

Debbie Cohen
Ventura County Citizen
District 4

September 9, 2024

Ventura County Board of Supervisors & Clerk of the Board
County of Ventura
800 South Victoria Avenue
Ventura, California 93009

cc: Tiffany North - Office of County Counsel
Michelle Ascension - County-Clerk, Registrar of Voters

Re: Response to County Counsel's Report dated June 18, 2024

Ventura County Board of Supervisors c/o Clerk of the Board,

Counsel Tiffany North presented her report "Receive and File Report on the Authority of the Board of Supervisors in the Administration of Elections" to the Board of Supervisors at the June 18, 2024 Board meeting. After reading it I found that several assertions of the Board's legal authority over Elections to be lacking in both content and context. The report was written in such a way that it suggested that the Board of Supervisors has less authority over the conduct of Elections than the law actually allows.

I wrote a lengthy response that addressed each of the problematic assertions, point by point, and sent it to Counsel North on July 22, 2024, cc'ng all five Board Members and the Registrar of Voters.

I received acknowledgement of receipt emails from Counsel North's office and Supervisor Gorell's office. No other response has been received.

I believe my 25 page report deserves more than two acknowledgements of receipt. My report goes to great lengths, with multiple citations of the California Constitution and California State Laws, to illustrate that a County Board indeed has a lot more breadth and depth of authority than what Counsel North's report suggested.

At the July 23, 2024 Board meeting, I spoke during public comment time and referred to Counsel North's report and the nature of my response. I implored Counsel North and the Board to review it.

As my report was not included in the minutes for the July 23rd meeting, I request that it be added to the minutes under Public Comments agenda item #8 for tomorrow's meeting, September 10, 2024.

The attached report is identical to the one submitted on July 22, 2024, with contact info redacted.

Sincerely,

DEBBIE COHEN

Debbie Cohen
Ventura County Citizen
Founding Member of Restore the Vote Ventura

Attachments:

Debbie Cohen Response to County Counsel's Receive and File Report on the Authority of the Board of Supervisors in the Administration of Elections

Debbie Cohen
Ventura County Citizen
District 4

July 22, 2024

County Counsel Tiffany North
County of Ventura - Office of County Counsel
800 South Victoria Avenue, L/C 1830
Ventura, California 93009

cc: Ventura County Board of Supervisors & Clerk of the Board
Michelle Ascension - County-Clerk, Registrar of Voters

Re: Response to County Counsel's Report dated June 18, 2024

Counsel North,

I am writing to you today as an individual citizen of Ventura County and on behalf of Restore the Vote Ventura (RTVV) in response to your report to the Ventura County Board of Supervisors, dated June 18, 2024 and entered into the record of the Board of Supervisors Meeting, June 18, 2024, under Agenda Item #93.

For the last 9 months, you and the Board of Supervisors, along with others routinely present at the Board of Supervisors meetings, have been hearing impassioned concerns and pleas from citizens across the county regarding some of the problematic processes used to conduct elections in Ventura County.

Many have also expressed dismay at the lack of transparency and accountability from the Registrar of Voters regarding inefficient, convoluted, and faulty processes, responses to complaints, not taking public concerns seriously, and a general lack of trust that elections are conducted safely and securely.

Let me emphatically state that these issues and concerns have not just been raised since Ms. Ascension was elected to office, but includes several years prior, under the direction of former Registrar of Voters Mark Lunn.

RTVV is a loosely organized grass-roots group of citizens who have grown increasingly concerned that their votes are not being counted and their voices are not being heard. We are not an organized legal entity and contrary to what some have suggested, we do not have "financial backing", nor do we fundraise or ask for monetary donations. We do everything as individuals while coordinating our message to maximize and amplify it to elected officials and in the public square.

Being this loose of a structure has its pros and cons. One of the challenges is that we often duplicate and sometimes contradict one another when speaking, or in the content of our

emails. Our emails, speeches and our speakers aren't always clear or concise, they're not always polished or well-rehearsed, and their content isn't peer reviewed or edited by others. Sometimes they lack a specific "ask" and sometimes they ask for something that the Board truly does not have the authority to do. They don't always know those boundaries but, as evidenced by the need for your report, the Board of Supervisors doesn't necessarily always know those boundaries either.

As one of the original members of RTVV, I can say that what some of us may be lacking in speaking or writing ability, we make up for with passion, using our personal experiences as a driving force to fuel our commitment to preserve, protect and defend the freedoms and liberty in our County, our State and our Nation. Realizing that it all starts with free, fair and secure elections, we have aimed our focus to restoring election integrity in Ventura County.

I am aware that many speakers and letter-writers have asked the BoS for things it may not be able to deliver due to limitations of BoS authority. After reading your report I felt the need to clarify our requests and read the laws you cited to get a more clear understanding of BoS authority. I have spent countless hours over the last month diving into the California Constitution, California Government Code and California Elections Code in an attempt to find the right answers. Of course, the more I read, the more there was to read, finding many "rabbit holes" along the way and reading ancillary material to further define and confirm what I was reading.

I don't claim to be a legal expert, but what I've found simply by reading and understanding these source materials, is that the BoS appears to have more authority with respect to the conduct and oversight of Elections than most realize, and they can use that authority to implement what's needed to quell many of the concerns, fears and mistrust that a rapidly growing number of Ventura County citizens have regarding elections.

We hold strongly that RTVV's core concerns, core "asks" if you will, are all within the realm of the BoS authority.

To clarify, RTVV is currently asking the Board of Supervisors to take action as follows:

- Return to a single day (Election Day) for in-person voting, using the tried and true precinct model. (the model used prior to VCA)
- That no preprocessing of ballots (scanning, storing of ballot data, adjudication, or tabulation) shall begin prior to 5pm the day before election day.
- That a 100% hand count audit tally (not 1%) to verify electronic tabulation be conducted prior to certification of an election.
- Create a Citizen-led Election Advisory Commission.
- Create an independent Election Inspectors Office and Fraud Hotline

Of course, the Board of Supervisors is invited to offer a compromise on some of the details requested. For example, rather than a 100% audit, which as you noted in your report is effectively a manual recount, they could suggest a percentage less than 100%.

In the following pages I intend to provide a counterpoint ("Our Response:") to each of your points ("County Counsel wrote:"), along with some of the reasons why we are asking for the BoS to take these actions.

To begin, your report provided an overview and background of what's transpired over the last 9 months and included your overall take on Board authority with respect to Elections.

County Counsel wrote:

Many public speakers frequently cite Government Code section 25201 as support for your Board's authority to act on the handling of elections. Respectfully, the public speakers neglect to state your Board's authority under Government Code section 25201 is expressly limited by the Elections Code. Government Code section 25201 states in its entirety:

"Subject to the provisions of the Elections Code, the board may establish, abolish, and change election precincts, appoint inspectors, clerks, and judges of election, canvass all election returns, declare the result, and order the county elections official to issue certificates of election."

Yes, your Board has authority under Government Code section 25201 to take the actions expressly identified in that code section so long as such actions comply with the Elections Code. California Constitution Article XI, Section 7 provides that your Board may adopt ordinances and regulations that are not in conflict with general laws. As such, as a general law county and not a charter county, your Board should not adopt ordinances that conflict with the Elections Code.

Our Response:

To be clear, we haven't neglected to state "Subject to the provisions of the Elections Code" so much as we didn't find it necessary to state that phrase because we haven't found anything in the Elections Code that usurps the authority of the Board of Supervisors ("BoS") to take the actions we are requesting.

County Counsel wrote:

Although your Board has authority to supervise all county officers to make certain that the county officers faithfully perform their duties, your Board does not have the power to perform county officers' statutory duties for them or direct the way those duties are performed. (People v. Langdon (1976) 54 Cal.App.3d 384, 390.)

Our Response:

It is not our intention to suggest that the Board of Supervisors perform the County-Clerk / Registrar of Voters ("RoV") statutory duties for them or direct the way those duties are performed. There would be no need for the BoS to infringe on the RoV's statutory area of responsibility in order to fulfill the requests we are making of the BoS.

County Counsel wrote:

Given the above, your Board has limited direct authority over the administration of elections. With few exceptions, the Elections Code delegates authority over elections to the “elections official,” which is the elected County Clerk-Recorder & Registrar of Voters. (Elec. Code, § 320.)

Our Response:

We find this paragraph intentionally framed as “the Board does not have authority” rather than the truth which is that the RoV has their responsibilities outlined in the Elections Code, while the BoS has wide-ranging authority on how the County is run, including many aspects of how elections are handled, subject to all other laws of California. (See Exhibit A – BoS Authority).

Citizens Requests to the Board of Supervisors – Points / Counterpoints

County Counsel wrote:

The remainder of this Board letter will address some of the more frequent topics and requests from the public concerning the handling of elections.

1. *Request that your Board adopt an ordinance to stop the universal vote by mail ballots.*

This is not the request of Restore the Vote Ventura.

County Counsel continued:

Elections Code sections 3000.5 and 3010 require the County Clerk-Recorder & Registrar of Voters to mail ballots to every active registered voter for every election. This requirement is present regardless of whether the County is proceeding with the election under the Voter’s Choice Act or as a one day, precinct polling place election. Adoption of an ordinance, as requested, would impermissibly conflict with state law.

Our Response:

RTVV has not requested that the Board adopt an ordinance to stop the universal vote by mail ballots. It’s possible that other citizens have, but that’s not one of our “asks”. We understand and agree that the Board cannot stop the mass mailing of ballots to every registered voter. Having said that, the Board and the RoV can work to mitigate the liability of sending ballots to people who are not eligible to vote. A serious effort to clean up the voter rolls, using existing laws as guidance, is called for.

2. *Request that your Board adopt an ordinance directing that elections shall be one day, precinct elections.*

Confirmed, this is our request.

County Counsel wrote:

Essentially this is a request to move away from the Voter's Choice Act (VCA). The VCA was passed in 2016 (Senate Bill No. 450) to allow counties to choose to conduct elections under a new model by mailing every voter a ballot, expanding in-person early voting, allowing voters to cast a ballot at any vote center within the County, and providing secure ballot drop off locations throughout the County. (Elec. Code, § 4005.) Under state law, counties may opt into the VCA. However, in doing so, the law references the "elections official" as the party that takes the actions to opt in to implement the VCA. As stated above, under Elections Code section 320, the "elections official" is the separately elected County Clerk-Recorder & Registrar of Voters. The elected County Clerk-Recorder & Registrar of Voters is vested with the power and authority to determine whether the County will conduct an election as an all-mail ballot election under the provisions of Elections Code section 4005, including the responsibility for conducting the election and preparing the plan for the administration of the election. The VCA requires each participating county to create an Election Administration Plan (EAP) through the process of public input and public hearings. The EAP must then be approved by the Secretary of State. Your Board does not approve the EAP. Former Clerk-Recorder Mark Lunn prepared the first EAP in 2022 and Clerk-Recorder Ascencion prepared an amended EAP, in accordance with her authority and the requirements of Elections Code section 4005, in 2023. The County's Amended EAP was approved by the Secretary of State on September 29, 2023.

Respectfully, your Board lacks authority under state law to direct the Clerk-Recorder & Registrar of Voters to conduct elections as one day precinct elections versus as conducted under the Voters Choice Act. That decision is statutorily the Clerk-Recorder's under state law as the elections official. Adoption of an ordinance, as requested, would impermissibly conflict with state law.

Our Response:

Nowhere in CA ELEC § 4005 does it state that the Elections Official has the authority to opt in to the VCA. It simply lays out the responsibilities of the Elections Official *under* the VCA.

Please site the exact section of law that states the Elections Official has the sole authority to opt-in to the VCA and/or that the Board of Supervisors as governing body has no authority to opt in or out of the VCA.

The specific practices under the VCA create an environment that makes it easier for bad actors to game the system, for cheating and fraud to occur and most notably for ineligible voters to cast ballots. This presents a serious liability for the County. The Board, the RoV and the SoS MUST take all reasonable and necessary steps to ensure that there is only one vote per eligible voter cast. The Board and the RoV have a duty under their sworn oath to uphold

the US Constitution, CA Constitution and the laws of the land which state that only citizens age 18 or older can vote and that Elections shall be held in ONE DAY.

Statutes Establishing Election Day as a Single Day:

- 2 U.S. Code § 7 Election Day for Congressional races:

Time of election - The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter.

- California ELEC § 1000

The established election dates are as follows:

- (a) The first Tuesday after the first Monday in March of each even-numbered year that is evenly divisible by four.
- (b) The first Tuesday after the first Monday in March of each odd-numbered year.
- (c) The second Tuesday of April in each even-numbered year.
- (d) The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four.
- (e) The first Tuesday after the first Monday in November of each year.

- California - ELEC § 1002

Except as provided in Section 1003, notwithstanding any other provisions of law, all state, county, municipal, district, and school district elections shall be held on an established election date.

- Section 1003 - This chapter shall not apply to the following:

...

- (f) Any election conducted **solely** by mailed ballot pursuant to Division 4 (commencing with Section 4000)
(Note: Ventura County, even under the VCA, does not conduct elections *solely* by mailed ballot, so this does not apply)

- California ELEC § 1100

No election shall be held on any day other than a Tuesday, nor shall any election be held on the day before, the day of, or the day after, a state holiday.

- California ELEC § 1200

The statewide general election shall be held on the first Tuesday after the first Monday in November of each even-numbered year.

- California ELEC § 1201

The statewide direct primary shall be held on the first Tuesday after the first Monday in June of each even-numbered year that is not evenly divisible by four and on the first Tuesday after the first Monday in March in each even-numbered year that is evenly divisible by four.

Furthermore, the VCA is currently being challenged as an illegal method of conducting elections (Orange County Superior Court Case No. 30-2024-01384971-CU-MC-NJC) as it clearly violates several laws, notably CA ELEC § 19205 (a) which states “No part of the voting system shall be connected to the Internet at any time.” Voting systems are used at the voting centers to check voter registration, accept new voter registration applications, and check to see whether a voter already submitted a ballot, which ultimately leads to decision to issue a ballot to the voter for casting at the voting center. These voting systems must be connected to the internet to perform these duties.

This Board may soon be considered in dereliction of duty for not engaging in a serious inquiry, discussion, and decision as to the legality, efficiency, and cost-benefit analysis of continuing to participate in the VCA.

Knowingly continuing to participate in an optional program that has this many potential liabilities presents a serious overall liability for the Board and could at some point be considered an act of maladministration.

Respectfully the Board not only has the authority to opt out of the VCA, it may soon find it has the responsibility and DUTY to do so under the law.

Allowing the November 2024 election to be conducted under the VCA is sealing the decision, and the Board and the RoV will be the elected officials who will ultimately be held accountable.

- 3. Request that your Board adopt an ordinance directing that any use of electronic tabulation machines shall be accompanied by a full 100% citizens assisted hand count audit.*

Confirmed, this is our request.

County Counsel wrote:

Elections Code section 15270.1 prohibits an elections official from conducting a manual vote count in any election held on an established election date and there are more than 1,000 registered voters eligible to participate or the election is held on a date other than an established election date and there are more than 5,000 registered voters eligible to participate. Granted, this request from the public is not a request for a manual vote count on its own but instead a request for a manual 100% hand count audit in conjunction with the electronic tabulation. This request from the public is essentially seeking a recount for every race on the ballot for a given election.

Elections Code section 15360 requires a 1% manual tally process to be undertaken as part of the post-election auditing process to ensure the accuracy and integrity of the results. This 1% manual tally involves the hand count inspection and counting of official ballots from randomly selected tabulated batches of ballots across the County as required by law. The 1% manual tally process is open to the public to view at any time during the process.

Additionally, Elections Code section 15000 requires the elections official to conduct a series of tests to ensure that every device used to tabulate ballots accurately records each vote. The test conforms to the voting procedures for specific voting systems, as adopted by the Secretary of State. Test ballots are processed, and the results are tallied to verify voter's intent and selection. These tests are designed to evaluate the performance of the voting system assuring voters that their choices will be accurately recorded. This process is open to the public to view at any time during the process.

The public commenters are requesting that your Board adopt an ordinance directing the elected Clerk-Recorder & Registrar of Voters to perform a manual audit of every election which may run afoul of Elections Code section 15270.1. As stated above, your Board should not adopt ordinances that conflict with state law. Further, your Board cannot direct how or when Clerk-Recorder Ascencion performs her statutory duty. (People v. Langdon, supra, 54 Cal.App.3d at p. 390.)

Our Response:

The process of randomly selecting ballots for the 1% tally employed in Ventura County is done by generating a report from the centralized tabulation system. This "random" generation is performed in a black box environment with an unknown algorithm where no human can validate the randomness of the sampling. Furthermore, this presents a paradoxical problem where the very system that is being audited dictates which ballots are chosen for the audit. This is not a valid method for random sampling. The RoV is required by law to personally conduct the random sampling for the audit. Not delegate it to the computer system that's being audited.

We are unable to find evidence that the process of random selecting of ballots for the 1% tally has been done in front of the public, nor can we find there was sufficient notice to the public that the random selection process was available for viewing by the public. If the RoV did notify the public via press release, it's no longer on the website. We have filed a public records request for such notice but have not yet received a response. (CA ELEC § 336.5 & 15360)

1% is not a large enough sampling and does not even meet minimum standards to account for statistical errors by any audit standards.

The state requires a *minimum* of 1% sampling but there is no mandate or law that states it must be only 1%.

The RoV can elect to sample any percentage of ballots beyond 1%. (CA ELEC § 15360)

The BoS can respectfully request the RoV conduct a larger sampling for the audit.

The BoS as the governing body of the county has the duty to make recommendations and apply pressure to the RoV to ensure that auditing of ballots is statistically sufficient. If a 100% audit is not feasible, the RoV can suggest a percentage that would be feasible and effective.

4. *Request that your Board adopt an ordinance directing that no scanning, counting or preprocessing of ballots in any form shall take place before Election Day.*

Confirmed, this is our request with the following clarification (in accordance with CA ELEC § 15101):

“...no scanning, counting or preprocessing of ballots in any form shall take place before 5pm the day before Election Day.”

County Counsel wrote:

Elections Code section 15101 expressly allows all jurisdictions, regardless of whether they are conducting the election under the VCA, to begin processing vote by mail ballot return envelopes and ballots 29 days before the election but requires that all jurisdictions begin processing vote by mail ballots no later than 5:00 p.m. on the day before the election. Specifically, section 15101 permits all jurisdictions to begin processing vote by mail ballot return envelopes 29 days before the election and permits any jurisdiction having the necessary computer equipment to begin processing vote by mail ballots 29 days before the election. (Elec. Code, §§ 15100 and 15101.) Under section 15101, “processing vote by mail ballots includes opening vote by mail ballot return envelopes, removing ballots, duplicating any damaged ballots, and preparing the ballots to be machine read, or machine reading them, including processing write-in votes so that they can be tallied by the machine, but under no circumstances may a vote count be accessed or released until 8 p.m. on the day of the election.”

The duty to process ballots, including vote by mail ballots is delegated exclusively to the elections official. As the elections official, Clerk-Recorder Ascencion is expressly allowed under state law to process ballots prior to election day. That decision is statutorily the Clerk-Recorder’s under state law. Respectfully, your Board cannot direct how or when Clerk-Recorder Ascencion performs her statutory duty. (People v. Langdon, supra, 54 Cal.App.3d at p. 390.) Adoption of an ordinance, as requested, would impermissibly conflict with state law.

Our Response:

CA State law (CA ELEC § 15101) currently states that election officials may begin pre-processing mail in ballots up to 29 days before Election Day.

First, the law says **may**, not shall. That means the RoV (at the urging and with support of the BoS) can choose to begin processing ballots starting at 5pm the day before Election Day. Or two days before, or 7 days before, or whatever number of days the RoV chooses, up to 29 days.

Second, just because the law allows it, does not make it a best practice nor does it help increase security, safety and trust in our elections. Once ballots are scanned and votes are read by tabulation machines, the system knows all the details that no human supposedly knows or has access to. We are told the data is stored in a “raw” format and that no tabulation,

counting or analysis is being performed on the data until election night. We are told that nobody has access to the raw data. In this day and age, with all the hacking that goes on, that's not only wishful thinking, it's ignorance with blinders on and nearly impossible for any thinking person to believe.

The same (or companion) system at the RoV routinely produces voter activity reports throughout the 29 day period indicating who has voted and who has not yet voted. The reports are provided to candidates under the auspices of helping them target their marketing and get out the vote effort. Information in these reports may include:

- The voter's precinct.
- The voter's party affiliation.
- The voter's address.
- The voter's name.
- The voter's voting activity in recent elections,
- and more.

This should be of serious concern to everyone. These reports provide a way to get a pulse read on an election at any given moment during the 29 days. With nearly a month before Election Day, this provides plenty of time to analyze trends, and opens the door to potential gaming of the system, hacking of the system to alter the trajectory of outcomes, and good old fashioned paper ballot fraud. Considering 550,000 ballots get mailed out, and hundreds of thousands are never returned, who would know if 1,000 or 20,000 ballots were intercepted, filled out by unscrupulous fraudsters, and mailed in? Signature verification has proven to be spotty, and many observers have reported that they've witnessed signature verifiers routinely accepting signatures that do not even come close to matching. Coupled with the 1% tally non-audit where the same tally software dictates which ballots are audited, the tally software system knows and sees all, and pre-installed algorithms or hackers adjusting tally votes along the way would be impossible for the RoV or the County's tech team to detect. There are not enough fool-proof checks and balances at work here. Why not take this option out of the equation and reduce the number of preprocessing days to reduce the opportunity for these potential hacks?

There are very good reasons why CA ELEC § 15101 initially only allowed pre-processing of absentee ballots to begin 7 business days prior to the election. Elections are to be held in one day. The preprocessing period is a courtesy, a convenience for the RoV to have enough time to process all the mailed in ballots received prior to Election Day, so they can be prepared to deliver preliminary results on election night. There is no valid reason why this period needs to be 29 days long.

Further, allowing up to 29 days of preprocessing mail-in (and drop box) ballots is a relatively new amendment (just introduced in 2020, the same year the VCA was first used in a Presidential Election) in a long list of amendments to CA ELEC § 15101.

Here's a list of the 8 times CA ELEC § 15101 has been amended since 2006:

- Amended by Stats 2021 ch 312 (AB 37),s 7, eff. 1/1/2022.
- Amended by Stats 2020 ch 106 (AB 3370),s 4, eff. 1/1/2021.
- Amended by Stats 2020 ch 4 (AB 860),s 6, eff. 6/18/2020.
- Amended by Stats 2018 ch 282 (AB 2665),s 1, eff. 1/1/2019.
- Amended by Stats 2014 ch 906 (AB 2530),s 4.5, eff. 1/1/2015.
- Amended by Stats 2014 ch 618 (SB 29),s 4, eff. 1/1/2015.
- Amended by Stats 2007 ch 508 (AB 1243),s 87, eff. 1/1/2008.
- Amended by Stats 2006 ch 372 (SB 1276),s 2, eff. 1/1/2007.

In fact, AB 860 (2020) specifically amended CA ELEC § 15101 for the 2020 Presidential Election, calling out the Nov 3, 2020 Election in paragraph (2). Previously, 15101 only allowed up to 10 *business* days of preprocessing. Incredibly, AB 860 changed the ballot preprocessing window for the Nov 2020 election from 10 business days to 29 calendar days. Then, just a few short months later, AB 3370 amended 15101 again, changing the preprocessing of ballots window to 29 calendar days for all elections, permanently.

Being able to preprocess and statistically deduce which way the election is going nearly a month before election day is an unprecedented move that was put in place during COVID along with Universal Mail-in Ballots. We no longer are under a COVID emergency and we no longer NEED Universal Mail-In Ballots. We understand that Ventura County BoS can't change the laws that require that every registered voter be sent a mail in ballot, but the BoS and the RoV *can* choose to reduce the number of preprocessing days at least back to a pre-COVID window of 10 business days. Properly scheduled and staffed, that should be plenty of time to get all mailed in ballots pre-processed prior to Election Day. It may also save staffing costs by reducing the number of days requiring temp workers assigned to preprocessing by 19 days.

We believe the BoS has the inherent and supreme authority to protect our County elections so long as the ordinances they pass are not in direct conflict with existing laws. The law states the elections official may begin 29 days before the election. It does not say shall begin 29 days before the election. Therefore, the BoS has the authority to pass an ordinance to set the ballot preprocessing window to a number between 29 and 1 (5pm the) day before Election Day.

We request and recommend that the Board of Supervisors adopt an ordinance directing that no scanning, counting or preprocessing of ballots in any form shall take place before 5:00pm the day before Election Day.

5. *Request that your Board adopt an ordinance requiring voter identification.*

While this may have been requested by individual citizens seeking increased security of our electoral process, it is not an official request of Restore the Vote Ventura.

County Counsel wrote:

Under state law, identifying information, as well as other specified information, is required when registering to vote and must be validated by elections officials. (Elec. Code, §§ 2188, subd. (b), 2196, subd. (a)(7); Cal. Code Regs. tit. 2, §§ 19073, 20107.) An applicant registering to vote must certify to the truth and correctness of the content of the application, under penalty of perjury. (Elec. Code, § 2188, subd. (e).) An individual who registers to vote knowing that they are ineligible to do so is subject to criminal penalties. (Elec. Code, § 18100.) Elections Code section 14216 further provides that, at the time of voting, a registered voter wishing to vote in person needs only provide their name and address; no further identification is required.

The City of Huntington Beach is currently being sued by the California Attorney General over the City's voter identification law, Measure A, which amended the City's Charter to allow the City to impose voter identification requirements at the polls for municipal elections in 2026. The Attorney General and Secretary of State allege that the City's Measure A is preempted and unlawfully conflicts with state law. If your Board were to adopt an ordinance requiring voter identification, it is foreseeable that the County would face a similar lawsuit.

Additionally, Senate Bill No. 1174 (Min, coauthor Newman) is currently pending before the State Legislature. If enacted, this bill would prohibit a local government from enacting or enforcing any charter provision, ordinance, or regulation requiring a person to present identification for the purpose of voting or submitting a ballot at any polling place, vote center, or other location where ballots are cast or submitted. Should your Board wish to do so, your Board could take a formal position on the Senate Bill.

Our Response:

Having acknowledged this is not one of RTVV's requests, we would still like to offer the following response to Counsel's points.

Cited laws notwithstanding, in practice, there is nothing in the process of registering to vote (whether online or by filling out a paper form) that specifically requires physical proof of identification that the voter is both a United States Citizen and a current resident of California. All questions of the sort can be circumvented at the time of registration, with the warning that the voter **may** be asked for ID when they go to vote for the first time.

California drivers' licenses and California IDs are not valid proof of citizenship.

We are not fully versed in the methods the Ventura County RoV uses to validate citizenship, residency, age, felonious incarceration status or court established mental incompetency for new (and existing) voters, or how stringent they are in validating each and all of these requirements. Perhaps the RoV can answer this as we don't recall it being explained in Ms. Ascencion's Election Education Series or on the website.

Regarding "*certifying the truth and correctness of the content of the application, under penalty of perjury*" and the other voter registration fraud crimes listed above, one would be hard pressed to find an actual case of perjury for misrepresenting oneself, their citizenship or residency status, on a voter registration application in Ventura County. Undoubtedly one would expect there to be some of these for each election cycle, yet there's no transparency, no report, no publicly available information on just how many of these fraudulent registration applications exist, how many get rejected and how many are prosecuted. If we had this type of accountability and transparency, it would help to restore trust in Ventura County elections processes.

We believe Elections Code § 14216 is incorrectly interpreted by County Counsel. It does not provide that "a voter need only provide their name and address" (and not identification) as Counsel infers. It states:

California Code, Elections Code - ELEC § 14216

(a) Any person desiring to vote shall state or provide his or her name and address and, upon the precinct officers finding the name in the roster, the voter shall then sign his or her name in the space provided or, if the voter is unable to sign, shall have his or her name signed by another person on the roster provided for that purpose, whereupon a challenge may be interposed as provided in this article.

(b) The signature shall be capable of being retained for the prescribed retention period for the election being conducted.

(c) This section does not prohibit the use of technology to capture the signature prescribed by subdivision (a).

The City of Huntington Beach is operating well within its jurisdiction and authority to conduct elections as they see fit. As a charter city, they have wide latitude for how they conduct the City's operation. Being a charter city notwithstanding, the truth of the matter is that any county or municipality in California has the authority to conduct elections for local offices how they see fit, and need only ensure that the methods they use are not in conflict with CA State Law, the CA Constitution, and the US Constitution (CA Constitution Article XI § 7; Article III § 1). Technically, any city within Ventura County could choose to require voter ID for its municipal elections, and by extension, the Ventura County Board of Supervisors could pass an ordinance requiring voter ID for County elections. The only question would be the practicality of running separate elections (separate ballots) for city and/or county races vs. state and federal races.

The CA Attorney General has attacked the City of Huntington Beach with a clearly frivolous lawsuit. There is no California law that prohibits a county or city from requiring voter ID. The fact that SB 1174 is being drafted (in an urgent manner and as a knee jerk reaction) in Sacramento is proof enough that there's no law on the books prohibiting local government from requiring voter ID. To the contrary, the California Constitution allows cities to conduct their

own municipal elections as they see fit. It also indirectly supports Voter ID requirements through the fact that it requires all voters to be US Citizens and California Residents. The only way Huntington Beach can be stopped from requiring voter ID would be through an amendment to the California Constitution. If SB 1174 passes, it will be ignored by the City and/or immediately be challenged as unconstitutional. We do urge the Board to take a strong formal position opposing the frivolous lawsuit brought by AG Bonta, opposing unconstitutional Senate Bill 1174 and siding with the City of Huntington Beach and its Constitutional right to conduct municipal elections as it sees fit. (CA Constitution, Article XI § 5)

The Ventura County RoV has a DUTY to ensure that all voters who cast a ballot are doing so LEGALLY. The BoS is the ultimate authority for the County and how the County is run (Exhibit A, multiple citations). Since identification and proof of citizenship and residency at the time of registration and at the time of casting the ballot is NOT required in Ventura County, then the burden of proof that the voter is eligible to vote and the ballot being cast is that of an eligible voter falls on the Ventura County RoV and ultimately on the Ventura County Board of Supervisors. What would happen if after this November's Presidential Election proof is disclosed that thousands, or even perhaps tens of thousands of ballots were cast by ineligible voters in Ventura County? So much so that several local, state and perhaps even national races were incorrectly tabulated and certified? Who would be liable for that? The RoV? The SoS? The County BoS who did nothing after being alerted by its citizens for over a year about these types of issues? Seriously, if lawsuits were filed by disgruntled candidates, or the federal government, who would be named?

Requiring Voter ID to protect local elections is a legal measure the BoS can take to shield the County from these potential liabilities.

We request and recommend that the Board of Supervisors stay abreast of breaking news in CA and across the country regarding the growing demand for and implementation of Voter ID as a measure to fulfill Federal requirements to protect election systems as critical infrastructure (see March 2021 CISA report "Election Infrastructure Subsector Cyber Risk Summary").

6. *Request that your Board appoint a Citizen's Election Oversight Commission.*

Confirmed, this is our request.

County Counsel wrote:

Government Code section 31000.1 states that your Board "may appoint commissions or committees of citizens to study problems of general or special interest to the board and to make reports and recommendations to the board." Should your Board wish to do so, your Board could appoint a commission. However, such a commission could only be advisory to your Board and could only make recommendations to your Board. Similar to the limitations on your Board above, such a commission could not direct how or when Clerk-Recorder Ascencion performs her statutory duties under state law. Nor could a commission impede the performance of those statutory duties. If the formation of a

commission is desired by your Board to serve as advisory to your Board, this would need to be explored further to determine the proper role for such a commission.

Our Response:

The County currently has nearly 100 appointed boards and commissions, not one of them covers the subject of Elections.

We understand that the Ventura County Elections Advisory Commission (VCEAC) would be advisory only to the Board of Supervisors. In fact, that's exactly what we want it to be.

We understand and agree that an Elections Advisory Commission could not direct how or when the RoV performs their statutory duties under state law and that the Commission could also not impede the performance of the RoV's statutory duties.

We would like to see the creation of the Ventura County Elections Advisory Commission modeled after the Shasta County Elections Commission. The Shasta County Elections Commission was established via [Ordinance No. SCC 2023-07](#) in accordance with California Government Code section 25201.

<https://www.shastacounty.gov/clerk-board/page/shasta-county-elections-commission>

We envision the VCEAC would have the following responsibilities and authority:

- a) Advise and make recommendations to the Board of Supervisors on elections-related activities in Ventura County.
- b) Have access to places, people and records necessary to implement their delegated duties.
- c) Observe, inspect, and examine elections related records, documents and computer systems for accuracy, completeness, and compliance.
- d) Tour and observe Elections department and Registrar of Voters facilities during, before or after an election period.
- e) Ask questions of elections officials and receive reasonably timely answers.
- f) Review in depth voter and vote recordkeeping processes.
- g) The Commission would meet regularly, holding meetings according to the rules set forth for all other Ventura County commissions and boards charged with advising the BoS.
- h) Conduct open meetings inviting the public to come speak, share their concerns, present issues and solutions, offer relevant information and reports, and offers of praise and acknowledgment for County staff when appropriate.
- i) The Commission should be made up of people representing all districts in Ventura County, and evenly representative of major political parties.

The Commission would be the interface between the public and the BoS for all elections-related topics. When we have a VCEAC, the BoS will be able to redirect public concerns, comments, and questions regarding election activities to the Commission rather than tackling it at the level it is enduring now. The VCEAC would be responsible for gathering relevant information, performing analysis, and making the appropriate recommendations directly to the BoS, all while keeping the RoV in the loop, and working with the RoV to resolve issues first

whenever possible, allowable or appropriate. The BoS and the RoV could establish rules for how and when the Commission would be allowed to approach the RoV directly.

Our intention is not to create an adversarial environment, but to provide both the RoV and BoS a path forward for handling election related concerns held by the public, which are increasing at a rapid rate, daily.

We request and recommend establishing a citizen-led Elections Advisory Commission for Ventura County.

7. *Request that your Board establish an independent election fraud hotline and election inspector's office.*

Confirmed, this is our request.

County Counsel wrote:

During the election education series, Clerk-Recorder Ascencion advised that the Elections Division activates a call center that fields voter inquiries and issues of all kinds throughout the election. Additionally, the Clerk-Recorder & Registrar of Voters has a full-time Legal Compliance Officer (LCO) who handles all the cases that need to be addressed. The LCO sends these cases to both the Secretary of State and/or the Ventura County District Attorney.

Should your Board wish to do so, your Board could establish an additional hotline/office and staffing for same. However, similar to the limitations on your Board above, such additional staffing could not direct how or when ClerkRecorder Ascencion performs her statutory duties under state law. Nor could the additional staffing impede the performance of those statutory duties.

Our Response:

The operative word in this request is "independent".

The VC RoV and CA Secretary of State both operate hotlines during election season. Many people have reported that they sent their issues and inquiries to these hotlines and either didn't receive a valid, useful or actionable response or didn't receive a response at all.

The common sentiment is that these hotlines are nothing but black holes and that nothing tangible ever comes out of reporting to them. Most voters don't trust they will get any type of resolution and as a result, many don't bother submitting their issue.

Further, there is no perceivable public transparency regarding issues that are reported. We are not aware if the RoV and/or the SoS routinely produce reports with metrics showing how many calls were fielded, what general categories they fell into, how many were resolved, required

follow-up, referral to DA or other agency, etc. Shouldn't that information be shared with the public? Again, even doing that would go a long way towards restoring voter trust in Ventura County elections.

The real issue here is transparency and accountability. An independent office, accountable to the BoS and the public, in a transparent way, could provide a more neutral place for voters to share their concerns, report their issues and hold someone accountable for an answer.

We request and recommend establishing an Independent Election Inspector's Office and Fraud Hotline.

In Conclusion,

County Counsel wrote:

Finally, one of the few exceptions to the authority of the elections official pertains to the adoption of a voting system. Elections Code section 19207 provides that your Board may adopt for use at elections any kind of voting system, any combination of voting systems, or any combination of a voting system and paper ballots, provided that the voting systems involved have been certified or conditionally approved by the Secretary of State. As an aside, Elections Code section 19205 prohibits a voting system from being connected to the internet at any time or for a voting system to electronically receive or transmit data through an exterior communication network or to receive or transmit wireless communications or wireless data transfers. Related to the authority to adopt the voting system, your Board is the entity responsible for approval of the budget for the Clerk-Recorder & Registrar of Voters and for approval of any contract with vendors/contractors if the dollar amount is over the Purchasing Agent's authority of \$200,000 per year. Your Board is also tasked with declaring the results of each election under Elections Code section 15400 after your Board receives the certified statement of results from the elections official per Elections Code section 15372, typically accomplished by a routine receive and file consent item.

Our Response:

We are encouraged to hear County Counsel acknowledge that the Board of Supervisors has the authority to choose the voting systems we use for elections in Ventura County. We are further encouraged that Supervisor Gorell suggested that the BoS begin a review of existing systems and explore what other options may be available.

Our research this past month has led us to conclude that the Board of Supervisors has wide-ranging authority regarding elections, as it does with most things related to running a County in California. We are attaching Exhibit A, a list of relevant Articles from the California Constitution and sections of California Law that grant the BoS the over-arching, implied and direct authority to establish everything we are asking for.

We thank you for your time and consideration. We look forward to a reply and next action steps from the Board of Supervisors and the Registrar of Voters.

Sincerely,

DEBBIE COHEN

Debbie Cohen
Ventura County Citizen
Founding Member of Restore the Vote Ventura


Attachments:

Exhibit A – Ventura County Board of Supervisors Authority Under the California State Constitution and Laws

Exhibit A – Ventura County Board of Supervisors Authority Under the California State Constitution and Laws

California County Board of Supervisors (“BoS”) Authority – Overview

Source: <https://www.counties.org/general-information/county-structure-0>

Ventura County is a General Law County (as opposed to a Charter County). It adheres to state law as to the number and duties of county elected officials.

According to the CA State Constitution, Only the governing board (Board of Supervisors), sheriff, district attorney, and assessor must be elected positions.

The California Constitution authorizes a county to make and enforce local ordinances that do not conflict with general laws.

The powers of a county can only be exercised by the Board of Supervisors or through officers acting under the authority of the Board or authority conferred by law.

Where the law does not specifically prescribe a method for accomplishing a task, the county may adopt any reasonably suitable means.

Unlike the separation of powers that characterizes federal and state governments, the Board of Supervisors is both the legislative and the executive authority of the county. It also has quasi-judicial authorities.

The Board of Supervisors oversees most county departments and programs and annually approves their budgets; supervises the official conduct of county officers and employees; controls all county property; and appropriates and spends money on programs that meet county residents’ needs.

The Board of Supervisors may supervise the official conduct of county officers and require them faithfully to discharge their duties, but the Board cannot add to those duties or relieve the officers from these obligations. The Board may not direct or control the day-to-day operations of a county department, or otherwise limit the exercise of discretion vested by law in a particular officer.

The County Clerk, Registrar or Recorder may be either elected or appointed by the Board of Supervisors. They are typically appointed in larger counties. Otherwise elected, serving four year terms. County Clerk, Registrar and Recorder are *not* Constitutionally elected Officials.

CA State Constitution Articles & State Law regarding BoS Authority:

BoS Authority & Responsibility under CA State Constitution Articles

California Constitution, Article II, Sections 1, 2, 2.5 & 4

Articles dealing with voting – People power, State power, local responsibility. *(our notes in parenthesis below each Section)*

SECTION 1. All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.

(Current election laws and methods are not protecting, securing or benefitting citizen voters.)

SEC. 2. (a) A United States citizen 18 years of age and resident in this State may vote.
(Current registration methods do not enforce the requirements for proof of eligibility.)

SEC. 2.5. A voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted.

(Fraud and cheating negate legitimate votes, causing legitimate votes to not be counted.)

SEC. 4. The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or serving a state or federal prison term for the conviction of a felony.

(Improper (even illegal) practices (and laws) instituted by the legislature (and local (county) government(s)) are affecting elections, and as such, are in violation of this Section.)

California Constitution, Article III, Section 1-9

ARTICLE III STATE OF CALIFORNIA Section 1

SEC. 1. The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.

California Constitution, Article XI, Section 7

The BoS has inherent power to make and enforce ordinances and regulations not in conflict with general laws.

SEC. 7.

A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

BoS Authority & Responsibility under CA Govt & Elections Code

The BoS has authority to take a wide-ranging set of actions with regard to elections under their implied and explicit role of OVERSEEING elections.

The Board of Supervisors IS the Election Board for the County

California Code, Elections Code - ELEC § 319

“Election board” means the board of supervisors of each county, the city council or other governing body of a city, or any board or officer to whom similar powers and duties are given by any charter.

The Board of Supervisors can establish, abolish and change many pieces of the Election apparatus and process.

California Code, Government Code - GOV § 25201

Subject to the provisions of the Elections Code, the board may establish, abolish, and change election precincts, appoint inspectors, **clerks, and judges of election**, canvass all election returns, **declare the result**, and **order the county elections official to issue certificates of election**.

(We find nothing in the Elections Code as currently written that conflicts with any of the above.)

Powers not otherwise specified are inherent powers of the BoS.

California Code, Government Code - GOV § 25207

The board may do and perform all other acts and things required by law not enumerated in this part, or which are necessary to the full discharge of the duties of the legislative authority of the county government.

California Code, Government Code - GOV § 23003

A county is a body corporate and politic, has the powers specified in this title and such others necessarily implied from those expressed.

The Board of Supervisors is the ULTIMATE AUTHORITY for the County where not specified in the law to the contrary

California Code, Government Code - GOV § 23005

A county may exercise its powers only through the board of supervisors or through agents and officers acting under authority of the board *or authority conferred by law.*

The BoS has wide ranging authority over how and where county officers conduct business:

California Code, Government Code - GOV § 24255

All offices required by this chapter shall be provided by the county through the board of supervisors.

California Code, Government Code - GOV § 24260

In all counties county officers shall keep their offices open for the transaction of business during such hours and on such days as are **fixed by the board of supervisors** by ordinance or resolution.

California Code, Government Code - GOV § 24262

Notwithstanding any other provision of this chapter, no office of the sheriff or clerk shall be established elsewhere than at the county seat **without the approval of the board of supervisors.**

The BoS has the power to consolidate or separate the duties of the County Clerk Recorder.

California Code, Government Code - GOV § 24301

If the duties of officers are consolidated pursuant to this chapter, the board of supervisors, by ordinance, may elect to separate the duties so consolidated, and reconsolidate them in any other manner permitted by this chapter or separate the duties without reconsolidation, and provide that the duties of each office shall be performed by a separate person, if it deems the change to be in the public interest.

Also see California Code, Government Code - GOV § 24300

(For a list of combinations they can consolidate or separate.)

The BoS has Budgetary power over consolidated offices.

California Code, Government Code - GOV § 24305

When the duties of officers are consolidated pursuant to this chapter, the board of supervisors, by ordinance, may elect to consolidate the budgets of the offices the duties of which are consolidated.

BoS powers are superior to the County Clerk-Registrar with respect to Declaring Elections:

California Code, Elections Code - ELEC § 15400

The governing body **shall declare elected or nominated** to each office voted on at each election under its jurisdiction the person having the highest number of votes for that office, or who was elected or nominated under the exceptions noted in Section 15452. The governing board shall also declare the results of each election under its jurisdiction as to each measure voted on at the election.

(15401 backs up 15400)

California Code, Elections Code - ELEC § 15401

The elections official shall make out and deliver to each person elected or nominated, **as declared by the governing body**, except those elected to a central committee, a certificate of election or nomination, signed and authenticated by the elections official.

The County Clerk - Recorder is an elected officer but can be changed to appointed by the Board of Supervisors with voter approval.

California Code, Government Code – GOV 24000-24012

24009. (a) Except as provided in subdivision (b), the county officers to be elected by the people are the treasurer, county clerk, auditor, sheriff, tax collector, district attorney, recorder, assessor, public administrator, and coroner.

(b) Except for those officers named in subdivision (b) of Section 1 of Article XI of the California Constitution, any county office that is required to be elective may become an appointive office pursuant to this subdivision. In order to change an office from elective to appointive, a proposal shall be presented to the voters of the county and approved by a majority of the votes cast on the proposition. A proposal shall be submitted to the voters by the county board of supervisors or it may be submitted to the voters pursuant to the qualification of an initiative petition as provided in Chapter 2 (commencing with Section 9100) of Division 9 of the Elections Code. Any county office changed from elective to appointive in accordance with this subdivision may be changed back from appointive to elective in the same manner.

Registrar of Voters Definitions and Duties

Registrar of Voters = County Clerk election-related responsibilities

California Code, Government Code - GOV § 26802

Except as provided by law, the county clerk shall register as voters any electors who apply for registration and shall perform any other duties required of him or her by the Elections Code. In those counties in which a registrar of voters office has been established, the registrar of voters shall discharge all duties vested by law in the county clerk that relate to and are a part of election procedure.

Definition of “Elections Official”

California Code, Elections Code - ELEC § 320

“Elections official” means any of the following:

- (a) A clerk or any person who is charged with the duty of conducting an election.
- (b) A county clerk, city clerk, registrar of voters, or elections supervisor having jurisdiction over elections within any county, city, or district within the state.

Other Election-Related Definitions and Duties

Definition of “Inspector” (of Elections)

California Code, Elections Code - ELEC § 325

“Inspector” means the supervisor of the precinct board of which he or she is a member.

Definition of “Official Canvass”

California Code, Elections Code - ELEC § 335.5

The “official canvass” is the public process of processing and tallying all ballots received in an election, including, but not limited to, provisional ballots and vote by mail ballots not included in the semifinal official canvass. The official canvass also includes the process of reconciling ballots, attempting to prohibit duplicate voting by vote by mail and provisional voters, and performance of the manual tally of 1 percent of all precincts.

Definition of “shall” vs. “may”

California Code, Elections Code - ELEC § 354

“Shall” is mandatory and “may” is permissive.

Definition of “Voting system”

California Code, Elections Code - ELEC § 362

“Voting system” means a mechanical, electromechanical, or electronic system and its software, or any combination of these used for casting a ballot, tabulating votes, or both. “Voting system” does not include a remote accessible vote by mail system.