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Election Law Changes as a Result of COVID-19

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## COMMENTARY

### ELECTION LAW CHANGES AS A RESULT OF COVID-19

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*Senator Tom Umberg, Chair, Senate Committee on Elections and Constitutional Amendments  
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As the chair of Senate Committee on Elections and Constitutional Amendments, 2020 brought unique challenges to our committee's work. COVID-19 upended the legislature's process and dramatically altered our priorities for the remainder of the 2019-20 legislative session. California held its Primary Election on March 3, 2020. At the time, there were very few confirmed cases of COVID-19 in the state. Unfortunately, COVID-19 was not contained, the positivity rate spiked, and California needed to modify how the state conducts its elections to confront the ongoing challenges of the pandemic. This resulted in a collaborative legislative effort with Assemblymember Marc Berman, Chair of the Assembly Committee on Elections and Redistricting, aimed at mitigating the effects of COVID-19 on California's November General Election.<sup>1</sup> This included ways to provide greater access through voting by mail while maintaining sensible and safe in-person voting options. Legislation also addressed the long-term effects of COVID-19 on census and redistricting deadlines.<sup>2</sup>

#### **Assembly Bill 860 (Berman)**

California voters have gradually shifted from voting in-person to voting by mail. This is a result of a number of changes over the past two decades aimed at expanding voter accessibility. One recent and notable change, SB 450, permitted counties to shift from a traditional polling place model to a vote center model.<sup>3</sup> Among the many changes permitted by SB 450, the bill required counties that moved to a vote center model to mail a ballot to every active registered voter. (The county of Los Angeles was exempted from this requirement, but this spring its Board of Supervisors voted to adopt this practice.) With this change, and combined with the number of voters who permanently receive a vote-by-mail ballot for every election as well as voters who reside in an all vote-by-mail county, the March 2020 Primary Election saw 72.1 percent, or 6,982,750 ballots, cast by mail.<sup>4</sup> To compare, the June 2016 primary saw 58.9 percent, or 5,036,262, of ballots cast by mail.<sup>5</sup>

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<sup>1</sup> SB 423 (Umberg, Chapter 31, Statutes of 2020) and AB 860 (Berman, Chapter 4, Statutes of 2020)

<sup>2</sup> SB 970 (Umberg, Chapter 111, Statutes of 2020)

<sup>3</sup> SB 450 (Allen, Chapter 832, Statutes of 2016)

<sup>4</sup> Voter Participation Statistics for March 3, 2020 Presidential Primary Election by California Secretary of State (<https://www.sos.ca.gov/elections/historical-absentee>)

<sup>5</sup> Voter Participation Statistics for June 7, 2016 Presidential Primary Election by California Secretary of State (<https://www.sos.ca.gov/elections/historical-absentee>)



Shortly after the March 2020 Primary Election, Governor Newsom and local governments declared states of emergency and took steps to reduce the spread of COVID-19. County election officials needed to reevaluate and update their plans for the November General Election. The Secretary of State established a working group to discuss the conduct of elections during the COVID-19 pandemic. On May 8, 2020, Governor Newsom issued Executive Order N-64-20, which required each county's elections official to send vote-by-mail ballots for the November 3, 2020 General Election to all registered voters.<sup>6</sup> AB 860 used the framework from the Executive Order and addressed the procedures for the vote-by-mail portion of the November general election. AB 860 required county election officials to begin mailing ballots on the 29<sup>th</sup> day before the election, allowed counties to begin processing returned vote-by-mail ballots earlier, and extended the deadline for receipt of vote-by-mail ballots. With Californians already trending towards voting by mail, and with the effects of the pandemic, sending every active registered voter a ballot by mail ensures that voters are safe and are not disenfranchised because of concerns relating to COVID-19.

### **Senate Bill 423 (Umberg)**

However, not all individuals will vote by mail due to a variety of reasons. In-person voting locations are necessary for homeless or unhoused voters, Californians who require language assistance, use of disabled-accessible voting equipment, replacing lost or damaged ballots, or for voters registering or updating their voter registration. That is why changes were made to address the in-person voting aspect for the November General Election. On June 3, 2020, Governor Newsom issued Executive Order N-67-20 and established a minimum level of in-person voting opportunities that must be available for the November General Election.<sup>7</sup>

SB 423 expanded on the Governor's executive order and permitted counties to administer the November General Election as they normally would or alternatively opt for a minimum of one vote center or consolidated polling place for every 10,000 registered voters. The consolidated polling places are required to be open for at least three days prior to and including Election Day. Counties that consolidate their polling locations must provide at least two ballot drop-off locations or at least one ballot drop-off for every 15,000 registered voters, whichever is more. Each county and the Secretary of State are also required to conduct a voter education and outreach campaign in their jurisdiction or statewide to bring awareness to these changes in the voting procedure. With funding allocated in the 2020-21 state budget for the administration and outreach support, SB 423 will ensure that voters who decide to vote in person are safe and with a reduced risk to COVID-19.

### **Senate Bill 970 (Umberg)**

While AB 860 and SB 423 address the November General Election, SB 970 changes the date of the direct primary in gubernatorial election years (i.e. even-numbered years not evenly divisible by four)

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<sup>6</sup> Executive Order N-64-20

<sup>7</sup> Executive Order N-67-20



from March to June. Because of COVID-19, on April 13, 2020, the United States Census Bureau sought relief from Congress to provide 120 additional calendar days to deliver the first apportionment counts. This delay means that the date on which redistricting data are sent to the states would be moved to July 31, 2021, providing redistricting bodies and local jurisdictions with a nearly impossible timeframe to adjust state and local district lines.

The timeline that was in place at the start of the 2020 year is as follows: The California Redistricting Commission would have until August 12, 2021 to release the final district maps for the House of Representatives, the Board of Equalization, the State Senate, and the State Assembly. Meanwhile, local jurisdictions, such as counties and municipalities, have deadlines of 151 days before the next regular election occurring after March 1, 2022. Special districts have until 180 days before the next regular election occurring after March 1, 2022. Counties and municipalities would have until October 8, 2021 and special districts would have until September 9, 2021 to finalize their maps.

While this was the timeframe when the bill was moving through the legislative process, the California Supreme Court granted emergency relief to the Legislature. The California Supreme Court granted the Legislature a peremptory writ of mandate allowing the California Redistricting Commission to certify the final statewide maps no later than December 15, 2021.<sup>8</sup> Additionally, AB 1276 by Assemblymember Bonta altered the deadlines for local jurisdictions.<sup>9</sup> Moving the primary from March to June provides additional time to finalize district maps.

## **Conclusion**

Though COVID-19 has upended California's election process, the work of the legislature with the governor will ensure that California's November General Election runs smoothly and is safe for all individuals who participate, regardless of the manner in which they choose to participate.

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<sup>8</sup> Legislature of the State of California v. Padilla, S262530, July 17, 2020.

<sup>9</sup> AB 1276 (Bonta, Chapter 90, Statutes of 2020)