4. Adopt clear statewide standards for voter registration and poll worker training, auditing and evaluation.**

According to a 2013 Public Policy Institute of California study, 62 percent of eligible Latino voters in California are not registered to vote.<sup>265</sup> In addition to the recommendations above, voter suppression, intimidation, and other forms of voter discrimination can and should be proactively addressed and rooted out with standard regulations for the recruitment, screening, training, pay, and evaluation of elections officials and poll workers, and should include a diversity training component.

State legislators should enact laws requiring that county registrars maintain digital and/or paper lists of registered voters who have voted in the last two to three elections in every precinct prior to the full implementation of VoteCal. This would help to avoid the excessive provisional balloting witnessed in many predominantly African-American and Latino precincts on Election Day in 2012. Law enforcement should ensure that, given their record, third party challengers such as EIP are not permitted to enter precincts in California or to unlawfully collaborate with elections officials to intimidate voters or threaten other lawful election observers with arrest.

State and federal law enforcement and regulators should impose stringent state sanctions, such as revocation of nonprofit status or articles of incorporation, on third party groups engaged in voter intimidation on par with current sanctions for election fraud. Counties with the highest number of reported third party or pollworker misconduct should be thoroughly investigated, audited and monitored on a regular basis by the Secretary of State and the California Attorney General.

**5. Strengthen and expand state and federal language and disability access voting rights laws. Make the statewide initiative petition, title and summary process, which is currently English-only, fair and accessible to over 2.6 million eligible California voters who speak languages other than English.**

Language and disability access at the polls can be strengthened in a number of ways at the state level. First, current state laws need to be enforced and followed. Better and more standardized training would help. So, too, would increased funding for more bilingual poll workers, staff, and fully equipped machines designed to make voting easier and more accessible for disabled voters, and, in particular, for disabled voters who speak, read or write languages other than English. The 2013 California Assembly Bill (AB) 817, expanding the pool of potential bilingual poll workers available to assist voters in a greater number of languages, was a positive development for California. To build on the success of AB 817, further legislative reforms should be implemented to authorize the recruitment, training and certification of poll workers directly at the state level, through a centralized and standardized process by the Secretary of State.

As discussed *supra*, Part III.a, the proposed federal notice and disclosure reforms in the VRAA will help ameliorate some of these problems well ahead of Election Day. However, similar state-based legislation would go a long way to remedy many of the systemic barriers limited English-proficient (LEP) and disabled California voters face. This legislation should include specific notice and disclosure requirements to comply with current state and federal language and disability access laws. Although there are a number of reports and federal consent decrees regarding language access violations, very few cases have been filed under state language access and disability provisions over the last thirteen years. The California Attorney General could make it a priority to prosecute state violations of these provisions; legislation that would make it less burdensome for communities to file suit would also be helpful to ensure full compliance with state language and disability access protections.

Finally, California's statewide initiative system, much like the state primary system, is a cornerstone of our democratic process and election systems in California—it is a check on the power of the state legislature and allows every Californian to participate in direct democracy. Current state and federal language access voting rights protections, as discussed *supra* Part II.d, provide for language access assistance and materials in certain precincts and counties. However, this critical language access assistance is not currently provided for the more than 2.6 million California voters who speak languages other than English in the statewide initiative petition, title and summary process.<sup>266</sup>

Language access does not begin and end at the registration and balloting phases of our elections; just as state primaries are the precursor to general elections, the statewide ballot initiative petition summary, title and signature process is a precursor to the decision to vote “Yes” or “No” on a given proposition. LEP voters should have the opportunity to decide whether a proposition is placed on the statewide ballot in the first place. Yet, current guidelines for our statewide title and signature process for initiatives remain an exclusive, English-only franchise.<sup>267</sup> Our state legislature and governor must have the courage to extend state and federal language access laws to all aspects and all levels of our democratic process.

## CONCLUSION

Even into the twenty-first century, California voters continue to face significant barriers to exercising the right to vote. Vote dilution, voting discrimination, *de facto* disenfranchisement, and ongoing barriers to language access and disability access continue to plague California voters well into the twenty-first century. Despite a web of federal and state laws that have been enacted over the past half-century to protect the fundamental right to vote, voters in California continue to confront discrimination and barriers to voting.

More can and must be done. All of us have a role in protecting this fundamental right. Federal and state legislators, executive administrators and local jurisdictions must take action to become more accountable and transparent to the entire diversity of the electorate. Civil rights advocates and communities must remain vigilant and continue to advocate together in coalition for stronger protections and reform under state and federal law. State officials must also work together with underrepresented communities, civic engagement organizations and civil rights advocates to ensure that the fundamental right to vote remains protected for future generations of Californians.

## ENDNOTES

<sup>1</sup> 42 U.S.C. § 1973 (West 2013).

<sup>2</sup> See Assistant Democratic House Leader and Congressman James E. Clyburn (D-SC), Clyburn Statement on Introduction of the Voting Rights Amendment Act of 2014, Jan. 17, 2014, *available at* <http://clyburn.house.gov/press-release/clyburn-statement-introduction-voting-rights-amendment-act-2014> (“Upon signing the 1982 reauthorization of the Voting Rights Act, President Reagan called the right to vote ‘the crown jewel of American liberties’ and pledged that ‘no barrier will come between our citizens and the voting booth.’ The Voting Rights Amendment Act of 2014 is an important step toward renewing our commitment to President Reagan’s pledge in the wake of the Supreme Court’s decision last year in *Shelby County v. Holder*.”).

<sup>3</sup> 42 U.S.C. § 1973(a).

<sup>4</sup> Section 3 of the VRA also allows courts to “bail” certain jurisdictions into section 5 preclearance if the plaintiffs or the DOJ can prove that the jurisdiction intentionally engaged in discriminatory voting practices or procedures. 42 U.S.C. § 1973a(c).

<sup>5</sup> *Shelby County, Alabama v. Holder*, 570 U.S. \_\_\_, 133 S.Ct. 2612 (2013).

<sup>6</sup> *Id.* at 2619 (quoting *Northwest Austin Municipal Utility District v. Holder*, 557 U.S. 193, 203 (2009)).

<sup>7</sup> *Id.*

<sup>8</sup> In California, Kings, Monterey and Yuba counties were previously covered by section 5 of the VRA. *Jurisdictions Previously Covered by Section 5*, U.S. Dep’t of Justice, [http://www.justice.gov/crt/about/vot/sec\\_5/covered.php](http://www.justice.gov/crt/about/vot/sec_5/covered.php) (Last visited Mar. 6, 2014). Merced County “bailed out” of VRA preclearance coverage in 2012 after the DOJ found that the County had demonstrated a 10-year history free of discriminatory election changes. *Shelby County v. Holder*, Amicus Curiae Brief for the National Bar Association in Support of Respondents, United States Department of Justice, at 24-25.

<sup>9</sup> Courts have been reluctant to grant preliminary injunctions in section 2 cases, granting them in approximately five percent of cases. J. Gerald Hebert & Armand Derfner, *More Observations on Shelby County, Alabama and the Supreme Court*, Campaign Legal Center Blog, Mar. 1, 2013, 18:01, [http://www.clcblog.org/index.php?option=com\\_content&view=article&id=506:more-observations-on-shelby-county-alabama-and-the-supreme-court-;](http://www.clcblog.org/index.php?option=com_content&view=article&id=506:more-observations-on-shelby-county-alabama-and-the-supreme-court-;) see also Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 After Shelby County* (working draft, Feb. 9, 2014, forthcoming 2014) at 11.

<sup>10</sup> Voting Rights Amendment Act of 2014, H.R. 3899, S.B. 1945, 113th Cong., (2d Sess. 2014); see also Ari Berman, *Members of Congress Introduce a New Fix for the Voting Rights Act*, THE NATION, Jan. 16, 2014, *available at* <http://www.thenation.com/blog/177962/members-congress-introduce-new-fix-voting-rights-act>.

<sup>11</sup> *Shelby County*, 570 U.S. at \_\_\_, 133 S.Ct. at 2619.

<sup>12</sup> H.R. 3899, S.B. 1945. Specifically, the VRAA (1) brings states within section 5 preclearance coverage if empirical data review of court decisions on the merits reveal five violations of federal voting rights law over a rolling 15 calendar year time period; and (2) brings local jurisdictions within section 5 preclearance coverage if they have committed three or more violations of federal voting rights law or have one violation and “persistent, extremely low minority turnout” over the latest 15-year period. *Id.*

<sup>13</sup> Ellen Katz, Margaret Aisenbrey, Anna Baldwin, Emma Cheuse, & Anna Weisbrodt, *Documenting Discrimination in Voting: Judicial Findings under the Voting Rights Act Since 1982*, 39 U. MICH. J.L. REFORM 643 (2006). We would like to thank the authors of the 2006 Katz Report for inspiring and informing this project.

<sup>14</sup> 2014 Lawyers’ Committee for Civil Rights of the San Francisco Bay Area (LCCR) Voting Rights Project Database Master List, *available at* <http://www.lccr.com> (instructions to search and sort database are included in the master list) [hereinafter 2014 LCCR-VR Database Master List].

<sup>15</sup> OurVoteLive.org, <http://electionawareness.appspot.com> (last visited Mar. 6, 2014) (to search reports follow Search Reports” hyperlink; then follow “Enter it here” hyperlink).

<sup>16</sup> *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Baker v. Carr*, 369 U.S. 186 (1962).

<sup>17</sup> Jack Citrin & Benjamin Highton, *How Race, Ethnicity, and Immigration Shape the California Electorate 1* (Pub. Pol’y Inst. of Cal., 2002).

<sup>18</sup> 42 U.S.C. §§ 1973 (West 2014).

<sup>19</sup> CAL. ELEC. CODE §§ 14026-14032 et seq.

<sup>20</sup> 42 U.S.C. §§ 1973, 1973(b)(f) (West 2014).

<sup>21</sup> 42 U.S.C. § 1973(b).

<sup>22</sup> See Joanna E. Cuevas Ingram, *The Color of Change: Voting Rights in the 21<sup>st</sup> Century and the California Voting Rights Act*, 15 HARV. LATINO L. REV. 183, 185 (2012) (noting the definition of “Racially polarized voting” under section 2 of the VRA and the CVRA); see also Joseph Fishkin, *Equal Citizenship and The Individual Right to Vote*, 86 IND. L.J. 1289, 1360, n. 43-45 (2011) (citing Heather K. Gerken, *Understanding the Right to an Undiluted Vote*, 114 HARV. L. REV. 1663, 1671 (2001)); see also cases promulgated under 42 U.S.C. Sec. 1973 et seq.; CAL. ELEC. CODE § 14026(e) (defining racially polarized voting).

<sup>23</sup> CAL. ELEC. CODE § 14026(a).

<sup>24</sup> CAL. ELEC. CODE § 14027. To bring a CVRA claim, a plaintiff must show that racially polarized voting occurs in the elections for the jurisdiction or political subdivision in question. CAL. ELEC. CODE § 14028(a). Racially polarized voting is shown by proof that the minority group is politically cohesive and that the majority votes as a bloc in a way that defeats the minority’s preferred candidate. Unlike the VRA, however, plaintiffs need not prove that members of the protected class are geographically compact (comprise more than 50 percent or more of the population of a proposed district) nor prove intentional discrimination on the part of the voters or elected officials. CAL. ELEC. CODE § 14028(c)-(d); see Cuevas Ingram, *supra* note 22, at 190 (noting the definition of “Candidate of Choice” under section 2 of the VRA and the CVRA); see also Stephen Ansolabehere, et al., *Race, Region, and Vote Choice in the 2008 Election: Implications for the Future of the Voting Rights Act*, 123 HARV. L. REV. 1385 (2010) (discussing the definition of “candidate of choice” under section 2 of the VRA).

<sup>25</sup> CAL. ELEC. CODE § 14026(b).

<sup>26</sup> In addition, the creation of minority-majority districts may result in higher political participation and voter turnout among minority voters, because being able to elect representatives of choice allows other voters from the population to perceive that “they are able to play a meaningful role in political life.” Claudine Gay, *The Effect of Minority Districts and Minority Representation on Political Participation in California v* (Pub. Pol’y Inst. of Cal. 2001).

<sup>27</sup> See Matt Barreto, et al., *Redistricting: Coalition Districts and the Voting Rights Act* (U.C. Berkeley Chief Justice Earl Warren Inst. on L. & Social Pol’y, May 2011).

<sup>28</sup> See Gilda R. Daniels, *Racial Redistricting in A Post-Racial World*, 32 CARDOZO L. REV. 947, 950-51 (2011) (defining these practices as “cracking,” as “split[ting] large concentrations of minority voters into smaller powerless groups,” and “packing,” as “pack[ing] as many minority voters as possible into districts to limit the number of positions that minorities could control”); see also *Vieth v. Jubelirer*, 541 U.S. 267, 343 (2004) (Souter, J., dissenting) (discussing cracking and packing).

<sup>29</sup> State & County QuickFacts: California, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/06000.html> (last visited Jan. 27, 2014).

<sup>30</sup> *Id.*

<sup>31</sup> See Jean Merl, *Voting Rights Act leading California cities to dump at-large elections*, L.A. TIMES, Sep. 14, 2013, <http://www.latimes.com/local/la-me-local-elections-20130915,0,295413.story>.

<sup>32</sup> Complaint, *Diego v. City of Whittier*, No. BC517363, 2013 WL 4095785 (Los Angeles Super. Ct., filed Aug. 5, 2013), at ¶ 5, 40.

- <sup>33</sup> Peter Fullam, *Palmdale voting rights ruling could foreshadow Whittier's fate*, WHITTIER DAILY NEWS, Dec. 3, 2013, <http://www.whittierdailynews.com/social-affairs/20131203/palmdale-voting-rights-ruling-could-foreshadow-whittiers-fate>.
- <sup>34</sup> Medina v. City of Visalia, Case No. 254528 (Tulare Sup. Ct. filed Dec. 19, 2013, settled Feb. 5, 2014).
- <sup>35</sup> Four cases remain pending. See 2014 LCCR-VR Database Master List, *supra* note 14.
- <sup>36</sup> Sanchez v. City of Modesto, 145 Cal. App. 4th 660, 666-67 (Cal. Ct. App. 2006). The case was filed by LCCR.
- <sup>37</sup> *Id.* at 667.
- <sup>38</sup> *Id.* at 680, 686.
- <sup>39</sup> *Id.* at 667.
- <sup>40</sup> *Modesto City Council*, City of Modesto, California (last visited Jan. 6, 2014), <http://www.modestogov.com/council>.
- <sup>41</sup> Rey v. Madera Unified School District, 203 Cal. App. 4th 1223, 1230 (Cal. Ct. App. 2012). This case was filed by LCCR.
- <sup>42</sup> Mitchell Landsberg, *Madera Unified case is changing elections throughout California*, L.A. TIMES, Jan. 4, 2009, <http://articles.latimes.com/2009/jan/04/local/me-madera4>.
- <sup>43</sup> *Id.*
- <sup>44</sup> *Id.*
- <sup>45</sup> *Meet the MUSD Board of Education*, Madera Unified Sch. Dist. (last visited Jan. 6, 2014), <http://www.madera.k12.ca.us/page/203>.
- <sup>46</sup> Will Evans, *School Boards Vary Widely in Response to Voting Rights Law*, U.T. SAN DIEGO, Mar. 29, 2012, <http://www.utsandiego.com/news/2012/mar/29/school-boards-vary-widely-in-response-to-voting>.
- <sup>47</sup> Diego v. City of Whittier, No. BC517363, 2013 WL 40957585 (Los Angeles Super. Ct. 2013).
- <sup>48</sup> *City of Whittier Reacts to Court Ruling*, CITY OF WHITTIER, Dec. 13, 2013, <http://www.cityofwhittier.org/news/displaynews.asp?NewsID=636&TargetID=1>.
- <sup>49</sup> Jauregui v. City of Palmdale, No. BC 483039 (Los Angeles Super. Ct. 2013).
- <sup>50</sup> *Id.* (Statement of Decision re: Remedies and Order Thereon, Nov. 27, 2013); Jean Merl, *Palmdale ordered to hold by-district election for City Council posts*, L.A. TIMES, Dec. 2, 2013, <http://articles.latimes.com/2013/dec/02/local/la-me-palmdale-elect-20131203>.
- <sup>51</sup> Medina et al. v. City of Visalia, Case No. 254528 (Tulare Sup. Ct., filed Dec. 19, 2013, settled Feb. 5, 2014); Lewis Griswold, *Judge approves City Council district elections in Visalia to end lawsuit*, FRESNO BEE, Feb. 6, 2014, <http://www.fresnobee.com/2014/02/06/3753682/visalia-city-council-district.html>.
- <sup>52</sup> Satorre v. San Mateo County Board of Supervisors, No. 504866 (San Mateo Sup. Ct.) (filed Apr. 14, 2011, settlement signed on Feb. 21, 2013). LCCR, Asian Law Caucus and other litigation partners brought this lawsuit on behalf of Asian and Latino voters in San Mateo County.
- <sup>53</sup> See Merl, *Voting Rights Act leading California cities to dump at-large elections*, *supra* note 50.
- <sup>54</sup> As of the date of this publication, 100 school districts and 18 community college districts have voluntarily sought to change from at-large to district-based election systems, and have sought waivers from the California State Board of Education or the California Community Colleges Chancellor's Office to make this change without holding an election. See 2014 LCCR-VR Database Master List, *supra* note 14. It is important to note that the change from at-large elections by many of these jurisdictions was likely due to fear of expensive lawsuits under the CVRA. See Merl, *Voting Rights Act leading California cities to dump at-large elections*, *supra* note 50.
- <sup>55</sup> Ian James, *Coachella Valley Water District to scrap at-large election system: Change comes after group challenged current system as unfair*, THE DESERT SUN, Nov. 12, 2013, <http://www.mydesert.com/article/20131112/NEWS01/311120010/CVWD-scrap-large-election>

system; Jean Merl, *Coachella water district agrees to change elections system*, L.A. TIMES, Nov. 12, 2013, <http://articles.latimes.com/2013/nov/12/local/la-me-pc-coachella-elections-20131112>.

<sup>56</sup> Ian James, *Coachella Valley Water District to let voters decide how board picked*, THE DESERT SUN, Mar. 4, 2014, <http://www.mydesert.com/article/20140304/NEWS03/303040019/Coachella-Valley-Water-District-voter-board>.

<sup>57</sup> Jean Chung, *Felony Disenfranchisement: A Primer*, 1 (The Sentencing Project, June 2013) available at [http://sentencingproject.org/doc/publications/fd\\_Felony%20Disenfranchisement%20Primer.pdf](http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf).

<sup>58</sup> For example, in Florida individuals must wait five years after completing a felony sentence before applying for restoration of their right to vote. In Nebraska, the waiting period is two years. *Id.* at 1-2.

<sup>59</sup> Maya Harris, *Making Every Vote Count: Reforming Felony Disenfranchisement Policies and Practices in California* 7 (ACLU, 2008), available at [https://www.aclunc.org/sites/default/files/asset\\_upload\\_file228\\_7648.pdf](https://www.aclunc.org/sites/default/files/asset_upload_file228_7648.pdf) [hereinafter *Making Every Vote Count*].

<sup>60</sup> Chung, *supra* note 57, at 2. In Florida, Kentucky and Virginia, more than 20 percent of African-American adults are disenfranchised. *Id.*

<sup>61</sup> MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (The New Press, 1st Ed. 2010); New York Times Bestsellers, N.Y. TIMES, Feb. 18, 2014, <http://www.nytimes.com/best-sellers-books/paperback-nonfiction/list.html>.

<sup>62</sup> ALEXANDER, *supra* note 61, at 154.

<sup>63</sup> *Id.*

<sup>64</sup> See Christopher Uggen, et al., *State Level Estimates of Felon Disenfranchisement in the United States, 2010* (The Sentencing Project, Report, July 2012); Lee Rowland & Myrna Pérez, *Democracy Restoration Act Would Restore Voting Rights to Millions*, HUFFINGTON POST, April 24, 2012, [http://www.huffingtonpost.com/lee-rowland/democracy-restoration-act\\_b\\_1453413.html](http://www.huffingtonpost.com/lee-rowland/democracy-restoration-act_b_1453413.html).

<sup>65</sup> U.S. CONST. amend. XIV, § 2.

<sup>66</sup> *Richardson v. Ramirez*, 418 U.S. 24 (1974).

<sup>67</sup> *Id.* at 54-55.

<sup>68</sup> *Farrakhan v. Gregoire (Farrakhan II)*, 590 F.3d 989 (9th Cir.), *aff'd in part, overruled in part en banc* by *Farrakhan v. Gregoire (Farrakhan III)* 623 F.3d 990, 993-94 (9th Cir. 2010) (per curiam).

<sup>69</sup> Studies show that when individuals are deprived of their voting rights it depresses the voting rates of those around them, further undermining the political power of affected communities. See Jessie Allen, *Documentary Disenfranchisement*, 86 TUL. L. REV. 389, 392, fn. 2 (2011) (citing *Farrakhan v. Gregoire (Farrakhan II)*, 590 F.3d 989, 993-94 (9th Cir. 2010) (“The [district] court found that Plaintiffs’ evidence of discrimination in the criminal justice system, and the resulting disproportionate impact on minority voting power, is compelling.” (internal quotation marks omitted))); Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement*, 56 STAN. L. REV. 1147, 1155-64 (2004); Ryan S. King & Marc Mauer, *The Vanishing Black Electorate: Felony Disenfranchisement in Atlanta, Georgia* (The Sentencing Project, Sept. 2004), available at [http://www.sentencingproject.org/doc/publications/fd\\_vanishingblackelectorate.pdf](http://www.sentencingproject.org/doc/publications/fd_vanishingblackelectorate.pdf).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Jim Crow laws were passed by the states in the decades after the ratification of the Fifteenth Amendment to make voter registration and voting more restrictive for African-Americans and naturalized immigrants. These laws “were so effective that between 1896 and 1924 ... the black vote dropp[ed] from 44 percent to essentially zero percent.” H.R. REP. NO. 103-9, at 2-3. Even after the enactment of the Voting Rights Act, eligible citizens have had to navigate “a complicated maze of local laws and procedures,” creating obstacles to voting sometimes “as restrictive as the outlawed practices.” *Id.* at 3.



<sup>73</sup> CAL. CONST. art. II, § 4; *see generally* League of Women Voters of California v. McPherson, 145 Cal. App. 4th 1469 (Cal. Ct. App. 2006) (defining “imprisoned” under the California Constitution as a sentence served in state prison).

<sup>74</sup> Ryken Grattet & Joseph Hayes, *California’s Changing Prison Population* (Pub. Pol’y Inst. Of Cal., 2013), [http://www.ppic.org/main/publication\\_show.asp?i=702](http://www.ppic.org/main/publication_show.asp?i=702). Populations include both males and females.

<sup>75</sup> CAL. CONST., of 1849, art. II, § 5, adopted in CAL. CONST. of 1849 as art. II, § 1.

<sup>76</sup> League of Women Voters of California v. McPherson, 145 Cal. App. 4th 1469, 1469 (Cal. Ct. App. 2006) (quoting Prop. 7 for the Nov. 7, 1972 election).

<sup>77</sup> Ramirez v. Brown, 9 Cal. 3d 199, 206, 2011, 217 (Cal. 1973) (finding that denying the vote to every person convicted of a felony was not the least restrictive method of achieving the compelling state interest of protecting against morally corrupt and dishonest voters).

<sup>78</sup> CAL. CONST. art. II, § 4 (emphasis added). This provision is implemented by Elections Code section 2101, which states, “A person entitled to register to vote shall be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election.”

<sup>79</sup> Flood v. Riggs, 80 Cal. App. 3d 138, 155 (Cal. Ct. App. 1978).

<sup>80</sup> League of Women Voters of California v. McPherson, 145 Cal. App. 4th 1469 (Cal. Ct. App. 2006).

<sup>81</sup> *Id.* at 1475.

<sup>82</sup> Legal Services for Prisoners with Children v. Bowen, 170 Cal. App. 4th 447 (Cal. Ct. App. 2009).

<sup>83</sup> *Id.* at 450.

<sup>84</sup> Harvey v. Brewer, 605 F.3d 1067 (9th Cir. 2010) (challenging Arizona’s felony disenfranchisement law).

<sup>85</sup> California falls within the jurisdiction of the Ninth Circuit Court of Appeals.

<sup>86</sup> Farrakhan v. Gregoire (*Farrakhan II*), 590 F.3d 989 (9th Cir.), *aff’d in part, overruled in part en banc* by Farrakhan v. Gregoire (*Farrakhan III*) 623 F.3d 990, 993-94 (9th Cir. 2010) (per curiam).

<sup>87</sup> *Id.*

<sup>88</sup> *See* Ryan P. Haygood, *Disregarding the Results: Examining the Ninth Circuit’s Heightened Section 2 “Intentional Discrimination” Standard* in Farrakhan v. Gregoire, 111 COLUM. L. REV. SIDEBAR 51, 61 (2011); Jonathan Sgro, *Intentional Discrimination in Farrakhan v. Gregoire: The Ninth Circuit’s Voting Rights Standard “Results In” The New Jim Crow*, 57 VILL. L. REV. 139 (2012).

<sup>89</sup> Secretary of State CC/ROV Memorandum No. 11134 (issued Dec. 5, 2011). In 2011, California implemented the Public Safety Realignment Act, also known as the Criminal Justice Realignment Act, which sought to decrease criminal recidivism by creating alternative sentences for people convicted of some low-level felony offenses. Under Realignment, California has created two alternative, community-based forms of post-release county supervision: post-release community supervision and mandatory supervision. *See* Scott v. Bowen, RG14712570 (Alameda Super. Ct. filed Feb. 4, 2014).

<sup>90</sup> Scott v. Bowen, RG14712570 (Alameda Super. Ct. filed Feb. 4, 2014).

<sup>91</sup> CDCR, Estimates and Statistical Analysis Section, Weekly Report of Population as of January 22, 2014, [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/WeeklyWed/TPOP1A/TPOP1Ad140122.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad140122.pdf).

<sup>92</sup> Pete Yost, *AG urges restoring voting rights to ex-inmates*, AP/SFGATE.COM, Feb. 12, 2014. <http://www.sfgate.com/news/politics/article/Holder-urges-restoring-voting-rights-to-ex-inmates-5224390.php>.

<sup>93</sup> *See generally* Erika Wood & Rachel Bloom, *De Facto Disenfranchisement* (ACLU & The Brennan Center for Justice, Oct. 2008), available at <http://www.brennancenter.org/publication/de-facto-disenfranchisement>.

<sup>94</sup> *Id.* at 1.

<sup>95</sup> *Id.* at 7.

<sup>96</sup> *See id.*

<sup>97</sup> CDCR, Estimates and Statistical Analysis Section, Weekly Report of Population as of January 22, 2014, [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/WeeklyWed/TPOP1A/TPOP1Ad140122.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad140122.pdf); KAMALA D. HARRIS, CRIME IN CALIFORNIA 2012, 54 (Cal. Dep't of Justice, 2012), *available at* <http://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd12/cd12.pdf>; FACILITIES STANDARDS & OPERATIONS DIV., BD. OF STATE & COMMUNITY CORR., JAIL PROFILE SURVEY: FOURTH QUARTER CALENDAR YEAR 2 (2012), *available at* [http://www.bscc.ca.gov/download.php?f=/2012\\_4th\\_Qtr\\_JPS\\_full\\_report.pdf](http://www.bscc.ca.gov/download.php?f=/2012_4th_Qtr_JPS_full_report.pdf).

<sup>98</sup> LCCR interview with Dorsey Nunn, Executive Director, Legal Services for Prisoners with Children (LSPC), Co-Founder, All of Us or None (AOUON), March 10, 2014. AOUON is a project of LSPC, a nonprofit organization that advocates for incarcerated parents, their family members, and people at risk for incarceration. AOUON is dedicated to fighting discrimination against people who have been incarcerated, works to inform individuals with convictions of their voting rights and leads voter education, outreach, and registration efforts throughout California. *See* LSPC, All of Us or None, <http://www.prisonerswithchildren.org/our-projects/allofus-or-none>.

<sup>99</sup> Harris, *Making Every Vote Count*, *supra* note 59, at 7.

<sup>100</sup> KAMALA D. HARRIS, CRIME IN CALIFORNIA 2012, 54 (Cal. Dep't of Justice, 2012), *available at* <http://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd12/cd12.pdf>; FACILITIES STANDARDS & OPERATIONS DIV., BD. OF STATE & COMMUNITY CORR., JAIL PROFILE SURVEY: FOURTH QUARTER CALENDAR YEAR 2 (2012), *available at* [http://www.bscc.ca.gov/download.php?f=/2012\\_4th\\_Qtr\\_JPS\\_full\\_report.pdf](http://www.bscc.ca.gov/download.php?f=/2012_4th_Qtr_JPS_full_report.pdf).

<sup>101</sup> CAL. CONST. art. II, § 4.

<sup>102</sup> *See* HARRIS, CRIME IN CALIFORNIA *supra* note 100; FACILITIES STANDARDS & OPERATIONS DIV., BD. OF STATE & COMMUNITY CORR., JAIL PROFILE SURVEY, *supra* note 100.

<sup>103</sup> Harris, *Making Every Vote Count*, *supra* note 59.

<sup>104</sup> *Id.* at 22-36.

<sup>105</sup> *Id.* at 22, 28, 32. Local elections officials were asked about voting with a criminal conviction and whether it mattered if the conviction was a felony or misdemeanor, *id.* at 32; probation departments were asked about voting while on probation, *id.* at 22, and sheriff's offices were asked about voting while in jail, *id.* at 28.

<sup>106</sup> *Id.* at 28.

<sup>107</sup> *Id.* at 32.

<sup>108</sup> *Id.* at 22. Only 13 percent of probation departments, 19 percent of local election officials, and 21 percent of sheriff's offices provided incorrect information about voting rights. *Id.* at 22, 28, 32.

<sup>109</sup> *Id.* at 22, 28.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 29 (*emphasis in original*).

<sup>112</sup> CAL. ELEC. CODE §§ 18100(a) ("Every person who willfully causes, procures, or allows himself or herself or any other person to be registered as a voter, knowing that he or she or that other person is not entitled to registration, is punishable by imprisonment pursuant to subdivision (h) of section 1170 of the Penal Code for 16 months or two or three years, or in a county jail for not more than one year."); 18560(a) ("Every person is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in county jail not exceeding one year, who: 1. (a) Not being entitled to vote at an election, fraudulently votes or fraudulently attempts to vote at that election.").

<sup>113</sup> *Id.* at 23, 29, 33.

<sup>114</sup> *See* Jennifer Rae Taylor, *Can't Vote because you're in jail? Yes, you can!*, SF BAY VIEW, Aug. 21, 2008, *available at* <http://sfbayview.com/2008/can-t-vote-because-you-re-in-jail-yes-you-can>; *see generally* Harris, *Making Every Vote Count*, *supra* note 59; Steven Kalogeras & Marc Mauer, *Jail Based Voter*

*Registration Campaigns* (The Sentencing Project ed., 2003), available at [http://www.sentencingproject.org/detail/advocacy\\_material.cfm?advocacy\\_material\\_id=6&id; see also, e.g., All of Us or None \(AOUON\) v. Sheriff Sniff](http://www.sentencingproject.org/detail/advocacy_material.cfm?advocacy_material_id=6&id; see also, e.g., All of Us or None (AOUON) v. Sheriff Sniff) (Riverside Superior Court, filed Sept. 24, 2012) (No. RIC1214296) (action for writ of mandate to enable deputy registrars to register voters in Riverside County Jail).

<sup>115</sup> 42 U.S.C. § 1973gg (West 2014).

<sup>116</sup> 42 U.S.C. § 1973gg-5.

<sup>117</sup> See, e.g., San Francisco City and County, *Inmate Voting: How to Register to Vote, Vote by Mail*, <http://www.sfgov2.org/index.aspx?page=869>; Los Angeles County Registrar-Recorder/County Clerk, *Guide to Inmate Voting* (June 2009), available at [http://www.lavote.net/voter/pdfs/guide\\_inmate\\_voting.pdf](http://www.lavote.net/voter/pdfs/guide_inmate_voting.pdf).

<sup>118</sup> See Rae Taylor, *supra* note 114 (quoting Voting Rights for All Co-Chair Kathy Kahn, ‘Many individuals in jail have no reason to think they can vote and little chance of receiving accurate information if they ask.’).

<sup>119</sup> S. REP. NO. 103-6, at 14-15 (*internal quotations omitted*). A recent study by The California Civic Engagement Project also documented general disparities in California’s Vote-by-Mail (VBM) use, finding that among VBM voters, Latinos are underrepresented compared to their proportion of California’s total vote. Mindy Romero, *Disparities in California’s Vote-by-Mail Use* (U.C. Davis Ctr. for Regional Change, California Civic Engagement Project, Future of California Elections Policy Brief, March 2014), available at <http://regionalchange.ucdavis.edu/projects/california-civic-engagement-project-ccep>.

<sup>120</sup> Press Release, San Francisco Office of the Sheriff, San Francisco Sheriff’s Department Registers Record Number of Inmate Voters (Oct. 19, 2012), [http://www.sfsheriff.com/files/SFSD\\_PR\\_RM\\_10\\_19.pdf](http://www.sfsheriff.com/files/SFSD_PR_RM_10_19.pdf).

<sup>121</sup> *Getting Out The Vote From The Inside*, Newsletter (City & County Sheriff’s Dep’t, San Francisco, C.A.), Dec. 2012, [http://www.sfsheriff.com/newsletter\\_december2012.html](http://www.sfsheriff.com/newsletter_december2012.html); Press Release, San Francisco Office of the Sheriff, San Francisco Sheriff’s Department Registers Record Number of Inmate Voters (Oct. 19, 2012), [http://www.sfsheriff.com/files/SFSD\\_PR\\_RM\\_10\\_19.pdf](http://www.sfsheriff.com/files/SFSD_PR_RM_10_19.pdf).

<sup>122</sup> *Getting Out The Vote From The Inside*, *supra* note 121.

<sup>123</sup> 42 U.S.C. § 1973(b).

<sup>124</sup> Gilda R. Daniels, *Voter Deception*, 43 IND. L. REV. 343, 359 (2010).

<sup>125</sup> H.R. REP. NO. 103-9, at 2-3 (1993); S. REP. NO. 103-6, at 3; see also *Shelby County*, 570 U.S. at \_\_\_, 133 S. Ct. at 2624-25 (citing *South Carolina v. Katzenbach*, 383 U.S. 301, 308, 310 (1966)).

<sup>126</sup> H.R. REP. NO. 103-9, at 2-3.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 3.

<sup>129</sup> Gilda R. Daniels, *Voter Deception*, *supra* note 124, at 346-48.

<sup>130</sup> Wendy Weiser & Vishal Agraharkar, *Ballot Security and Voter Suppression: What It Is and What the Law Says* 7 (Brennan Ctr. for Justice, 2012); see 42 U.S.C. § 1971(b).

<sup>131</sup> *Id.* at 7-8.

<sup>132</sup> *Id.*

<sup>133</sup> Election Protection, *Our Broken Voting System and How to Repair It* 58 (Election Protection, 2013), available at <http://www.866ourvote.org/newsroom/publications> [hereinafter *Election Protection 2012*].

<sup>134</sup> Daniels, *Voter Deception*, *supra* note 124, at 347.

<sup>135</sup> *Id.* at 347-49, 387.

<sup>136</sup> Weiser & Agraharkar, *supra* note 130, at 9; Daniels, *Voter Deception*, *supra* note 124, at 348-49.

<sup>137</sup> Weiser & Agraharkar, *supra* note 130, at 7; Daniels, *Voter Deception*, *supra* note 124, at 348-49.

---

<sup>138</sup> Daniels, *Voter Deception*, *supra* note 129, at 347-48.

<sup>139</sup> *State and Federal Voter Identification Requirements*, Cal. Sec'y of State, <http://voterguide.sos.ca.gov/voter-info/voter-id-requirements.htm> (last accessed Mar. 5, 2014).

<sup>140</sup> TEX. ELEC. CODE ANN. § 63.0101 (Vernon 2013).

<sup>141</sup> Keesha Gaskins & Sundeep Iyer, *Challenge of Obtaining Voter Identification 2* (Brennan Center for Justice 2012). One-in-ten voting age citizens that do not have a current, government-issued photo ID. *Id.*

<sup>142</sup> *Got ID? Helping Americans Get Voter Identification 1* (Common Cause et al., eds. 2012).

<sup>143</sup> Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections 14* (2013), available at <http://advancingjustice-la.org/sites/default/files/VoicesofDemocracy-Sec203report.pdf> [hereinafter *Voices of Democracy*]; *Election Protection 2012*, *supra* note 133, at 46.

<sup>144</sup> Daniels, *Voter Deception*, *supra* note 124, at 387.

<sup>145</sup> Election Protection, *Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow 1* (Election Protection, 2009), available at <http://www.866ourvote.org/newsroom/publications/body/0077.pdf> [hereinafter *Election Protection 2008*].

<sup>146</sup> OurVoteLive Data are not publicly available for elections prior to 2010, and individual online reports are not available regarding California elections prior to 2006.

<sup>147</sup> Election Protection, *Report on the Legal Program to Board of Directors and Trustees, Staff, and Pro Bono Partners 18* (Election Protection, 2007), available at <http://www.866ourvote.org/newsroom/publications/body/0083.pdf> [hereinafter *Election Protection 2006*].

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 19.

<sup>150</sup> Election Protection, *Election Protection 2008 Primary Report 4* (2008), available at <http://www.866ourvote.org/newsroom/publications/document/0019.pdf> [hereinafter *Election Protection Primary 2008*].

<sup>151</sup> OurVoteLive.org, *supra* note 15, at No. 65099 (San Diego County, 2012); *Election Protection 2012*, *supra* note 133, at 58.

<sup>152</sup> *Election Protection 2012*, *supra* note 133, at 58.

<sup>153</sup> *Id.*

<sup>154</sup> *Election Protection 2006*, *supra* note 147, at 19.

<sup>155</sup> OurVoteLive.org, *supra* note 15, at No. 36549 (Los Angeles County, 2012).

<sup>156</sup> *Id.* at No. 44992 (Los Angeles County, 2012).

<sup>157</sup> *Id.* at Nos. 36289 (Fresno County 2012), 36549 (Los Angeles County, 2012), 40505 (Fresno County 2012), 43730 (San Diego County, 2012), 47474 (Orange County 2012), 57153 (Los Angeles County 2012).

<sup>158</sup> *See A Nationwide Movement and Election Integrity Effort is Born*, True The Vote, <http://www.trueethevote.org/news/a-nationwide-movement-and-election-integrity-effort-is-born> (last visited Mar. 6, 2014).

<sup>159</sup> *Id.* at No. 64287 (Fresno County, 2012).

<sup>160</sup> *Id.* at No. 64501 (San Bernardino County, 2012).

<sup>161</sup> *Election Protection 2012*, *supra* note 133, at 53.

<sup>162</sup> *Id.*

<sup>163</sup> OurVoteLive.org, *supra* note 15, at No. 45825 (Orange County, 2012).

<sup>164</sup> *Id.* at No. 64907 (San Diego County, 2012).

<sup>165</sup> *Id.* at No. 64576 (San Diego County, 2012).

<sup>166</sup> CAL. ELEC. CODE § 14216 (West 2013); 2 CCR § 20108.38 (2013).

<sup>167</sup> HAVA § 15483(b); CAL. ELEC. CODE § 14216, 2 CCR § 20108.38. Acceptable identification to include with a mail-in registration form includes California a driver's license, California identification card number, or last four digits of one's social security number. 2 CCR § 20108.38.

<sup>168</sup> *Id.*

<sup>169</sup> E.g., OurVoteLive.org, *supra* note 15, at Nos. 46840 (Orange County, 2012); 61706 (Los Angeles County, 2012); *see also* Anna Almendrala, *Voting Problems in California: Asking for Voter ID, No Voting Machines & Mail-In Confusion*, HUFFINGTON POST, Nov. 6, 2012, [http://www.huffingtonpost.com/2012/11/06/voting-problems-california\\_n\\_2084344.html](http://www.huffingtonpost.com/2012/11/06/voting-problems-california_n_2084344.html)

<sup>170</sup> *Election Protection 2006*, *supra* note 147, at 18.

<sup>171</sup> *Id.*

<sup>172</sup> *Election Protection Primary 2008*, *supra* note 150, at 4.

<sup>173</sup> *Voices of Democracy*, *supra* note 143, at 14; *Election Protection 2012*, *supra* note 133, at 46.

<sup>174</sup> *Election Protection 2012*, *supra* note 133, at 46; OVL 61706, 35360, 46840 (Nov. 2012).

<sup>175</sup> OurVoteLive.org, *supra* note 15, at No. 36656 (Santa Clara County, 2012).

<sup>176</sup> Weiser & Agraharkar, *supra* note 130, at 9 (citing Ian Urbina, *Reports of Intimidation and Electronic Problems Surface at Polls across the U.S.*, N.Y. TIMES, Nov. 2, 2010, at <http://www.nytimes.com/2010/11/03/us/politics/03voting.html>; Associated Press, *Group: Robocalls Gave Spanish-Speaking Voters Late Polling Date*, CBS LOS ANGELES (Nov. 2, 2010, 3:44pm), <http://losangeles.cbslocal.com/2010/11/02/group-robocalls-gave-spanish-speaking-voters-late-polling-date/>); Daniels, *Voter Deception*, *supra* note 124, at 348-49.

<sup>177</sup> *See, e.g.*, OurVoteLive.org, *supra* note 15, at Nos. 45673 (Solano County, 2012), 63975 (Alameda County, 2012), 65023 (San Mateo County, 2012), 65111 (Alameda County, 2012), 65160 (San Mateo County, 2012).

<sup>178</sup> HAVA § 15482; CAL. ELEC. CODE §§ 2142 (gives voters the right to go to court in order to compel county elections officials to register them to vote and to count their ballot), 3016 (ID requirements for vote by mail voters who appear in person), 3019 (ID requirements for first time voters; photo ID not required), 14310-14311 (ID and provisional balloting requirements and procedures for counting provisional ballots, including provisions for voters who have moved within or between counties and who have not re-registered to vote since the last time they voted), 15100 et seq., 15350 (similar provisions), 17300-17506 (rules for keeping records of provisional ballots, whether or not they are counted or rejected for the purposes of an election).

<sup>179</sup> *See* Presidential Commission on Election Administration, *Presidential Report on Election Administration* 2, 14, 25, 32 (January 2014), available at <http://www.supportthevoter.gov> (noting that, in 2008, half of the provisional ballots issued to voters nationwide were attributable to problems with the rolls, and emphasizing the need to keep provisional ballots to a minimum); Pew Center on the States, *Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade* 7 (2012), available at [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2012/Pew\\_Upgrading\\_Voter\\_Registration.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Upgrading_Voter_Registration.pdf).

<sup>180</sup> *See, e.g.*, Bob Fittrakis, *Soulless Secretary of State Targets Those Voting While Black*, COLUMBUS FREE PRESS, Mar. 6, 2014, <http://columbusfreepress.com/article/soulless-secretary-state-targets-those-voting-while-black> ("Additionally, they made provisional ballots – those second-class, back-of-the-bus ballots that are handed out freely in inner-city minority precincts and rarely counted – even more difficult to count."); *see also* Project VOTE, *Legislative Brief: Ensuring that Provisional Ballots Are Counted* 3 (January 2010), available at <http://projectvote.org/provisional-voting.html>; Editorial Board, *Voting Reform Could Backfire*, N.Y. TIMES, May 9, 2004, <http://www.nytimes.com/2004/05/09/opinion/voting-reform-could-backfire.html> (cautioning readers that provisional ballots can be overused, and that "[p]oor and minority voters are especially likely to have trouble at the polls, and are often singled out for challenges by partisan poll watchers. Provisional balloting must not become a second-class voting system, used whenever a question is raised about a voter's eligibility.").

<sup>181</sup> Camille Ryan, *Language Use in the United States: 2011 3* (Am. Community Survey Reports, Aug. 2013), available at <http://www.census.gov/prod/2013pubs/acs-22.pdf?eml=gd>.

<sup>182</sup> *Id.*

<sup>183</sup> *Voices of Democracy*, *supra* note 143, at 5.

<sup>184</sup> 42 U.S.C. § 1973aa-1a (2013).

<sup>185</sup> *Id.*

<sup>186</sup> *In re County of Monterey Initiative Matter*, 427 F.Supp.2d 958, 963-64 (N.D. Cal. 2006).

<sup>187</sup> *Padilla v. Lever*, 463 F.3d 1046, 1048, 1050 (9th Cir. 2006) (emphasis added).

<sup>188</sup> 42 U.S.C. § 1973aa-6 (2013).

<sup>189</sup> *Voices of Democracy*, *supra* note 143, at 5.

<sup>190</sup> *Id.* at 10-11.

<sup>191</sup> See Joaquin G. Avila, *Voting Rights in California 1982-2006* 26 (Project Voting Rights: RenewtheVRA.org, May 2006), available at <http://www.protectcivilrights.org/pdf/voting/CaliforniaVRA.pdf>.

<sup>192</sup> Ryan, *supra* note 181, at 11; see also AsianWeek Staff, *Governor Signs Bill Promoting Greater Availability Of Bilingual Poll Workers*, *infra* note 214 (quoting Carolyn Hsu, Attorney at Asian Law Caucus, noting that there are 2.6 million LEP eligible voters in California).

<sup>193</sup> Mindy Romero, *Is Democracy Political Destiny? Population Change and California's Future Electorate*, U.C. Davis Ctr. for Regional Change, California Civic Engagement Project, Policy Brief Issue 7 (Jan. 2014) at 1-2.

<sup>194</sup> See Ryan, *supra* note 181, at 13-14.

<sup>195</sup> *Id.*

<sup>196</sup> *Voices of Democracy*, *supra* note 143, at 5.

<sup>197</sup> *Id.*

<sup>198</sup> 28 C.F.R. Part 55 (2013). The California counties subject to section 203 and 208 of the federal Voting Rights Act are Alameda, Colusa, Contra Costa, Fresno, Imperial, Kern, Kings, Los Angeles, Madera, Merced, Monterey, Orange, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Mateo, Santa Barbara, Santa Clara, Stanislaus, Tulare and Ventura.

<sup>199</sup> California Elections Code sections 12303 and 14201 require elections officials to translate a copy of the ballot and related instructions, post the translated materials, and make reasonable efforts to recruit election officers who are fluent in a language used by at least 3 percent of the non-English-speaking voting age residents of a precinct as well as in English, and provide voter information and materials in the language spoken by 3 percent or more of the precinct population. The Secretary of State must find a need exists when the number of limited English speaking, voting-age residents from a group reaches 3 percent of the total voting-age residents in a precinct. In addition, the Dymally-Alatorre Bilingual Services Act, CAL. GOV. CODE § 7290 et. seq., was signed into law in 1973 to eliminate language barriers that preclude Californians, who either because they do not speak or write English or because their primary language is other than English, from having equal access to public services.

The following California counties are required to provide translated election materials under the California Election Code: Alameda (Chinese, Tagalog, Vietnamese); Los Angeles (Chinese, Tagalog, Hindi, Japanese, Khmer, Korean, Thai, Vietnamese); Orange (Chinese, Korean, Vietnamese); Sacramento (Chinese); San Diego (Chinese, Tagalog, Vietnamese); San Francisco (Chinese); San Mateo (Chinese); and Santa Clara (Chinese, Tagalog, Vietnamese). *Fact Sheet: Language Assistance During Elections*, (Asian Americans Advancing Justice, January 2014), available at <http://advancingjustice-la.org/what-we-do/policy-and-research/voting-rights>.

- 
- <sup>200</sup> *Voters With Disabilities*, California Secretary of State (2014), [http://www.sos.ca.gov/elections/elections\\_dis.htm](http://www.sos.ca.gov/elections/elections_dis.htm) (last visited Mar. 6, 2014).
- <sup>201</sup> *Cases Raising Claims Under the Language Minority Provisions of the Voting Rights Act*, U.S. DEP'T OF JUSTICE, <http://www.justice.gov/crt/about/vot/litigation/recent203.php> (last visited Jan. 17, 2014).
- <sup>202</sup> *Id.*
- <sup>203</sup> *See id.*
- <sup>204</sup> *Election Protection 2012*, *supra* note 133, at 45.
- <sup>205</sup> *Id.*
- <sup>206</sup> *Id.*
- <sup>207</sup> *Voices of Democracy*, *supra* note 143, at 14.
- <sup>208</sup> *Id.* at 13.
- <sup>209</sup> OurVoteLive.org, *supra* note 15, at No. 35607 (Los Angeles County, 2012).
- <sup>210</sup> *Id.* at Nos. 65160 (San Mateo County, 2012); 64706 (San Mateo County, 2012); 12871 (Los Angeles County, 2010).
- <sup>211</sup> *Voices of Democracy*, *supra* note 143.
- <sup>212</sup> *Id.* at 10-11.
- <sup>213</sup> *Voices of Democracy*, *supra* note 143, at 10-11.
- <sup>214</sup> Codified at CAL. ELEC. CODE §§ 12300-12302 (West 2013); *see* AsianWeek Staff, *Governor Signs Bill Promoting Greater Availability Of Bilingual Poll Workers*, ASIANWEEK, Aug. 27, 2013, <http://www.asianweek.com/2013/08/27/governor-signs-bill-promoting-greater-availability-of-bilingual-poll-workers>.
- <sup>215</sup> *See* Michelle Romero, *California's ballot initiative process remains English-only, Governor Brown Vetoes Rights for Limited-English Voters*, GREENLINING BLOG, Oct. 14, 2013, <http://greenlining.org/blog/2013/governor-brown-vetoes-rights-limited-english-voters>.
- <sup>216</sup> Matthew W. Brault, *Americans With Disabilities: 2010*, U.S. CENSUS BUREAU, 5 (Washington, D.C., July 2012), available at <http://www.census.gov/prod/2012pubs/p70-131.pdf>.
- <sup>217</sup> 42 U.S.C. § 1973aa-6 (West 2013). To ensure that the vote is not coerced, the assistance *cannot* be provided by an employee or agent of the voter's employer or union. *Id.*
- <sup>218</sup> 42 U.S.C. § 15421(b)(1) (West 2013).
- <sup>219</sup> 42 U.S.C. § 15421(b)(2).
- <sup>220</sup> 42 U.S.C. § 1973ee-1.
- <sup>221</sup> 42 U.S.C. § 1973ee-3.
- <sup>222</sup> 42 U.S.C. § 12101 *et seq.* (West 2013).
- <sup>223</sup> 42 U.S.C. § 1973gg-4.
- <sup>224</sup> 42 U.S.C. § 1973gg-5.
- <sup>225</sup> CAL. ELEC. CODE §§ 19225–19229.5 (West 2013).
- <sup>226</sup> CAL. ELEC. CODE. § 19227.
- <sup>227</sup> *See* Cal. Sec'y of State, *2010 HAVA State Plan Update*, (2010), available at <http://www.sos.ca.gov/elections/hava/state-plan/state-plan-final.pdf>; *Voters With Disabilities*, Cal. Sec'y of State (2014), [http://www.sos.ca.gov/elections/elections\\_dis.htm](http://www.sos.ca.gov/elections/elections_dis.htm).
- <sup>228</sup> *Voters With Disabilities*, *supra* note 227.
- <sup>229</sup> *Id.*
- <sup>230</sup> *Id.*
- <sup>231</sup> *Id.*

<sup>232</sup> *California Council of the Blind v. County of Alameda*, order granting in part and denying in part defendants' motion to dismiss, Case No. 13-cv-03443-JCS (N.D. Cal., Oct. 16, 2013), at 2-3.

<sup>233</sup> *Id.*

<sup>234</sup> Calendar for Magistrate Judge Joseph C. Spero, Courtroom G, 15th Floor, *California Council of the Blind v. County of Alameda*, Case No. 13-cv-03443-JCS Case Conference scheduled for Friday, Mar. 28, 2014, <http://cand.uscourts.gov/CEO/cfd.aspx?71BK> (last visited Mar. 15, 2014).

<sup>235</sup> OurVoteLive.org, *supra* note 15, at No. 3211 (Los Angeles County, 2010), 16562 (Contra Costa County, 2012), 35412 (Los Angeles County, 2012), 37304 (Los Angeles County, 2012), 37991 (Fresno County, 2012), 38103 (Los Angeles County, 2012), 44899 (Alameda County, 2012), 45825 (Orange County, 2012).

<sup>236</sup> *Voices of Democracy*, *supra* note 143, at 14.

<sup>237</sup> OurVoteLive.org, *supra* note 15, at No. 45825 (Orange County, 2012).

<sup>238</sup> *Id.* at No. 11901 (Los Angeles County, 2010).

<sup>239</sup> *Id.* at No. 16562 (Contra Costa County, 2012).

<sup>240</sup> *Id.* at No. 44899 (Alameda County, 2012).

<sup>241</sup> *Voices of Democracy*, *supra* note 143, at 14.

<sup>242</sup> OurVoteLive.org, *supra* note 15, at No. 11572 (Los Angeles County, 2010).

<sup>243</sup> *Id.* at No. 65342 (Ventura County, 2012). Curbside voting is a right in California under CAL. ELEC. CODE § 14282(c). Here, an elections official, precinct board member or poll worker will take a ballot outside to the voter and, once the voter has finished voting, return it to the ballot box.

<sup>244</sup> *Id.* at No. 65496 (Los Angeles County, 2012).

<sup>245</sup> See 2014 LCCR-VR Database Master List, *supra* note 14.

<sup>246</sup> Dustin Volz & Jack Fitzpatrick, *New Voting Rights Act Would Revive Federal Oversight for Only 4 States*, NATIONAL JOURNAL, Jan. 16, 2014, <http://www.nationaljournal.com/congress/new-voting-rights-act-rewrite-would-revive-federal-oversight-for-only-4-states-20140116>.

<sup>247</sup> *Id.*

<sup>248</sup> See Voting Rights Amendment Act of 2014, H.R. 3899, S.B. 1945, 113th Cong., (2d Sess. 2014); see also Berman, *supra* note 10 (summarizing and explaining new proposed amendments to 2014 VRAA).

<sup>249</sup> See sources cited *supra*, note 248.

<sup>250</sup> Yost, *supra* note 92.

<sup>251</sup> Democracy Restoration Act (DRA) of 2011, H.R. 2212, S. 2017 (112th Cong.) (introduced Dec. 16, 2011, 2011-2013), available at <http://www.opencongress.org/bill/hr2212-112/show>; Democracy Restoration Act (DRA) of 2009, H.R. 3335, S.1516 (111th Cong.) (introduced in Senate Jul. 24, 2009, 2009), available at <http://www.opencongress.org/bill/hr3335-111/show>.

<sup>252</sup> *Id.*

<sup>253</sup> See Jonathan Soros & Mark Schmitt, *The Missing Right: A Constitutional Right to Vote*, DEMOCRACY JOURNAL, Issue No. 28 (Spring 2013), <http://www.democracyjournal.org/28/the-missing-right-a-constitutional-right-to-vote.php>; see also Colorofchange.org, *We Need the Freedom to Vote*, <http://colorofchange.org/campaign/freetovote> (setting forth grassroots efforts to call for an amendment affirmatively guaranteeing the right to vote).

<sup>254</sup> See 2014 LCCR-VR Database Master List, *supra* note 14.

<sup>255</sup> Cuevas Ingram, *supra* note 22, at 217.

<sup>256</sup> See *Scott v. Bowen*, RG14712570 (Alameda Super. Ct. filed Feb. 4, 2014).

<sup>257</sup> National Voter Registration Act of 1993 (NVRA), codified at 42 U.S.C. § 1973gg-4. For a general discussion of the California Secretary of State's discretionary authority to designate more state and local agencies, see California State Auditor, *Office of the Secretary of State: It Must Do More to Ensure*



---

*Funds Provided Under the Federal Help America Vote Act Are Spent Effectively*, Report 2012-112 (August 2013) at 3, available at <http://www.bsa.ca.gov/reports/highlights/2012-112>.

<sup>258</sup> Yost, *supra* note 92.

<sup>259</sup> See Mark Baldassare et al., *California's Likely Voters* (Pub. Pol'y Inst. of Cal., August 2013) (“As of February 2013, 18.1 million of California’s 23.9 million eligible adults are registered to vote.”).

<sup>260</sup> *Elections Performance Index* (Pew Center on the States, February 2013), available at <http://www.pewstates.org/research/reports/elections-performance-index-85899445029?p=1>.

<sup>261</sup> Office of the California Secretary of State, *VoteCal Project Background*, <http://www.sos.ca.gov/elections/votecal/background.htm> (last visited Mar. 15, 2014).

<sup>262</sup> U.S. Department of Justice, Nov. 2, 2005 HAVA Memorandum of Agreement with California Secretary of State, available at [http://www.justice.gov/crt/about/vot/hava/ca\\_moa.php](http://www.justice.gov/crt/about/vot/hava/ca_moa.php).

<sup>263</sup> See California State Auditor, *supra* note 257, at 27. Dave Roberts, *Audit: Secretary of State wastes \$22 million on voting machines*, CALWATCHDOG.COM, Sept. 3, 2013, <http://calwatchdog.com/2013/09/03/audit-secretary-of-state-wastes-22-million-on-voting-machines>.

<sup>264</sup> See California State Auditor, *supra* note 257; California Senate Select Committee on Science, Innovation and Public Policy, *Informational Hearing: New and Necessary Innovations to Improve Voter Participation and Registration*, Mar. 11, 2014 (Video Recording on Demand available at California Channel, *Senate Informational Hearing on Science and Innovations to improve voter participation*, Mar. 11, 2014, [http://calchannel.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=1893](http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=1893)).

<sup>265</sup> Baldassare et al., *supra* note 259.

<sup>266</sup> See June 25, 2013 Legislative Bill Analysis for California Senate Bill (SB) 654: Ballot measure petitions: translations, California Assembly Committee on Elections and Redistricting, at 12 (Arguments in Support, Greenlining Institute), available at [http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_0651-0700/sb\\_654\\_cfa\\_20130624\\_115527\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0651-0700/sb_654_cfa_20130624_115527_asm_comm.html).

<sup>267</sup> See Michelle Romero, *supra* note 215.

LAWYERS' COMMITTEE FOR  
**CIVIL RIGHTS**  
OF THE SAN FRANCISCO BAY AREA

---

**Lawyers Committee for Civil Rights  
of the San Francisco Bay Area**  
131 Steuart Street, Suite 400  
San Francisco, CA 94105  
415.543.9444  
[www.lccr.com](http://www.lccr.com)

© March 2014

**Readers can access the  
2014 LCCR Voting Rights Project Database  
at [www.lccr.com](http://www.lccr.com).**