CALIFORNIA ELECTION LAW DURING THE SIXTIES AND SEVENTIES: LIBERALIZATION AND CENTRALIZATION

By

BRUCE C. BOLINGER

Consultant, Assembly Committee on Elections and Reapportionment

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Analysis

INTRODUCTION

A little less than two decades have elapsed since Edward H. Gaylord wrote his article, History of the California Election Laws. Despite the relatively brief time span, there have been a great many significant developments in the field of elections. If one's point of view is that citizen participation in the electoral process should be maximized, then it has been a period of considerable progress. It is far easier for a person to become a registered voter, to learn the relevant facts concerning an impending election, and to cast a vote than was the case before. If that person wants to become a candidate, several, although not all, of the obstacles have been removed from that process. Finally, when the votes are counted, as a result of the reapportionment decisions, one person's vote is far more likely to carry just as much weight as that of the next person than was the case before.

Space does not allow a detailed treatment of all these developments. For that reason, in the pages that follow this Introduction, only the changes which have a bearing on access to the franchise will be discussed in some depth. Nevertheless, some of the more outstanding innovations in the other areas of election law will be mentioned here.

First of all, in order to make an intelligent decision at the polls, the voter needs information on the candidates and measures that is both timely and in a form which is useful. California has long been known for the high level of information provided voters on measures on the ballot but, in the case of candidates, only their names and occupational designations appeared on official election material. A significant development was the adoption of candidates' statements of qualifications in local elections in 1965 to be mailed along with the voters' sample ballots.[1] In addition to wanting to know about the qualifications of a candidate, a voter is likely to want to know a candidate's sources of campaign funding in order to better judge how the candidate will behave once in office. The Waxman-Dymally Campaign Disclosure Act of 1973 [2] and the Political Reform Act of 1974 [3] help to ensure that this information will be available.

1. AB 1212 (Stanton), Stats.1965, c. 1810. Later legislation ended this restriction to "qualifications," allowing discussion of the issues (Stats.1975, c. 1158). It appears likely that before long such statements will be authorized in the case of candidates for state office as well.

2. Stats.1973, c. 1186.

3. Approved by the voters as Proposition 9 on the June 1974 ballot.

Candidates now have somewhat more equal access to the ballot. Instead of being obliged to pay filing fees, they are allowed to file petitions carrying certain numbers of signatures in lieu of the fees.[4] Non-incumbent candidates are no longer relegated to less favorable positions on the ballot. The Political Reform Act of 1974 prohibited listing incumbents first and the State Supreme Court subsequently ruled that that practice and the listing of candidates in alphabetical order were unconstitutional.[5] The Legislature then devised the randomized alphabet to ensure every candidate equal access to the best possible ballot position.[6] Candidates, like voters, no longer will be faced with excessive durational residence requirements.[7] And, finally, independent candidates will no longer be barred from the ballot by filing requirements that made it virtually impossible for any independent ever to qualify.[8]

With little public notice, the ballots also have been opened up to a vast new array of measures. In addition to initiatives and referenda, the voters now will be faced with advisory votes on whatever subjects local governing boards see fit to place on the ballot.[9]

In addition to the above, the administration of elections has been changing. It is becoming far more centralized, partly as a result of deliberate legislative steps,[10] partly as a result of changes in

4. Stats.1974, c. 454, which was prompted by Donovan v. Brown, 11 C.3d 571, 115 Cal.Rptr. 41, 524 P.2d 137, and Knoll v. Davidson, 12 C.3d 335, 116 Cal. Rptr. 97, 525 P.2d 1273. See also Lubin v. Panish, 415 U.S. 709, 94 S. Ct. 1315, 39 L.Ed.2d 702.

5. Gould v. Grubb, 14 C.3d 661, 122 Cal. Rptr. 377, 536 P.2d 1337.

6. AB 1959 (Keysor), Stats.1975, c. 1211.

7. Johnson v. Hamilton, 15 C.3d 461, 125 Cal.Rptr. 129, 541 P.2d 881, held that any durational residence requirements for candidates for local office in excess of thirty days preceding the date of filing is in violation of the equal protection clause of the Fourteenth Amendment. Although the California Constitution (Article IV, Section 2(c)) still contains a one-year residence requirement for legislative candidates, the Legislature is reluctant to enforce it and the State Supreme Court in In re McGee, 36 C.2d 592, 226 P.2d 1, has made clear that the courts will not. The Secretary of State in an opinion, February 4, 1976 (No. 76-SOS 1 E/PR) concluded that the conclusions in Johnson v. Hamilton are equally applicable to legislative candidates.

8. AB 52 (Keysor), Stats.1976, c. 115, reduced signature requirements, lengthened the circulation period for obtaining signatures, and broadened the pool of voters from which signatures could be obtained. The legislation probably would not have been possible, however, had it not been for Storer v. Brown, 94 S.Ct. 1274, 415 U.S. 724, 39 L.Ed.2d 714, rehearing denied 94 S.Ct. 2635, 417 U.S. 926, 41 L.Ed.2d 230.

9. SB 231 (Dunlap), Stats.1976, c. 916, as revised by SB 14 (Dunlap), Stats. 1977, c. 1. There had been occasional advisory votes placed on local ballots over a period of years, but no legal authority for doing so.

10. County clerks have been given primary responsibility for administering special district elections (see, in particular, Stats.1965, c. 2019; Stats.1968, c. 268; and Stats.1974, c. 1157) and

the technology of casting and compiling votes,[11] and partly as a result of the increased complexity of election laws and election administration which dictates that officials who specialize in elections can run them more efficiently and more economically than those whose involvement in elections is only sporadic.[12]

The author hopes that these remarks and those that follow will provide a useful orientation to persons using the code and a starting point for those who wish to pursue certain topics even further than was possible here.

Special thanks are due Assemblyman Jim Keysor, Chairman of the Assembly Committee on Elections and Reapportionment, and his staff for their encouragement which led to this article, and to the many interns without whose assistance it would never have been possible to collect and digest all the information that was used in preparing it: Dianah Baldwin, Steve Casad, Manuel Coelo, Sarah Hoover, Jean Mastbrook, Alyshia Patrick, Roberta Ruozzi, Bob Ruth, Ron Taylor, and Ramona Vipperman.

school district elections (Stats.1970, c. 1344; Stats.1971, c. 643; Stats.1972, c. 514). The Secretary of State was made the chief election officer of the state with authority to adopt regulations to ensure the uniform application and administration of election laws (Stats.1975, c. 1119).

11. In the 1960 statewide elections, 94 percent of the voters voted on paper ballots counted by hand in the polling places and 6 percent voted on conventional voting machines. No one was using paper ballots tabulated by optical scanners because the first use of such equipment did not come until 1962, nor was anyone voting on punchcard ballots since these were not used by any county in a statewide election until 1964. By 1977, only 0.4 percent of the voters (in seven very small counties) were still using paper ballots counted by hand in statewide elections, 5 percent were using conventional voting machines, 26 percent were voting on paper ballots counted by optical scanners, and 69 percent were voting on punchcards. (In various local elections, however, hand-counting in the polling places is still common.) (Survey of the county clerks and registrars of voters by the Assembly Committee on Elections and Reapportionment, June 9, 1977, coupled with voter registration figures from the Statement of Registration by the Secretary of State.)

12. Thirty-seven percent of the cities in the state from 1960 to 1977 voluntarily turned over all or major parts of the administration of their municipal elections to the counties. (Assembly Committee on Elections and Reapportionment survey of county clerks and registrars of voters, June 9, 1977, of charter city clerks, March 25, 1977, and of general law city clerks, April 15, 1977.) The counties, for the most part, control the voting equipment and have the technical expertise for running the ever more complex elections.

EXPANDING ACCESS TO THE FRANCHISE

A. VOTER QUALIFICATIONS

1. Literacy and Bilingualism in the Elections Process

For the first 44 years of its existence as a state, California did not require that one be literate in English in order to vote. It was not until 1894 that the Constitution was amended to add the words "no person who shall not be able to read the Constitution in the English language and write his name, shall ever exercise the privileges of an elector in this state. . . ." [1]

Originally introduced in the Assembly three years earlier, the author of the amendment, a former member of an anti-Chinese vigilante group, declared its purpose to be that of protecting "the purity of the ballot-box from the corrupting influences of the disturbing elements . . . from abroad." [2] Unable to obtain legislative approval for placing the amendment on the ballot at the outset, its proponents suggested a popular advisory vote as an alternative to which the Legislature agreed and which appeared on the 1892 ballot.[3] Championed by newspaper editorial support expressing sentiments such as "wipe out the ignorant foreign vote", the advisory vote passed overwhelmingly and the stage was set for approval of the constitutional amendment in 1894. Clearly, "fear and hatred played a significant role in the passage of the literacy requirement." [4]

Despite the explicit language of the 1894 amendment, one historical account concluded that

> There is every reason to suspect that the provision remained largely a dead letter: certainly it was not enforced among the Italians of San Francisco in the first decades of this century nor against Yiddish-speaking Los Angeles Jews in the years after 1920, nor even against the newly naturalized Issei after 1952. The sole enforcement, and that largely sporadic, seems to have been against a group more native than the nativists themselves: the Spanish-speaking Mexican-Americans whose recent increased

1. Senate Journal, January 25, 1893, p. 214. The amendment received 84% of the popular vote. (California Blue Book or State Roster, 1895, p. 266, as cited in Roger Daniels & Eric F. Petersen, "California's Grandfather Clause: The 'Literacy in English' Amendment of 1894," Southern California Quarterly, Vol. 50, March, 1968, p. 54.)

2. As quoted in Castro v. State of California, 2 C.3d 223, 230, 85 Cal.Rptr. 20, 24, 466 P.2d 244, 248.

3. Stats.1891, c. 113.

4. Castro v. State of California, op. cit., 2 C.3d 223, 231, 85 Cal.Rptr. 20, 25, 466 P.2d 244, 249.

political activity has resulted in the first significant use of the Gilded Age voting restriction.[5]

Because the large Mexican-American population in California has tended to vote predominantly Democratic, the question of one's ability to use the English language has been a politically charged issue not only during the 1960's while the English literacy requirement still existed, but also in the 1970's as multi-lingual election services were extended to non-English speaking groups by state and federal legislation.

After the Democratic Party gained control of the Legislature and the governorship in 1959, its leaders were finally in a position to act on what they perceived as a misuse of the literacy requirement as a device for conducting mass challenges at the polls to intimidate non-English speaking citizens.[6] The hotly contested 1960 presidential election strengthened the leadership's feelings about the matter and the stage was set when the Legislature convened in 1961 for the Democrats to attempt to change the law.[7]

Although one legislator at the 1961 session proposed amending the Constitution to, for all practical purposes, eliminate the literacy requirement,[8] this was probably politically premature. The real controversy at that session centered on whether the law should continue

5. Daniels & Petersen, op. cit., p. 55.

6. The "Manual for Democratic Poll Watchers, California General Election, November 4, 1958" published by the Pat Brown for Governor Committee, stated that "this vicious practice of intimidation, through challenge, has, in the past been used by Republicans particularly against foreign language group members."

7. For example, a letter from Hazel L. Lewis, Executive Secretary of the Orange County Democratic Central Committee, dated December 14, 1960, to Joseph Wyatt, reported on the mass challenge of "all voters of Mexican-American descent in the precincts where they were predominant. (H)arassment was such that many people who were legally entitled to vote were intimidated to the degree that they left the polls without voting. This was true in precincts in Stanton, Placentia, West Santa Ana, La Habra and Westminster." Alan Sieroty, Legislative Chairman of the Los Angeles County Democratic Central Committee, testified at a hearing of the Assembly Interim Committee on Elections and Reapportionment in late 1960 that "many voters didn't even get to the polls because along the way, before they got there, they were approached by people who told them that, '(Y)ou won't be able to vote anyway because we're going to challenge you,' . . . . ." Transcript of Hearing, December 15 and 16, 1960, pp. 133–134.

One member of the state Assembly said "I am firmly convinced that literally thousands of voters did not vote because of fear of public embarrassment, rather than because of the question of their ability to read." (Sacramento Bee, February 15, 1961.)

8. SCA 18 and SB 697, by Senator Short would have allowed a person not literate in English to vote with the assistance of someone who could. Both bills were referred to interim study, i. e., killed for all practical purposes.

to allow voters to be challenged at the polls on the issue of literacy. The Elections Code not only allowed such a challenge, it provided that a challenged voter could be required to demonstrate his English language proficiency by reading "any consecutive one hundred words of the Constitution" selected by the precinct board officers.[9]

Since the Elections Code already required that the affidavit of registration contain language to which the voter subscribed and swore to the effect that he was able to read the Constitution in English,[10] the state Attorney General recommended that a voter's literacy be established at the time of registration with no election day challenges being allowed on the issue.[11] The latter recommendation was put into bill form by the chairman of the Assembly Committee on Elections and Reapportionment, approved by the Legislature over adamant Republican opposition, and signed by the Democratic Governor.[12]

Ostensibly, from then on, English language literacy would be established at the time the voters registered.[13] But without any procedure being spelled out in the Elections Code for doing this, each county clerk was on his own. The only bill which was proposed to set the necessary guidelines never emerged from committee and a subsequent hearing on it by an interim committee produced a recommendation against its enactment.[14] As a result, some counties provided their

9. Sec. 5626 as of 1960; Sec. 14247 of the Elections Code of 1961.

10. Secs. 220(g) and 230 as of 1960.

11. Los Angeles Times, Dec. 30, 1960, part I, p. 10.

12. Stats.1961, c. 56, (AB 370, Crown). Republicans denounced the bill as a "backdoor" approach to abolishing the literacy requirement. (Sacramento Bee, February 25 and March 1, 1961.) The minority floor leader of the Assembly said that "Obviously the Democrats feel that a person who cannot read would choose their party." (Sacramento Bee, March 4, 1961.) The vote in the Assembly was a straight party vote, 45 Democrats in favor, 32 Republicans against. (Sacramento Bee, March 1, 1961.) A bill to restore the literacy challenge procedure by one of the Republican leaders, AB 2686, never was acted upon by the Elections Committee. (Sacramento Bee, April 18, 1961.)

13. An associate justice of the District Court of Appeal, addressing a convention of the county clerks, warned them that the responsibility for enforcing literacy requirements lay with them in view of the passage of AB 370. (Sacramento Bee, May 26, 1961.) In signing the bill, the Governor said the time to challenge a voter was when he registered. (San Francisco Chronicle, April 1, 1961, p. 6.)

14. AB 1647 (Cunningham) would have required the prospective voter to read a 100-word excerpt from the Constitution at the time of registration. See the Elections and Reapportionment Interim Committee, An Omnibus Report, January, 1963, part IV, Literacy Test for Voting, pp. 43–48 and p. 58. See also the report on the bill in the Los Angeles Times, December 16, 1961, part I, p. 12.

deputy registrars with excerpts of the Constitution or other material for voters to read while others did not [15] and even in those that did, deputy registrars varied greatly as to how conscientiously they checked for English language ability.[16]

In 1962, California was one of only 19 states which made English language literacy a prerequisite for voting.[17] The arbitrary application of literacy tests in some states to bar Blacks from voting had resulted in growing federal pressure for their elimination. The previous year, the U.S. Commission on Civil Rights had recommended that completion of six years schooling should suffice as evidence of literacy in states requiring it as a prerequisite.[18] In late 1963, the Report of the President's Commission on Registration and Voting Participation went even farther, recommending the outright repeal of literacy tests, particularly in light of the availability of other than printed media to supply information to potential voters.[19]

In the meantime, the issue continued to occupy the 1963 Legislature. Much of what happened was a replay of the events of 1961. Another attempt to require a demonstration of proficiency in English at the time of registering was introduced, this time with unanimous Republican support. The bill, however, died in committee.[20] At the other extreme, again, just as in 1961, a constitutional amendment was introduced to allow persons to vote who were not literate in English provided they had the assistance of persons who were. Unable to gain the two-thirds support needed for passage in the Assembly, the author amended it to reinstate the literacy requirement language but exempt some 5000 persons who had become naturalized citizens under the Walter-McCarren Act and had taken the citizenship examination

15. For example, Los Angeles County did but San Diego County did not. Interview with Charles Sexton, Registrar of Voters, San Diego County, January 2, 1963. See also the Los Angeles Times, December 20, 1963, part II, p. 4.

16. The author directed several voter registration drives in Los Angeles County.

17. Book of the States as cited by Elections and Reapportionment Interim Committee, An Omnibus Report, January, 1963, pp. 47–48. In Hawaii, Hawaiian was allowed as an alternative to English.

18. United States Commission on Civil Rights, Voting, 1961 Commission on Civil Rights Report. (Washington: Government Printing Office, 1961), p. 141.

19. Washington: U.S. Government Printing Office, 1963, pp. 39–40. Three commissioners disagreed with the majority's recommendation (pp. 51–54).

20. AB 1350. The author, Assemblyman Victor Veysey, and his 27 co-authors, represented the entire Republican minority in the Assembly. (He also represented Imperial County. See the discussion below in the text concerning Imperial County's role in voter challenges.)

in their native languages. Despite its limited scope, the bill died in Senate committee.[21]

Again, however, the main controversy during that session involved legislation to further restrict any form of challenge as to literacy. During the 1962 gubernatorial general election in Imperial County, unauthorized signs had been posted outside of polling places warning persons that they must be able to read the Constitution to be able to vote. The state Attorney General reported that this had intimidated some Mexican-Americans from voting and that he had sent his deputies to remove the signs.[22]

The Democrats in the Legislature in 1963 responded with two bills. One prohibited the posting of signs about voter qualifications or speaking to voters about their qualifications within 100 feet of a polling place.[23] The other prohibited any challenges of voters unless done so through members of the precinct boards.[24] Both bills were enacted, again with the voting largely on party lines, the Republican leadership describing them as the precursors of "Chicago type corruption." [25]

The 1965 Legislature further restricted the possibility of challenges at the polls in response to what had occurred during the 1964 presidential campaign. Although the issue was largely one involving residency, literacy was also a part of it. The author of the key legislation of that session cited instances of allegedly improper challenges of members of minority groups in Imperial and San Diego Counties,[26] both having large Mexican-American populations. As enacted, this bill set up strict standards local precinct boards must adhere to before accepting or using any documents or lists concerning voting

21. ACA 11 (Song) and accompanying legislation, AB 714 (Song). The action on ACA 11 is described in the Sacramento Bee, February 5, 1963, p. A6, and May 29, 1963, p. A14, and in the Los Angeles Times, June 12, 1963, part I, p. 7.

22. Los Angeles Herald-Examiner, November 6, 1962, p. A2; Sacramento Bee, February 8, 1963, p. A10, and February 22, 1963. The Imperial County Grand Jury, however, several months later, concluded that there had been no evidence of intimidation as a result of the signs and that there were many people on the voter rolls who were unable to read English. The entire subject of alleged voter intimidation in Imperial County as well as subsequent removal of voters from the voter rolls by county authorities for literacy reasons was explored at a legislative committee hearing in December, 1963. (Assembly Elections and Reapportionment Committee, Transcript of Hearing, December 10 and 11, 1963, Brawley.)

23. AB 1116 (Crown) which became Stats.1963, c. 1171, p. 2668.

24. AB 1251 (Song) which became Stats.1963, c. 1560, p. 3143.

25. Los Angeles Times, April 20, 1963, part I, p. 5; Sacramento Bee, April 19, 1963; Los Angeles Times, May 26, 1963, section A, p. 22.

26. Sacramento Bee, April 28, 1965.

qualifications for use in challenging voters, required precinct boards to summarily overrule any mass challenges that might cause voters to forego voting because of insufficient time or because of fear of intimidation, and made it a crime to challenge a voter without probable cause or to fraudulently advise someone he is not eligible to vote when he is.[27] Once again, the legislation was approved by virtually party line votes.[28]

The 1965 Legislature also finally approved the constitutional amendment which had first been introduced in 1963 to suspend the English literacy requirement for persons naturalized under the Walter-McCarran Act, a group consisting of persons over 50 years of age in 1952 who had lived in the United States for 20 years or more and who had taken the citizenship examinations in their native languages.[29] Passed by the Democratic-controlled Legislature over Republication opposition,[30] the measure appeared on the November, 1966 ballot as Proposition 15. Despite the few people it affected,[31] the voters defeated it decisively, 2,986,829 no votes to 2,334,084 yes votes.[32]

The only other legislative change involving literacy made by the 1965 Legislature was a bill easing the problems of persons from other states registering as "new resident" voters to vote for President and Vice President only. Henceforth, they would no longer need certificates of eligibility from their states of origin and their compliance with the California literacy requirement would constitute fulfillment of the literacy requirements of their former states.[33]

The 1967, 1968 and 1969 legislative sessions saw six constitutional amendments introduced all of which would have provided that literacy in Spanish could be offered as an alternative to literacy in English by someone seeking to qualify as a voter.[34] Although one passed

27. AB 839 (Song), which became Stats.1965, c. 1908, pp. 4417–4420.

28. Sacramento Bee, May 5, 1965.

29. ACA 28 (Song), which became Stats.1965, Res. Chapter 163. Accompanying implementation legislation was AB 1247 (Song), which became Stats.1965, c. 1658.

30. Sacramento Bee, April 28, 1965.

31. Proposed Amendments to Constitution, Propositions and Proposed Laws, General Election, Tuesday, November 8, 1966, p. 20.

32. Frank M. Jordan, Secretary of State, California Statement of Vote and Supplement, November 8, 1966 General Election, p. 32.

33. AB 317 (Moretti) which became Stats.1965, c. 929, pp. 2541–2544. Another bill, SB 1488 (Rodda) would have dealt with the literacy requirement in the same manner. It died in committee.

34. ACA 57 (Roberti) in 1967; ACA 52 (Meyers), ACA 27 (Roberti), and SCA 21 (Petris) in 1968; and ACA 7 (Roberti) and SCA 15 (Petris) in 1969. Another bill, AB 1693 (Conrad), would

the Assembly in 1967, it died in Senate committee.[35] In 1968, none succeeded even in passing its house of origin.[36] But in 1969 one was approved by the Legislature and was to have appeared on the November, 1970 general election ballot. It did not, however, due to the *Castro* decision of that year (see below).[37] Also, during 1969 it became apparent that the California Constitution Revision Commission would recommend, as a part of its comprehensive proposals for the following year, that literacy, as a requirement for registering to vote, be abolished altogether.[38]

While these various legislative measures were being considered in Sacramento, the entire issue was, for practical purposes, being decided in the state courts. A legal action which was to become the landmark Castro v. State of California decision of 1970 [39] had been filed in superior court in Los Angeles in late 1967.[40] The plaintiffs were adult, native born United States citizens who, although literate in Spanish,[41] were not literate in English and, consequently, were denied the right to register to vote. They took the position that they had access to Spanish language periodicals, newspapers, and other communications media printed or broadcast in the Los Angeles area which were adequate to inform them about political issues and candidates. Arguing that the historical purpose of the English literacy requirement was to disenfranchise immigrant groups, they sought a declaration that it was unconstitutional.[42]

The State Supreme Court in *Castro* saw the problem as one of "whether California's restriction of the right to vote to those literate in English . . . . (was) necessary to achieve a compelling state interest." [43] It granted that a literacy test served a nondiscriminatory interest of the state by confining

have repealed several of the previously enacted restrictions on polling place challenges of literacy. It died in committee.

35. ACA 57.

36. ACA 52 and ACA 27 died in committee. SCA 21 failed passage on the Senate floor.

37. SCA 15 failed passage twice on the Senate floor in May but in June the Assembly approved ACA 7 and the Senate followed suit in August. ACA 7 became Stats.1969, Res. Chapter 308. It did not appear on the ballot in 1970 because the legislature did not adopt implementing legislation.

38. Report of the Assembly Committee on Elections and Constitutional Amendments, 1969 General Session of the California State Legislature, p. 39. See also, Assembly Interim Committee on Elections and Constitutional Amendments, 1969 Interim Report, p. 28.

39. 3 C.3d 223; 85 Cal.Rptr. 20, 466 P. 2d 244.

40. Los Angeles Times, September 14, 1967, part I, p. 3.

41. They had lived in Mexico while children and received their schooling there. Los Angeles Times, October 16, 1969, part I, p. 3.

42. 3 C.3d 223, 227, 85 Cal.Rptr. 20, 22, 466 P.2d 244, 246.

43. 3 C.3d 223, 236, 85 Cal.Rptr. 20, 29, 466 P.2d 244, 253.

participation in the electoral process to those who, because of their access to printed sources of political and electoral information, are thought capable of some degree of intelligence and independence in their voting.[44]

But since the issue of literacy as such was not before the court, rather only that of literacy in English, the question, then, was whether residents literate in Spanish were "substantially more isolated from political events and issues (and hence more likely to exercise the franchise in an uninformed manner)" than those then being allowed to vote because of being literate in English.[45] Since that depended on the amount of relevant information available to persons such as the petitioners, the court turned to the evidence on this point in the record. From that evidence, it concluded that the petitioners had demonstrated access to substantial amounts of information on national, state, and local political affairs.[46] The court concluded that there was no justification for demanding of them that they also demonstrate access to the "mammoth quantities" of information available only in English "which the state does not and could not demand that other voters utilize" [47] and which it had not demonstrated was necessary for the electorate to use in full in order to be able to "make intelligently self-interested choices at the polls . . . . ." [48]

The court, therefore, in a unanimous decision, concluded that the English language literacy requirement for voting as it applied to the petitioners and anyone else literate in a language other than English who could "make a comparable demonstration of access to sources of political information" was a violation of the equal protection of the laws requirement of the Fourteenth Amendment.[49]

Meanwhile, independently of the activity in California's courts, Congress in 1970 adopted the Voting Rights Act Amendments [50]

44. Ibid., 3 C.2d 223, 237, 85 Cal.Rptr. 20, 29, 466 P.2d 244, 253.

45. Ibid., 3 C.2d 223, 237–238, 85 Cal. Rptr. 20, 29–30, 466 P.2d 244, 253–254.

46. Ibid., 3 C.2d 223, 239, 85 Cal.Rptr. 20, 31, 466 P.2d 244, 255. This included 17 Spanish language newspapers and 11 Spanish language magazines.

47. Ibid., 3 C.2d 223, 240, 85 Cal.Rptr. 20, 32, 466 P.2d 244, 256.

48. Ibid., 3 C.2d 223, 241, 85 Cal.Rptr. 20, 33, 466 P.2d 244, 257.

49. Ibid., 3 C.2d 223, 242, 85 Cal.Rptr. 20, 34, 466 P.2d 244, 258. Estimates of the number of Mexican-Americans affected varied from 80,000 to 500,000. (Los Angeles Times, March 25, 1970, part I, p. 3, and the San Francisco Chronicle, July 20, 1969, p. 25.)

50. P.L. 91–285, 84 Stat. 314. Congress had earlier ventured into restricting the use of literacy tests in a more limited fashion in the Voting Rights Act of 1965, P.L. 89–110, in order to guarantee the rights to vote particularly of Puerto Ricans in the state of New York and of Blacks in the South.

which, among other things, prohibited the use of literacy tests for five years in all state and federal elections. Immediately challenged, it was upheld by the U.S. Supreme Court in Oregon v. Mitchell [51] as a valid use of congressional power to enforce the Fourteenth and Fifteenth Amendments.

In view of all that had happened in 1970, it would have seemed a simple matter for the Legislature then to have acted promptly to present a constitutional amendment to the voters to delete the literacy requirement from the Constitution and from the provisions of the Elections Code dealing with the affidavit of registration. Such was not the case, probably because age and residence requirements were also in flux at that time due to congressional and court action. During the 1970 session the one attempt to update the Constitution as far as its literacy requirement was concerned died in committee in its house of origin [52] and a bill to extend the deadline for the close of registration for the 1970 primary election for persons literate in a language other than English was refused passage on the Senate floor.[53]

During 1971, some fourteen bills to reform the literacy requirements of the Constitution and the Elections Code were introduced but died at one point or another in the legislative process.[54] The bill which most closely reflected the recommendations of the California Constitution Revision Commission with respect to voting qualifications, including the deletion of the literacy requirement,[55] SCA 2, by Senators Rodda and Beilenson, failed to pass the Senate on two separate votes, the two political parties largely arranging themselves on

51. 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed. 2d 272.

52. ACA 48 (Roberti), as amended June 22, 1970, would have removed the English language requirement and rescinded ACA 7 of 1969.

53. SB 228 (Dymally) in its April 8 and subsequent amended versions. (Sacramento Bee, April 13, 21 and 28, 1970.)

54. SCA 1, SCA 2, SCA 4, SCA 5, SCA 6, ACA 6, ACA 43, ACA 51, ACA 58, SB 60 (only as introduced), AB 2, AB 22, AB 1278 and AB 2545. AB 1278 passed the Assembly but failed passage on the Senate floor. SCA 1 passed the Senate on the second attempt but failed passage on the Assembly floor.

55. The commission's report said:
"The Commission recommends that the English language and literacy requirements not be continued. Originally, Spanish was an official language in California and citizens who spoke only Spanish were permitted to vote. Neither the 1849 nor the 1879 Constitution contained the English language and literacy requirements and the Commission was unable to find compelling reasons to support their retention. The literacy requirement poses practical difficulties of enforcement, and the problem of illiteracy is best solved by improved education."
(Proposed Revision of the California Constitution, Part 2, 1970, p. 20.)

opposite sides of the issue as they had ten years earlier on literacy challenges.[56]

Finally, in 1972, an equivalent measure, SCA 32 by Senator Rodda,[57] received legislative approval and went on the ballot as Proposition 7 in November of that year.[58] More than two-thirds of the voters endorsed it, the final vote being 5,226,396 to 2,426,818.[59] It was not until 1975, however, that legislation was approved to delete the English literacy references which were still in the affidavit of registration.[60]

With the elimination of the English language literacy requirement it was probably politically inevitable that steps would be forthcoming to create a bilingual or multilingual electoral apparatus even though the court in the *Castro* case made clear that it did not think that that necessarily had to follow from its decision.[61] Various observers had noted well prior to the *Castro* decision, however, that such would probably be the case.[62] There was also some precedent. Article XI, Section 21 of the Constitution of 1849 had required that "all laws, decrees, regulations, and provisions, which from their nature require publication, shall be published in English and Spanish."[63] But the Legislature and local governments were soon ignoring this mandate[64] and it was deleted thirty years later with the adoption of the Constitution of 1879.

56. Richard Rodda, "Sometimes Politics is Ironic," Sacramento Bee, October 24, 1971.

57. Stats.1972, resolution chapter 98. It also reduced the voting age and revised residency requirements.

58. The proponents of the proposition voted that "Proposition 7 does not take away the power of the Legislature to enact any literacy requirement which may be lawfully applied." (Proposed Amendments to Constitution, Propositions and Proposed Laws, General Election, Tuesday, November 7, 1972, p. 20.)

59. Secretary of State, Statement of Vote, General Election, November 7, 1972 (Sacramento: State Printing Office, 1973) p. 27.

60. SB 858 (Holmdahl), which became Stats.1975, c. 490. A previous attempt to delete it, AB 1112 (Waxman), had failed on the Senate floor in 1972. SB 177 (Moscone) in 1975 also would have deleted it but failed passage on the Senate floor over other issues involved in the bill.

61. Castro v. State of California, 2 C. 3d 223, 242, 85 Cal.Rptr. 20, 34, 466 P. 2d 244, 258.

62. Editorial entitled "A Bilingual Ballot?" in the Los Angeles Herald-Examiner, September 17, 1967. See also the description of the debate on ACA 7 in the Sacramento Bee, August 6, 1969.

63. "Constitution of the State of California" in J. Ross Browne, Report of the Debates in the Convention of California on the Formation of the State Constitution in September and October, 1849. (Washington: John T. Towers, 1850.)

64. Leonard Pitt, The Decline of the Californios (Berkeley: University of California Press, 1970), pp. 46, 190-191, 197–198, 226, 241, and 271.

The first step in making election services available to non-English speakers, as a matter of necessity, was to eliminate the long-standing prohibition on use of other than English in the polling places.[65] The first legislative attempt to do this occurred in 1968 but did not even gain committee approval.[66] Two more attempts in 1971 and 1972 did pass the Legislature but were vetoed by the Governor.[67] Finally, the matter was settled in 1973 and the prohibition was deleted.[68]

During the same period when the Legislature was attempting to resolve the question of whether languages other than English would be allowed in the polling places, other efforts were under way to require that there be bilingual deputy registrars and precinct board members. After unsuccessful attempts in 1971 and 1972,[69] legislation was enacted in 1973 to require "reasonable efforts" on the part of county clerks to recruit such bilingual officials.[70] Unlike some of the previous bills which would have required recruitment efforts when there were "substantial" numbers of persons whose native language was other than English, the 1973 bill, AB 790, took the approach of

65. Sec. 14217 of the Elections Code of 1961, formerly Sec. 5567 of the Elections Code of 1939, having been enacted by Stats.1941, c. 502, p. 1813. The author visited numerous polling places while involved in various political campaigns over a 15-year period and found it to be an unrealistic restriction. Most precinct board members were unaware of it and inevitably tended to lapse into the language of their particular community in dealing with voters whose command of English was limited. An example was the use of Yugoslavian in polling places cited by Sen. Stephen Teale during the debate on SB 150 (see below). (Sacramento Bee, April 30, 1971.)

66. AB 609 (Negri)

67. SB 150 (Dymally) in 1971. The veto was sustained by the Senate by a vote which may have been as much to back Governor Ronald Reagan politically as it was to defeat the bill. The vote was 18 to sustain (all Republicans) and 17 to override (all Democrats). (Sacramento Bee, April 30 and July 15, 1971; Los Angeles Times, July 15, 1971, part I, p. 3.) Another bill in 1971, AB 2263 (Garcia), would have made the same changes in the law as introduced but it was amended September 23, 1971 to delete the provision. The bill in 1972 was AB 4 (Garcia). No attempt was made to override the veto.

68. AB 790 (Garcia) which became Stats.1973, c. 885.

69. AB 2101 (Maddy), a 1971 bill requiring bilingual deputy registrars, initially passed both houses of the Legislature but was killed in the Senate after a motion to reconsider was adopted. AB 2263 (Garcia), a 1971 bill to require bilingual precinct board members, died in Senate committee. In 1972, AB 4 (Garcia), to require both bilingual deputy registrars and precinct board members was vetoed and no attempt made to override. AB 8 (Garcia) in 1973, started out to require both but became a vehicle for a different subject. AB 80 (Duffy), also in 1973, provided for bilingual instruction in the use of voting systems but was amended to become a vehicle for a different purpose.

70. AB 790 (Garcia) which became Stats.1973, c. 885.

requiring recruitment efforts if the county clerk found that in any precinct 3% or more of the voting age residents were non-English speaking citizens or if private citizens or organizations presented him with information which he believed indicated a need for such bilingual assistance. The use of a numerical point above which bilingual efforts would have to come into play implied a degree of precision in information about the language abilities of the population at the precinct level that does not always exist. In any event, it was a precursor of the 5% formula used in the Federal Voting Rights Act Amendments of 1975 [71] for determining when bilingual election materials would be required.

The matter of bilingual deputy registrars did not end with the 1973 legislation, however. A hearing of the Senate Committee on Elections and Reapportionment in 1976 considered testimony from representatives of organizations active in minority communities who cited a need for still further assistance [72] and in 1977 the Legislature considered two more measures to provide such assistance.[73] Whatever future steps may be taken by the Legislature, the existence now of mail registration and bilingual registration affidavits should mitigate many of the problems faced by minority-language communities.[74]

Well before the federal government mandated bilingual election materials or the State Supreme Court declared the English literacy requirement unconstitutional, the Legislature began to recognize the need of Spanish-speaking voters for election materials in their language. In 1967 it approved a bill to require that Spanish translations of the measures and instructions to voters portions of the ballot be made available in every polling place.[75] The Governor, nevertheless, vetoed it.

In 1968 there were attempts to require Spanish translations of the state voters' pamphlet, of explanations of the use of the new

71. P.L. 94–73. The legislation was drafted in large part by members of the California congressional delegation.

72. Interim Hearing, Assistance to Register and Vote for Language Minority Persons, October 1, 1976, Los Angeles.

73. SB 602 (Garcia) and AB 1417 (Agnos). The former died in committee in the house of origin. The latter passed the Assembly but was not due to receive final Senate action until 1978.

74. For a contradictory opinion by California Rural Legal Assistance, see the October 1, 1976 report of the Senate Committee on Elections and Reapportionment, op. cit., pp. 8–9, Attachment 2.

75. SB 1051 (Song). Another measure, SB 1395 (Song), also would have required printing 15 percent of the state voters' pamphlets in Spanish for distribution to the larger counties for use at the polling places. It died in committee.

punchcard voting systems, and of the key parts of the ballot for polling place distribution, but none were able to pass more than one house of the Legislature.[76]

Interest in the subject continued [77] and, finally, the 1971 legislative session saw the enactment of legislation requiring that a facsimile copy of the ballot with the measures and instructions portions translated into Spanish be posted in every polling place. It also allowed translations into other languages if the county clerk found "substantial need" for it.[78]

A 1973 measure to require that polling place instructional signs be translated into other languages [79] was vetoed by the Governor and similar legislation in 1975 [80] died in committee, possibly, by then, because of the effort in Congress to have the federal government enter the field.

It seems likely that California eventually would have acted on its own to provide most election services in Spanish and other minority languages but the federal Voting Rights Act Amendments of 1975 made it a moot question. In the amendments, Congress declared its finding that

> voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are ex-

76. SB 452 (Marks), AB 1144 (Negri) and AB 1143 (Negri), respectively. SB 452 required Spanish translations of both sample ballots and state voters' pamphlets at polling places. An additional measure, SB 453 (Marks), would have required them both translated into Chinese but it never even emerged from committee.

77. For example, it was recommended to the California Commission on Democratic Party Reform that ballots be printed in Spanish as well as English. (Memorandum dated October 10, 1970 from Phil Isenberg, Chairman, Committee on Voter Registration and Voting Procedure, to Senator George R. Moscone and Councilman Tom Bradley, co-chairmen of the commission.)

78. AB 1469 (McAlister) enacted as Stats.1971, c. 1093. A similar measure, AB 2262 (Garcia), died in committee. Another bill AB 2577 (Waxman) Stats.1975, c. 1298, required that local election officials provide a Spanish translation of candidates' statements to candidates at their expense if they wished them.

79. AB 80 (Duffy). Other legislation that session providing for foreign language instructional signs died in committee (AB 3088, Keysor, and AB 3428, Chappie).

80. SB 963 (Garcia) and AB 110 (Keysor).

cluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.[81]

Title III of the act provided that any election and registration materials made available to voters would have to appear in the language of each particular minority group if the state or political subdivision was found to contain five percent or more citizens of that language minority and the group had an English language illiteracy rate higher than the national average.[82] When this formula was applied to California, it required Spanish and Chinese for all statewide election materials, Spanish for all election materials produced in 38 counties, Chinese in one of the 38 (San Francisco), and oral assistance to American Indians lacking a written language in one additional county (Inyo).[83]

The initial costs of compliance were quite high during the state and local elections of 1976.[84] However, since the U.S. Department of Justice guidelines allow adoption of a system "which effectively targets language minority group voters and identifies them for receipt of minority language materials . . .,"[85] and since throughout the state there has been a conversion to the new mail registration affidavits which provide for voters to indicate their language preferences, it should be possible to cut such costs considerably in the future.

2. *Citizenship*

With the English literacy requirement disposed of, the next logical step in broadening the California electorate would be to extend voting rights to permanent resident aliens. As of 1975 there were 1,058,991 such persons in California, 43 percent of whom were from

81. P.L. 94–73, Sec. 203. 42 USC 1973b.

82. Ibid., Sec. 301. 42 USC 1973aa–1a.

83. Federal Register, Vol. 41, No. 140 (July 20, 1976), pp. 30001–30002.

84. For example, the San Diego County Grand Jury Report of 1977 stated that to comply with the Spanish language requirements increased its total election costs by $268,000, or 75%. During the June, 1976 presidential primary, 98 persons requested the official Spanish ballot, at a cost of approximately $2,735 per Spanish ballot in contrast to a cost of 71 cents per English ballot.

85. Federal Register, October 3, 1975, p. 46082.

Mexico.[86] Lest this sound like such a radical notion, it should be recalled that, at its greatest extent in the late nineteenth century, this was the prevailing practice in twenty-two states and territories. By the turn of the century, however, it had dwindled to eleven states and, in 1920, was repealed in the last of the states.[87] Considering the sentiments mentioned above which were expressed in connection with the adoption of California's English literacy requirement, however, it is not surprising that California was never among the twenty-two and that the few attempts to allow aliens to vote have failed.

The one and only legislative attempt in at least the last seventeen years occurred in 1972 with the introduction of a constitutional amendment to allow any permanent resident alien who had resided in the United States for at least five years and in the state for at least two, to register to vote if otherwise qualified.[88] The bill died on the Senate floor on a vote of eleven to twenty-four despite an emotional appeal from one member who described how his grandmother, a native of Italy, had never been able to vote despite having lived here for sixty years since she never could successfully pass the English-language citizenship requirements.[89]

The California State Supreme Court has not expressed itself on the subject of the disenfranchisement of aliens but three cases have reached the appellate courts.

In People v. Rodriguez[90] in 1973, the District Court of Appeal for the Second District affirmed the conviction of a permanent resident alien for having registered to vote. It rejected his argument that to limit the franchise to citizens works an invidious discrimination against aliens in violation of their rights under the due process

86. United States Department of Justice, 1975 INS Annual Report (Washington: Government Printing Office, 1975), p. 112.

87. Leon E. Aylsworth, "The Passing of Alien Suffrage," American Political Science Review, XXV (1931), 114. Canada, until 1975, allowed citizens of the British Commonwealth of Nations to vote in its federal elections and, at least as late as 1973, eight of Canada's provinces did also. (Letter dated November 27, 1973 from J. E. Forrester, Chief, Information and Training, Office of the Chief Electoral Officer, Ottawa, Canada, to Martha Riley, Joint Committee for Revision of the Elections Code, Sacramento, California.)

88. SCA 69 (Dymally). A companion bill, SB 1307 (Dymally), to conform the Elections Code to SCA 69, died in committee.

89. Sacramento Bee, June 22, 1972. Opponents expressed the fear that once aliens were permitted the vote, they would never make any further effort to become citizens. The support for the bill came only from Democrats most of whom represented districts in large metropolitan areas. (See Senate Journal, June 21, 1972, p. 4075, for the roll call.) Opponents were a mixed lot.

90. 35 C.A.3d 900, 111 Cal.Rptr. 238.

and equal protection clauses of the United States Constitution. It concluded that "where political rights are concerned, citizenship is a valid criterion by which the state may measure the right to participate in the political process."[91]

Similar views were expressed by the same court in Padilla v. Allison,[92] a 1974 case involving permanent resident aliens who met the federal requirements for naturalization except for the ability to speak, read, and write the English language. In its decision, the court noted that although the *Castro* case prevents citizens from being denied the right to vote because of inability to read or write in English, the state of California was not obliged "to look behind the fact of alienage to determine the reason for it. While the states could extend the franchise to aliens, there is no *obligation* to do so." [93] It concluded that

> Since the Legislature is not required to enfranchise aliens, the prerequisites for federal citizenship, which are solely of federal concern, cannot be said to invalidate a state legislative determination that aliens not be allowed to vote. Just as an alien does not have a constitutional right to become a citizen . . . so too do the aliens here lack a constitutional right to participate in the political process.[94]

The most recent assault on the citizenship requirement for voting, Ojeda v. Brown, took a more restrained approach seeking only that the petitioners, all permanent residents of the United States, be allowed to vote in school elections since they paid taxes to support the public schools attended by their children and yet, because of the citizenship requirement, were unable to vote and have a voice in the conduct of the school affairs.[95] The Court of Appeals for the Third District in an unpublished opinion denied the petitioners' request for a writ of mandate to force their county clerks to register them to vote.[96]

In view of the large population of permanent resident aliens living in California (and the large number of illegal aliens reported to

91. Ibid., 35 C.A.3d 900, 903–904, 111 Cal.Rptr. 239, 239–240. Appellant Rodriguez' petition for a hearing by the State Supreme Court was denied without comment February 7, 1974.

92. 38 C.A.3d 784, 113 Cal.Rptr. 582.

93. Ibid., 38 C.A.3d 784, 787, 113 Cal. Rptr. 582, 584.

94. Ibid.

95. Memorandum dated June 29, 1973 from California Rural Legal Assistance to attorneys with the Legal Aid Society of Sacramento County.

96. Ibid. and Sacramento Bee, May 1, 1976. Note that a Colorado case, Skafte v. Rorex, Colo., 553 P.2d 830, upheld the exclusion of permanent resident alien parents from school district elections. Appellant filed an appeal with the U.S. Supreme Court in 1977 but it was dismissed for want of a substantial federal question.

be in the state), it seems likely that voting rights for legally resident aliens will be a recurring issue, politically at least, even if not one for the courts.

3. Residence

The original California Constitution of 1849 required residence in the state for six months and in the local district for 30 days before one would be eligible to vote.[97] With the adoption of the Constitution of 1879, the residency requirement was lengthened to one year in the state.[98] Until residency requirements were deleted from the California Constitution by Proposition 7 of the 1972 general election, Californians were required to meet not only the one year state requirement but also the requirements that they had been 90 days in the county and 54 days in the precinct, facts to which they swore upon signing their affidavits of registration.[99]

Inevitably, in much the same manner as the English literacy requirement, there were disputes over whether various voters had met the residency requirements and whether they could be challenged at the polls for alleged failure to do so. In 1960, for example, two hearings of the Assembly Committee on Elections and Reapportionment considered testimony on the subject. Some witnesses felt that there had been numerous violations of the law on the part of people registering to vote who had not been in the state for the requisite one year, particularly since deputy registrars had to take the word of the registrants as to how long they had been residents. It was suggested that some form of evidence of one's residence should be shown at the time of registration.[100]

With the high rate of mobility of Californians, however, arguments over residence usually were concerned with the 54 days in the precinct rather than the longer time requirements. Since voter registration closed 54 days before an election, it was a simple matter for political campaign organizations to compile lists of persons of the opposite party who were still registered to vote at various addresses but who apparently no longer were there after the close of registration. These individuals, then, were natural targets for challenges at the polls if they returned to their former precincts to vote.

97. Constitution Revision Commission, Article II, Elections and Suffrage, Background Study 2, April, 1968, p. 22.

98. Keane v. Mihaly, 11 C.A.3d 1037, 1043, 90 Cal.Rptr. 263, 266.

99. Article II, Section 1 of the Constitution. See also Sec. 321 of the Elections Code as of 1961.

100. Assembly Interim Committee on Elections and Reapportionment, Transcript of Hearing, August 5, 1960, Sacramento, pp. 41–46.

Again, as in the case of the English literacy requirement, the Democratic Party activists saw challenges over the issue of residency as a device used by Republicans to unfairly disenfranchise large numbers of their supporters, particularly since Democrats were likely to be more mobile than Republicans. This was what they believed to be the case in the 1950's [101] and the early 1960's. During the 1960 presidential election, for example, in several assembly districts, political mass mailings which had been designed to be returned to the sender by the post office if undeliverable as addressed were sent to registered Democrats. In one assembly district, the 57th district in the San Fernando Valley in Los Angeles County, 5600 letters were returned. These were then sorted by campaign workers according to precinct, the information copied from the envelopes onto lists to which the envelopes were then attached, and the material turned over to campaign precinct workers or Republican members of the precinct boards for use in challenging any of the listed Democrats who came to vote on election day.[102] The Democrats raised objections to the manner in which the challenges were conducted, arguing that many of them were illegal.[103] The Republicans disagreed and responded that a challenged voter need only swear that he met the residency requirements and a precinct board was obliged to allow him to vote.[104] They further felt that such challenges would serve to deter fraudulent attempts to vote.[105] The Democrats replied that fraud was not neces-

101. "Manual for Democratic Poll Watchers, California General Election, November 6, 1956," distributed by Paul Ziffren, Democratic National Committeeman, Beverly Hills, in discussing mass challenges of Democrats, said, "In the November, 1952 election substantial numbers of voters were denied the right to vote through just such a mass challenging campaign." See also "Manual for Democratic Poll Watchers, California General Election, November 4, 1958," distributed by Pat Brown for Governor Committee.

102. Assembly Interim Committee on Elections and Reapportionment, Transcript of Hearing, December 15 and 16, 1960, Los Angeles, pp. 107–112.

103. Ibid., p. 108. Challenges were required to be oral (Sec. 5620 of the Elections Code as of 1960) and mailing the challenge lists to precinct boards appeared not to comply with that requirement. The Democrats also argued that moving without change of residence in and of itself did not disqualify a voter. The Republicans responded (p. 114) that anyone who saw the physical evidence of the returned letters had the right to challenge.

104. Ibid., p. 112. However, Elections Code Section 5628, as of 1960, required that each challenge involving residency had to be "tried and determined by the board" which presumably meant use of the set of rules for determining residency spelled out in Secs. 5650–5661, potentially a confusing and time-consuming process for an average precinct board. (See also the discussion of this in the Sacramento Bee, November 8, 1964, p. E6, and 16 Ops AG 144 (1950).)

105. Ibid., p. 115. Elections Code Section 11700 prohibited fraudulent attempts to vote.

sarily involved, rather it was simply a matter of voters who had moved but neglected to reregister at their new addresses and, consequently, felt they were entitled to vote at their old polling places.[106]

Use of lists to challenge voters over their residency qualifications reappeared in the 1962 general election.[107] In response to this and the posting of signs mentioned above in the discussion of literacy, the Legislature in 1963 enacted its prohibition on any signs referring to voter qualifications being posted near polling places. It also prohibited challenges made through anyone not a member of a precinct board.[108] Nevertheless, residency challenges became an even greater issue in the highly emotional 1964 general election when each major political party mobilized large numbers of volunteers to watch the polls and keep the other honest. In a good many precincts there were reports of challenges by Republicans of Democratic voters for failure to meet residency requirements.[109]

As a result of what had happened in the 1964 election, the Democratic-controlled Legislature in 1965 adopted comprehensive legislation to further restrict challenges at the polls. Specifically outlawed was the use of "mailed matter returned undelivered by the post office . . . unless other evidence or testimony is also presented . . .". No list or document bearing on residency could be used in any challenge unless the county clerk ruled that it constituted probable cause for instituting a challenge. A misdemeanor penalty was added for anyone challenging without probable cause or challenging for the purpose of delaying or preventing voting. And the questions to be asked of challenged voters about their residence were reworded in such a way that establishing that a voter did not meet the residence requirements would be a good deal more difficult.[110]

Much of the controversy in California over whether voters met the state's residence requirements might have been avoided if the re-

106. Ibid., p. 117.

107. Los Angeles Herald Examiner, November 6, 1962, p. B–1.

108. Stats.1963, c. 1171, p. 2668, and c. 1560, p. 3143.

109. Los Angeles Herald-Examiner, October 29, 1964, p. A3; October 30, 1964, p. A11; October 31, 1964, p. A3; November 1, 1964, p. A3; November 2, 1964, p. A21; November 3, 1964, pp. A4 and A12. Los Angeles Times, November 2, 1964, part I, p. 1. Sacramento Bee, October 31, 1964, p. 1 and November 8, 1964, p. E6.

110. Stats.1965, c. 1908, p. 4417, known as AB 839 (Song). In the Assembly the vote divided almost precisely along party lines. (Sacramento Bee, June 12, 1965.) Other legislation that year on challenges, AB 1825 (Allen) and AB 840 (Song), died in committee. During 1970 and 1971, four bills were introduced by Republican legislators to reverse most of the changes adopted in 1963 and 1965. AB 2227 (Mulford) and AB 1324 (Burke) failed passage on the Assembly floor in 1970. AB 1510 (Conrad) and SB 1421 (Richardson) died in committee in 1971.

quirements had not been as long as they were. As early as 1963, the report of the President's Commission on Registration and Voting Participation had recommended six months residence for voting in any state election and 30 days in a city or county election.[111] Shortening them was also a frequent recommendation of various Democratic Party elements.[112] Nevertheless, as late as 1968, even though several other major states had reduced their residence requirements, California was still one of 33 states that clung to a requirement of one year in the state.[113]

Unlike efforts to remove the literacy requirement which began in 1961, there does not appear to have been any move in the Legislature to reduce residency requirements until Congress was about to reduce them for voting for President and Vice President. In early 1970, a measure was introduced in the Legislature to lower the state residence requirement to six months and the county and precinct requirement to 30 days but it died on the Senate floor without action.[114]

In the meantime, Congress adopted the Voting Rights Act Amendments of 1970 which declared that durational residency requirements as a precondition for voting for President and Vice President denied the constitutional rights of citizens to vote for such offices and to move freely across state lines. Proclaiming that no one otherwise qualified to vote for President or Vice President was to be denied the right to vote because of state or local durational residency requirements, it required that anyone qualified be allowed to register up to 30 days before any presidential election.[115] Upheld by the U.S. Supreme Court later that same year,[116] its first impact was to be felt in the 1972 presidential election.

111. Washington: U.S. Government Printing Office, 1963, p. 34.

112. One group described them as "an anachronism in this age of high mobility." (Election Reform Report of the California Democratic Council, 1963 Convention, Bakersfield, p. 7). Democratic National Committee organizers in 1964 called for six months in the state and 30 days locally. (Matthew A. Reese, Jr., Director of Operations, Democratic National Committee, confidential memorandum entitled "Registration and Election Law Reform," December, 1964.) Abolition of residency requirements was recommended to the California Commission on Democratic Party Reform (memorandum to Senator George R. Moscone and Councilman Tom Bradley, co-chairmen of the commission, from Phil Isenberg, chairman of the committee on voter registration and voting procedure, October 10, 1970).

113. Los Angeles Times, April 21, 1968, part I, p. 1.

114. SB 1243 (Rodda). In later amendments, the local requirements would have been 40 days each. The accompanying constitutional amendment, SCA 33 (Rodda), died in committee.

115. Title II of P.L. 91–285, 84 Stat. 314.

116. Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272.

At that point, although California would have had to comply with the federal mandate when it came to voting for presidential electors, its durational residency requirements were otherwise still intact. However, the one-year state requirement immediately came under constitutional attack by a young couple who, while otherwise qualified, would have been in the state only some eleven months at the time of the 1970 general election and, therefore, had been denied permission to register to vote. The California District Court of Appeals for the First District came to their rescue in the case of Keane v. Mihaly [117] and ordered that they be registered as voters. In the view of the court, only a compelling state interest could justify exclusion from the franchise of citizens who had not resided in the state a year. It disagreed with arguments that the state's interest in an informed electorate and in preventing false or fraudulent declarations of residency required such a long residence, citing the immeasurably better opportunities for voters to inform themselves about elections than had been the case in 1879 and the absence of any evidence of attempts on the part of election officials actually to check declarations of residency. In short, the one-year residency requirement violated the equal protection clause of the Fourteenth Amendment.[118]

Between the Voting Rights Act Amendments of 1970 and the *Keane* decision of late that same year, the Legislature was left with little choice but to give serious attention to drafting amendments to the state Constitution to modernize its residency provisions. Because the issue of lowering the voting age and eliminating the literacy requirement also had to be faced, most bills introduced in 1971 to deal with residency also reformed the other provisions. This may have made them all the more unpalatable to some legislators. In any event, the result was that six bills to correct the residency language died in committee,[119] one failed to pass on the Senate floor,[120] and two were approved by the house of origin but were defeated on the floor of the other house.[121]

117. 11 C.A.3d 1037, 90 Cal.Rptr. 263.

118. Ibid., 11 C.A.3d 1037, 1043–1046, 90 Cal.Rptr. 263, 266–268.

119. SCA 14 (Rodda) (the only bill which dealt exclusively with residency), AB 2 (Brown), AB 22 (Miller), ACA 6 (Miller), ACA 43 (Waxman), and ACA 51 (Miller).

120. SCA 2 (Rodda).

121. SCA 1 (Moscone) and AB 1278 (Waxman). Other bills would have dealt with the residency problem presented by the congressional action indirectly by extending the deadline for registration. AB 1226 (Waxman), in its last amended version, would have moved it from the 54th to the 30th day before the election but died in Senate committee. SB 60 (Moscone) proposed a system of registering up to the 19th day but with voting by absentee ballot for anyone registering after the 54th day but it was vetoed by the Governor. AB 2029 (Monagan), which would have allowed persons arriving within 90 days of the presiden-

In early 1972, in a decision resting on the same reasoning as in the *Keane* case, the U.S. Supreme Court, in Dunn v. Blumstein,[122] held that the Tennessee residence requirements of one year in the state and three months in the county violated the equal protection clause. Within a little over a month the California State Supreme Court, in Young v. Gnoss,[123] acted to strike down what remained of California's durational residency requirement, that of 90 days in the county and 54 days in the precinct. The court was bound by the decision in *Dunn* to do away with the 90 day rule but it was on its own with respect to the 54 day requirement, which also was the closing date for voter registration, since the U.S. Supreme Court had not yet adjudicated the constitutionality of anything less than 90 days.[124]

In the *Young* case, the State of California did not choose to argue that 54 days was necessary to the prevention of fraud nor to ensuring that a voter would be sufficiently knowledgeable about the issues.[125] Rather, it was only concerned with the administrative problems that would follow from a later close of voter registration if the 54 day requirement was found unconstitutional in view of the many election services that state law directed must be provided. The court discussed the services and concluded that none of them represented a compelling governmental interest which justified cutting short voter registration and, noting that the *Dunn* case had concluded that Tennessee's 30-day close of registration law permitted that state to complete its administrative tasks, it concluded that no durational residency requirement in excess of 30 days nor any close of voter registration before the 30th day before an election could be imposed in California.[126]

In view of the Voting Rights Act Amendments of 1970, Keane v. Mihaly, Dunn v. Blumstein, and Young v. Gnoss, the Legislature in 1972 finally had to face up to the need to bring the Constitution and

tial general election to register to vote for President and Vice President up to seven days before the election, was enacted as Stats.1971, c. 1453.

122. 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed. 2d 274.

123. 7 C.3d 18, 101 Cal.Rptr. 533, 496 P.2d 445.

124. Ibid., 7 C.3d 18, 23, 101 Cal.Rptr. 533, 536, 496 P.2d 445, 448. It was not until the following year that the U.S. Supreme Court demonstrated that it would tolerate an earlier cutoff point (and, in effect, residency requirement) of 50 days. Marston v. Lewis, 410 U.S. 679, 93 S.Ct. 1211, 35 L.Ed.2d 627, and Burns v. Fortson, 410 U.S. 686, 93 S.Ct. 1209, 35 L.Ed.2d 633.

125. Ibid., 7 C.3d 18, 24, 101 Cal.Rptr. 533, 537, 496 P.2d 445, 449.

126. Ibid., 7 C.3d 18, 24–28, 101 Cal. Rptr. 533, 537–540, 496 P.2d 445, 449–452. Estimates of the numbers of persons that now would be eligible to register as a result of the court's decision ranged from a low of 75,000 (Sacramento Bee, May 5, 1972, p. B2) to a high of 250,000 (Los Angeles Times, April 1, 1972, part II, p. 1).

election statutes into compliance. SCA 32, a measure which deleted the unconstitutional literacy and residency provisions from the Constitution, was approved by the Legislature, appeared on the ballot in the general election as Proposition 7, and was ratified by the voters.[127] Other legislation was approved to set a close for voter registration of 30 days before an election.[128] It was not until the following year, however, that the Legislature finally deleted the out-of-date residency requirement language from the Elections Code.[129]

In addition to the problem of what *length* of residency can be demanded of the voters, there has been the problem of *defining* residency. Changes in the home, family, marriage and divorce, housing, the increasing entry of women into the work force, the flight from the central cities to the suburbs, commuting patterns, and the lowering of the voting age, all have created problems in applying rules of residency designed for a different time.

The long standing rule that "the residence of the husband is the residence of the wife" unless he had taken up an abode apart from his family[130] was one of the first to require change. In 1967, legislation was introduced in the Assembly to eliminate the assumption that the husband's residence would determine that of his wife. Senate amendments, however, watered it down so that it only dealt with the problem of the residence of a woman who marries an employee of the U.S. government who is only temporarily in the state.[131] It was not until 1969 that the Legislature was willing to adopt the policy that a woman's residence should be determined independently.[132]

With the adoption of the Voting Rights Act Amendments in 1970 which sought to enfranchise 18-year-olds, followed by the ratification of the Twenty-sixth Amendment on July 1, 1971 to resolve the constitutional question of whether 18-year-olds could vote, there was sud-

127. Proposed Amendments to Constitution, Propositions and Proposed Laws, General Election, November 7, 1972, pp. 18–20 of Part I and pp. 8–9 of Part II. Edmund G. Brown, Secretary of State, Statement of Vote, General Election, November 7, 1972, (Sacramento, Office of State Printing, 1973), p. 27.

128. SB 840 (Moscone), which became Stats.1972, c. 1356.

129. SB 294 (Rodda) which became Stats.1973, c. 444.

130. Sections 14290 and 14289 of the Elections Code of 1961. However, see Lowe v. Ruhlman, 67 Cal.App.2d 828, 155 P.2d 671.

131. AB 2539 (Shoemaker) which became Stats.1967, c. 1015. In 1960 the County Clerks Association had recommended changes in the rule but nothing came of it. (Assembly Interim Committee on Elections and Reapportionment, Transcript of Hearing, December 15–16, 1960, Los Angeles, pp. 24–25.)

132. AB 469 (Bagley) which became Stats.1969, c. 461. Equivalent changes were made in Government Code Section 244 by Stats.1972, c. 1071.

denly a vast number of minors entitled to vote who, because of attending school, were away from home much of the year. Due to the liberal voting patterns of many college students, the subject of what constituted "residence" in the case of a student suddenly became a political issue. Depending upon one's point of view, the prospect that in college communities they might be able to decide the outcome of local and even congressional elections was viewed with fear or delight.[133] In the Legislature, directly contrary measures were introduced by liberal and conservative members. One liberal proposed to revise the law to make clear that any minor who was qualified to vote could establish his own residence for purposes of voting [134] while, on the other hand, a conservative introduced legislation to place the burden on the student to establish that he no longer intended to retain his parents' domicile before he would be permitted to register at a location separate from that of his parents.[135]

Prior to the April 6, 1971 Berkeley city election at which a coalition of students and Blacks won near-control of the city council,[136] the Attorney General ruled that, for voting purposes, an unmarried minor's residence, whether student or not, normally would be his parents' home no matter what the minor's intentions were in the matter.[137] The issue was taken to court and later that year in Jolicoeur v. Mihaly the State Supreme Court ruled that both the Twenty-sixth Amendment and California law required that all citizens 18 years of age or older be treated alike for all purposes related to voting. No registrar of voters, therefore, could question a person's claim of domicile on account of his age or occupation.[138]

The difficulty of defining and enforcing residency requirements is well exemplified by tiny Alpine County. With the smallest population in the state, this mountainous county on the state line has be-

133. Alan E. Otten, "Should Collegians Vote at Home or at School? Many Disputes Erupt," Wall Street Journal, April 15, 1971, p. 1.

134. AB 1253 (Meade).

135. SB 735 (Grunsky).

136. Alan E. Otten, op. cit., p. 1. The circumstances were reversed in an election in Los Angeles County in 1976. In a close vote involving the issue of incorporating the proposed city of Malibu, the student vote at the conservative private Pepperdine University was given credit for the measure's defeat. Questions were raised as to whether the students met the residency requirements. (Santa Monica Evening Outlook, December 10, 1976, and Pacific Palisades Malibu Mail, December 16, 1976.)

137. 54 Ops.A.G. 7, February 17, 1971.

138. 5 C.3d 565, 582, 96 Cal.Rptr. 697, 708, 488 P.2d 1, 12. Nevertheless, a bill was introduced in 1974, AB 3458 (Collier), which sought to establish a student's voting residence as being that of his parents if they declared him as a dependent for state or federal income tax purposes. It died in committee without any hearing having been held.

come famous for having a voter registration drastically out of line with its population. In June, 1974, it had 826 registered voters but an official population of 650.[139] In the June, 1976 presidential primary, the voter turnout was reported as being 102 percent of the voting age population.[140]

The cause of these discrepancies apparently is the large number of persons with mountain cabins or other types of summer homes who have chosen to register in the county.[141] But what to do about them is the problem. In 1976, for example, the Secretary of State conducted a computer matching of voter registration lists with lists of drivers licenses and auto registrations of the Department of Motor Vehicles. The result was a total of 317 Alpine County registered voters whose driver's licenses or vehicle registrations had other than Alpine County addresses, including two county supervisors and one superior court judge. The district attorney notified each person on the list by mail of the residence requirements for voting but added, "There's not much more I can do because it's difficult to prove who lives where." [142]

Until revised and renumbered in 1976, the Elections Code defined the residence of a voter as "that place in which his habitation is fixed and to which, whenever he is absent, he has the intention of returning." [143] Determining a voter's "intention" is difficult at best and the migration of voters to suburbia seems to have aggravated the problem as became evident in San Bernardino and San Francisco during 1975 and 1976. In San Bernardino it was the migration in part of the younger generation of Mexican-Americans out of the barrio in the city's First Ward to other areas including surrounding cities, such as Colton and Redlands, while retaining or subsequently resuming their registration in the First Ward which became an issue in a bit-

139. San Francisco Sunday Examiner and Chronicle, June 9, 1974, section A, p. 4.

140. Los Angeles Times, November 22, 1976, part II, p. 1.

141. Sacramento Union, January 18, 1973, p. A3; San Francisco Sunday Examiner and Chronicle, op. cit., and Los Angeles Times, November 22, 1976, op. cit.

142. Los Angeles Times, November 22, 1976, op. cit. That local elected officials turned up on the list may reflect the limitations of the DMV lists as much as the confused state of residency. The outcome of an election for county supervisor was contested in 1976 by the loser on the grounds that illegal votes had been cast for the winner by persons not meeting residency requirements. The winner made similar charges of the losers' supporters. The District Court of Appeal for the Third District upheld the trial court's determination that such was indeed the case but not enough on either side to change the election result. (Doyal v. Thornburg, 3 Civil 16370, unpublished opinion filed July 8, 1977).

143. Sec. 14282.

terly contested recall election.[144] In San Francisco it was the migration of literally thousands of persons from the city to towns in surrounding Bay Area counties while continuing to register and vote in San Francisco, which was the heart of a major controversy over what constituted residence and which, in turn, prompted changes in the state law on residence.

The San Francisco controversy began in January, 1975 with the publication of an article which focused attention on large numbers of city employees who lived outside the city and county but continued to vote in San Francisco, a number believed to be more than enough to determine the outcome of many elections, including measures involving pensions of city employees.[145] Toward the end of the year, as the November and December, 1975 city elections approached, the matter became a major controversy particularly because of the interest taken in it by one of the city's daily newspapers. Its reporters examined the records of 10,000 of the city's 31,000 active and retired employees. Extrapolating from the number of employees they found with out-of-city residences but who were registered in the city plus their spouses, the reporters estimated there were possibly 3500 persons whose San Francisco voter registrations were highly questionable, particularly in light of the fact that many claimed state homeowners' tax exemptions for their homes in the outlying counties, a type of tax exemption which involves swearing that the home being claimed is one's residence.[146] Voters were found to be registered at fire stations, police stations, hospitals, even the hall of justice.[147] Among the individuals whose San Francisco registrations were inconsistent with the homes they maintained outside the city, it was learned, were the city planning director, the chief building inspector, the registrar of voters, and the assistant district attorney directing the investigation into the fraudulent registrations.[148]

Because of all the publicity, many voters realized their uncertain legal status. By the date of the city primary in November, 265 persons, most of them city employees, had requested that the registrar's

144. See, in particular, San Bernardino Sun-Telegram, August 31, 1975, p. A1; September 4, 1975, p. A1; and July 14, 1976, p. A1. See also Assembly Committee on Elections and Reapportionment, Voter Registration, transcript of the committee hearing of October 31, 1975, Los Angeles, pp. 31–43.

145. Jackson Rannells, "They Live in the Suburbs But They Vote Here," City Magazine, 8 (January 8–21, 1975), pp. 45–47.

146. San Francisco Examiner, November 23, 1975, p. 1.

147. Los Angeles Times, November 30, 1975, part I, p. 1.

148. San Francisco Chronicle, November 4, 1975, p. 1; San Francisco Examiner, November 20, 1975.

office remove them from the rolls, a number which was to reach 500 three months later.[149]

The San Francisco situation was, in part, the result of advice given over the years to city employees by a succession of city attorneys, the retirement board, and other city agencies that they could meet the city employment residence requirements merely by being registered to vote there.[150] By 1975, however, that was no longer the case [151] and the following year a major purge of voters was under way. By coupling a check made by the Secretary of State of San Francisco voter registration rolls against the D.M.V.'s lists with another check made of voting addresses against nonresidential addresses in the city, the registrar's office compiled some 13,000 to 15,000 names for use as a challenge list at the June, 1976 presidential primary election. Of these persons, 3,000 appeared at the polls and were challenged by precinct board members but only some 90 voters were turned away because they admitted they lived outside of the city or because they refused to swear to the addresses on their San Francisco registrations.[152]

By the end of 1976 there had been 40 convictions for voter fraud of persons registered in San Francisco,[153] the policy of the district attorney usually being to prosecute only persons who had voted illegally in the 1975 city election in spite of the massive publicity about questionable voter registrations that they would have been aware of by then.[154]

Prior to the 1976 revisions of the rules on residency, the only expression of interest in reforming the subject had been a report of the Assembly Elections and Constitutional Amendments Committee in 1970 which termed the existing law on residency "confused and confusing" and recommended language which would have substituted the word "home" for "residence" in the Elections Code.[155] Nothing came of the recommendation, however. It wasn't until the San Francisco situation dramatized the problem that legislation was introduced to clarify the meaning of residence. SB 1653, by Senator Marks

149. San Francisco Chronicle, November 4, 1975, p. 1; San Francisco Sunday Examiner and Chronicle, February 8, 1976, section A, p. 5.

150. San Francisco Examiner, December 16, 1975; Los Angeles Times, November 30, 1975, part I, p. 3.

151. San Francisco Chronicle, March 25, 1975, p. 2.

152. San Francisco Chronicle, March 5, 1976, p. 2; San Francisco Examiner, June 7, 1976; and Oakland Tribune, June 10, 1976.

153. San Francisco Examiner, December 15, 1976. The standard punishment was 250 hours of community service plus two years of probation.

154. San Francisco Sunday Examiner and Chronicle, June 6, 1976, section A, p. 4.

155. Assembly Interim Committee on Elections and Constitutional Amendments, 1970 Interim Report, pp. 35–37.

of San Francisco, made two major changes. It sought to clarify the meaning of voter residence by substituting "domicile" for "residence," the domicile now being the place in which the individual's habitation is fixed, and to which, "whenever he or she is absent, the person has the intention of returning." Furthermore, a person could have no more than one domicile. By contrast, the bill made a person's "residence" a place where his "habitation is fixed for some period of time, but wherein he does not have the intention of remaining." In addition, like many of the San Franciscans, the bill recognized that he might "have more than one residence." Throughout the many amendments to the bill, this language remained largely intact.

The other major change in the law accomplished by Senator Marks' bill was to set up several rebuttable presumptions which could be used in determining which of a person's residences was his "domicile" for purposes of voter registration. The fact of maintaining a homeowner's tax exemption or a renter's tax credit on a residence became a rebuttable presumption of domicile at that residence early in the bill's history and remained in it until its enactment except for the addition of an amendment to it which made such presumptions contingent upon a person's not having a different residence listed on a D.M.V. identification card, drivers' license, or motor vehicle registration. Another rebuttable presumption, but in this case of the absence of domicile, which remained in the bill through to enactment, was the fact of not having physically resided at a residence within the immediately preceding year.

A rebuttable presumption of domicile that was dropped from the bill as it was amended was exhibiting "the greatest amount of professional, business, social, family, and civic ties" at a particular residence. Another, also lost along the way, was the fact of the address listed on a person's driver's license, identification card, or motor vehicle registration.[156]

The author of SB 1653 said that the purpose of the bill was to eliminate dependence on voter "intent" in ascertaining a person's domicile but he recognized that rebuttable presumptions could be negated or might never come into play in the first place and one would have to fall back on voter intent once again.[157]

The adoption of mail voter registration in 1975 was incidentally accompanied by the elimination in many areas of the state of the old

156. SB 1653 as introduced and amended March 4, 16, and 25, April 8 and 26, August 2, 20, 30 and 31, 1976. Enacted as Stats.1976, c. 1172.

157. Author's notes of testimony at the August 3, 1976 hearing of the Assembly Committee on Elections and Reapportionment on SB 1653. A lengthy discussion of the bill appears in the Senate Committee on Elections and Reapportionment report Voter Residency and Registration, a transcript of its hearing March 5, 1976 in San Francisco.

system of mandatory comparison at the polls of a voter's signature on the sign-in roster with that on his affidavit of registration. This resulted in fears of voter fraud and proposals for requiring some form of proof of residence and personal identity at the polls.[158] Two bills were introduced in 1977 to this end, both of which provided for use of a driver's license, a D.M.V. identification card, or some other form of identification if the voter was not known to members of the precinct board. Lacking such identification the voter would have to swear under penalty of perjury that he was the person listed on the printed index of voters for the precinct and that he met the residency requirement. Both proposals met defeat in the Assembly Elections Committee, some Democratic members expressing the feeling that such requirements would put an unfair burden on minorities and the poor.[159]

4. Age

Proposals to lower the voting age in California were introduced in the Legislature at least as far back as 1949. Beginning in 1953, they were introduced at every legislative session, except for that of 1961, until finally approved in 1972.[160] SCA 32 of that year, which also revised the residency and literacy requirements, proposed to lower the voting age to 18, and was approved by the voters as Proposition 7 on the general election ballot.

Until 1967, the proposals invariably proposed a reduction to 18. Perhaps in order to garner more support, from 1967 to 1971, some bills proposed 19 or 20 at the outset or were so amended. Of those introduced at the 1963 and 1965 sessions, all died in committee. It was not until Senator Moscone's SCA 15 of the 1967 session reached the floor of the Senate that all the members of a house of the Legislature were faced with having to put themselves on record on the issue. With a two-thirds vote, or 27, of the members necessary to pass a constitutional amendment, the bill died on a vote of 19 to 19. Some opponents feared the bill might be the opening wedge to lowering the drinking age while others warned of the influence that might be exerted on younger voters by teachers and professors.[161]

158. The proposal was backed by the County Clerks Association. (Millbrae Sun & Leader, December 30, 1975.)

159. AB 623 (Dannemeyer) had to have these proposals amended out of it before it could gain committee approval. SB 991 (Beverly), initially gained committee approval but then was subjected to a motion to reconsider which, because it occurred at the committee's last meeting for 1977, caused it to be put over until the following year.

160. Assembly Interim Committee on Elections and Constitutional Amendments, 1969 Interim Report, Minimum Voting Age/Age of Majority, p. 38, and the author's review of bills during the 1960's and 1970's.

161. Ibid. Also, Sacramento Bee, April 20, 1967.

The same sequence of events occurred in 1968 and 1969. Each year, most bills on the subject died in committee but one would reach the Senate floor only to be defeated there. In 1968 it was SCA 8, setting the voting age at 18, and defeated 19 to 14.[162] The next year's bill, SCA 2, had been amended to make it 19 years instead of 18 in order to pick up votes. Nevertheless, it was defeated 22 to 18.[163]

In 1970, Congress finally entered the field by enacting the Voting Rights Act Amendments of 1970, Title III of which sought to require that anyone 18 years of age or older who was otherwise qualified to vote be permitted to vote in any election.[164] In Oregon v. Mitchell, however, the U.S. Supreme Court held that, although Congress had the authority to lower the voting age to 18 in national elections, it had no such authority with respect to state and local elections.[165]

Even though the court's decision did not come until after the Legislature had adjourned, the constitutionality of the federal action was already under attack with the result that the Legislature perhaps felt free to ignore it. In any event, the only measure that made any progress that year was ACA 40 to set a minimum age of 18 for voting. Although approved by the Assembly 59–14,[166] it was defeated again in the Senate, this time by a vote of 23–8, still four votes short of the number required.[167]

By early 1971 it had become clear that unless either the U.S. Constitution or the California Constitution was amended to allow 18-year-olds to vote in state and local elections, the state would be faced with maintaining two lists of voters, those qualified to vote in all elections and the 18 to 20-year-olds who would be qualified only to vote in federal elections. Since state and many local elections in California coincide with federal elections, different types of ballots would have to be provided to the two classes of voters at the polls.[168] Fortunately, by March of that year, Congress had approved the Twenty-sixth Amendment for submission to the states and, even though the Legislature was unable to approve any amendments to change the California Constitution, it did act to ratify the federal constitutional amendment.[169]

162. Sacramento Bee, March 20, 1968.

163. Sacramento Bee, April 10, 1969.

164. P.L. 91–285, 84 Stat. 314.

165. 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed. 2d 272.

166. Sacramento Bee, July 16, 1970.

167. Sacramento Bee, August 7, 1970.

168. See, for example, Sacramento Bee, December 22, 1970 and January 8, 1971.

169. The Legislature's approval of SJR 22, Stats.1971, Resolution Chapter 45, made California the twentieth state to ratify the 26th Amendment. Sacramento Bee, April 20, 1971.

Finally, in 1972, the Legislature placed SCA 32 on the general election ballot of that year as Proposition 7 to reduce the voting age, among other things. It was approved by 68 percent of the voters.[170]

With that, one would think that the matter would have ended. Nevertheless, in 1975, SCA 24 was introduced to allow 17-year-olds to vote. It died in Senate committee. Then, in 1977, ACA 39 was proposed, which would have allowed 17-year-olds who would be 18 by the November general election to vote in the June primary election. It was defeated by a vote of 42 to 31 on the Assembly floor, far short of the necessary two-thirds vote. Opponents felt that "you have to draw the line somewhere." The author of the bill, who had introduced it at the behest of various student groups, felt that it did not make sense that someone eligible to choose among the candidates of the different parties at the general election should be denied the right to help select his party's candidates at the preceding primary.[171]

5. *Criminal Convictions*

Until the State Supreme Court decision of Otsuka v. Hite[172] in 1966, the language in Article II, Section 1 of the California Constitution that "no person convicted of an infamous crime . . . shall ever exercise the privileges of an elector in this state" and companion language in Article XX, Section 11,[173] had effectively barred large numbers of persons convicted of felonies and, perhaps, even of some misdemeanors from voting. This across the board disenfranchisement was challenged in *Otsuka* by two bona fide conscientious objectors convicted of Selective Service Act violations in World War II. In its decision the court concluded that to preserve the language's constitutionality, it "must be limited to conviction of crimes involving moral corruption and dishonesty, thereby branding their perpetrator a threat to the integrity of the elective process."[174] The state's interest in maintaining the "purity of the ballot" was the only compelling state interest that the court could identify which could justify a restriction on the fundamental right to vote—in this instance, of per-

170. Secretary of State, Statement of Vote, General Election, November 7, 1972 (Sacramento: Office of State Printing, 1973), p. 27.

171. Author's notes of committee testimony. See also the Sacramento Bee, June 7, 1977, p. A3, and the San Francisco Chronicle, June 7, 1977, p. 10.

172. 64 C.2d 596, 51 Cal.Rptr. 284, 414 P.2d 412.

173. Article XX, Section 11, also provided that "laws shall be made to exclude from . . . the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes."

174. 64 C.2d 596, 599, 51 Cal.Rptr. 284, 286, 414 P.2d 412, 414.

sons convicted of crimes.[175] When it came to deciding in the future whether a particular crime warranted the loss of the franchise, the court held that it would be necessary to determine "whether the elements of the crime are such that he who has committed it may reasonably be deemed to constitute a threat to the integrity of the elective process." [176]

The court made clear in *Otsuka* that it was of doubtful constitutionality to deprive someone convicted of a crime of his right to vote as an *additional punishment* to that already meted out to him.[177] Because of this and the court's narrow interpretation of what constituted an "infamous" crime, the Legislature was faced with the problem of how to revise the statutes to restore the right to vote to persons who had "paid their debt to society" and to somehow distinguish between those whose crimes constituted a "threat to the integrity of the elective process" and those whose crimes did not. Constitutional amendments were introduced in 1967 and 1968 to limit the loss of the franchise to the period of one's imprisonment but none received legislative approval.[178] In 1969, however, legislation was enacted which required that the affidavit of registration carry a notice that not all felony convictions would disqualify a person from voting.[179] This was in addition to the language still in the affidavit which had the voter swearing that he was "not disqualified to vote by reason of a felony conviction." [180] The following year the Legislature revised the language on the registration affidavit again, this time to have the voter swear that he had never been convicted of a felony which *disqualified* him from voting. If he was uncertain whether a felony of which he had been convicted was one which so disqualified him, the deputy registrar was to provide him with a written statement that not all felony convictions were disqualifying and to advise him to contact the county clerk for a legal determination of his eligibility. In the event of an unfavorable ruling by the county clerk, the bill provided that he could file in superior court for a judicial determination.[181]

175. Ibid., 64 C.2d 596, 603, 51 Cal.Rptr. 284, 289, 414 P.2d 412, 417.

176. Ibid., 64 C.2d 596, 611, 51 Cal.Rptr. 284, 294, 414 P.2d 412, 422.

177. Ibid., 64 C.2d 596, 602, 51 Cal.Rptr. 284, 288, 414 P.2d 412, 416.

178. ACA 64 in 1967 was killed in Assembly committee by referral to interim study. ACA 25 and its companion bill, AB 1416, both passed the Assembly in 1968 but died in Senate committee.

179. AB 1052 (Sieroty), Stats., 1969, c. 1543.

180. Section 310(h) of the Elections Code of 1961. AB 1052 as introduced would have deleted this language but it was reinstated by the initial amendments to the bill.

181. AB 313, Stats.1970, c. 148. Another bill that year, ACA 67 (Roberti), would have spelled out what felonies would cause disenfranchisement but the bill was amended to become a vehicle for a different purpose. In

Another attempt to bring the state Constitution into comformity with *Otsuka* was made in 1972 by the introduction of Senator Petris' ACA 25. The bill would have left it to the Legislature to specify what felonies would cause permanent loss of the right to vote. It had become apparent by then that there was a serious lack of uniformity in the policies of the different counties as to which ex-felons would or would not be allowed to vote.[182] Nevertheless, the bill failed to pass the Senate by one vote.

In 1973, the State Supreme Court intervened again in the matter of ex-felons' voting rights. In Ramirez v. Brown,[183] a case involving the right to vote of three individuals who had been convicted of such crimes as robbery, possession of heroin, burglary, and forgery, it agreed to review its earlier decision in the *Otsuka* case in light of the stricter standards which had since been set in voting rights cases by the U.S. Supreme Court.[184] Accepting the conclusion in *Otsuka* that the purpose of disenfranchising certain ex-felons was to guarantee the "integrity of the electoral process," the court said that it now had to consider "whether so drastic a remedy is 'necessary in the sense that it is the least burdensome means available to achieve that goal.' " [185] Reviewing the history of statutory regulation of elections from the mid-nineteenth century to the present, it concluded that "the voting and counting process is now thoroughly hemmed in by control mechanisms at every stage, so that deliberate irregularities, 'if present today, are rare and have negligible effects on election results.' " [186] In view of this, the court declared that

> the enforcement of modern statutes regulating the voting process and penalizing its misuse—rather than outright disfranchisement

1971, AB 2155 (Knox), tried to spell out which crimes were threats "to the integrity of the elective process" and proceeded to list only various election crimes. Although it passed the Legislature, it was vetoed by the Governor because it limited disenfranchisement to Elections Code violations. (Letter from Governor Reagan to the Assembly, October 29, 1971.)

182. Statement by Senator Petris (Sacramento Bee, June 22, 1972). This was the finding of the "Report of the Secretary of State Regarding the Right to Vote of Ex-Felons in California," May 30, 1972, pp. 2–6. A similar conclusion was reached later in Lee E. Chatman's "Voter Registration of Former Prisoners in California," California Department of Corrections, Bay Area Research Unit, March, 1974.

183. 9 C.3d 199, 107 Cal.Rptr. 137, 507 P.2d 1345.

184. Kramer v. Union School District, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583; Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92; Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274.

185. Ramirez v. Brown, op. cit., 9 C.3d 199, 211–212, 107 Cal.Rptr. 137, 145, 507 P.2d 1345, 1353, citing Young v. Gnoss, 7 C.3d 18, 22, 101 Cal.Rptr. 533, 536, 496 P.2d 445, 448.

186. Ramirez v. Brown, op. cit., 9 C.3d 199, 214, 107 Cal.Rptr. 137, 147, 507 P. 2d 1345, 1355, citing 14 U.C.L.A.L.Rev. 699, 702.

> of persons convicted of crime—is today the method of preventing election fraud which is the least burdensome on the right of suffrage.[187]

It further declared that the provisions of Article II and Article XX, Section 11, of the California Constitution denying the right of suffrage to ex-felons no longer in prison or on parole were in violation of the equal protection clause of the Fourteenth Amendment. However, it declined to rule on the permissibility of continuing to disfranchise those persons still in prison or on parole.[188]

Within a few days of the *Ramirez* decision, ACA 38 was introduced by Assemblymen Dixon and Sieroty. As originally worded, it would have deleted from the Constitution any reference to depriving persons convicted of crimes of the right to vote. As finally approved by the Legislature following several amendments, however, it proposed simply to require the Legislature to provide for the disqualification of persons while "imprisoned or on parole for the conviction of a felony." [189] ACA 38 appeared on the 1974 general election ballot as Proposition 10 and was approved by a vote of 3,004,695 to 2,330,880 [190] thereby adding California to the ranks of the twenty-seven other states which by 1974 had restored the voting rights of ex-felons.[191]

Although the right to vote of ex-felons who have completed their parole is clearly established, the rights of persons still in prison or on parole have been left rather ambiguous by the Legislature despite all the time that has passed since the adoption of Proposition 10. On the one hand, the Legislature did act to revise a section of the Penal Code to delete language which explicitly denied a person in prison the

187. Ramirez v. Brown, op. cit., 9 C.3d 199, 216, 107 Cal.Rptr. 139, 149, 507 P. 2d 1345, 1357.

188. Ibid., 9 C.3d 199, 217, 107 Cal.Rptr. 139, 149, 507 P.2d 1345, 1357.

189. Stats.1973, resolution chapter 89. Companion implementing legislation, AB 1128 (Dixon) was vetoed as was another bill, AB 1797 (Keysor), which would have allowed felons to vote upon expiration of their terms of imprisonment and parole.

190. Secretary of State, Statement of Vote, General Election, November 5, 1974 (Sacramento: Office of State Printing, 1975), p. 41. This voter approval occurred despite the fact that in the meantime the U.S. Supreme Court in a 6–3 decision in Richardson v. Ramirez, 418 U.S. 24, 94 S.Ct. 2655, 41 L.Ed.2d 551, had reversed the California Supreme Court. It construed the language of Section 2 of the Fourteenth Amendment to permit the states to deny the right to vote to former felons even though they have completed their sentences of imprisonment and parole.

191. Secretary of State, California Voters Pamphlet, General Election, November 5, 1974, (Sacramento: Office of State Printing, 1974), p. 39.

right to vote,[192] but on the other hand it has left in the affidavit of registration language which obliges the voter to swear that he is "currently not imprisoned or on parole for the conviction of a felony which disqualifies him from voting" [193] while at the same time it has required that there be language in the informational portion of the voter registration card to the effect that if he "states he is either imprisoned or on parole for the conviction of a felony that his registration will be reviewed by the county clerk who will inform him of its acceptance or rejection." [194] Under these circumstances it is not surprising that in some counties parolees whose crimes had not threatened the electoral process were being allowed to register and vote until a ruling was issued by the Secretary of State in 1976 that no one in prison or on parole was entitled to vote.[195]

It appears likely that the issue of voting rights of parolees and prisoners convicted of felonies will be with us for some time to come.[196]

6. Mental Competence

California's disenfranchisement of the mentally ill and the mentally retarded dates back to the Constitutional Convention of 1849. Without discussion or debate, language was adopted to the effect that "no idiot or insane person . . . shall be entitled to the privileges of an elector." [197] Subsequent statutes directed the county clerk to cancel the registration of a person whose insanity was legally established,[198] and required judges to notify county clerks when a guardian

192. Stats.1975, c. 1175, p. 2897, section 3. Penal Code Section 2600 as revised now permits the deprivation of only such rights as is necessary to ensure reasonable security in a state prison. With mail registration and absentee voting there would appear to be few security problems associated with voting by prisoners.

193. AB 313, Stats.1970, c. 148, p. 392. The language is now located in Elections Code Section 500(j) as added by Stats.1976, c. 1275.

194. Elections Code Section 102 as added by Stats.1976, c. 1275. Originally enacted as Section 321.7 by Stats.1975, c. 704.

195. Secretary of State, Opinion No. 76 SOS 3 (E/PR), April 29, 1976. (Previously, an opinion with the same opinion number dated February 25, 1976, had been issued but with a contrary conclusion. Within a few days it was withdrawn in the midst of a minor controversy. Sacramento Union, May 1, 1976, p. A4; Sacramento Bee, May 30, 1976, p. A2.)

196. For example, in 1977, Flood v. Riggs (1 Civ.No., 40846), was pending in the District Court of Appeals for the First District challenging the law as it applied to parolees.

197. Article II, Sec. 5, 1849 Constitution. See, also, J. Ross Browne, The Debates of the Convention of California on the Formation of the State Constitution (Washington: John T. Tower, 1850), p. 75. The language was amended slightly in 1879 to read, in Article II, Sec. 1: ". . . no idiot, no insane person . . . shall ever exercise the privileges of an elector in this State. . . ."

198. Originally Sec. 1104 of the 1872 Political Code, it is now to be found as Sec. 701(b) of the Elections Code as added by Stats.1976, c. 1275.

was appointed in court for a mentally incompetent person or when a person was committed as mentally ill to a state hospital. The county clerk would then cancel the affidavit of registration of that person.[199]

This stance of outright and permanent disenfranchisement changed, however, in the 1960's. More attempts were made to understand mental illness—to regard the mentally ill as handicapped rather than branded, and to see rehabilitation as a better solution than incarceration in a state hospital. With respect to the franchise, the county clerk was directed to purge a declared incompetent or mentally ill person only if, after six months, no certificate of restoration to competency was received.[200] But the best example of the changing attitude toward mental illness came with the passage of the Lanterman-Petris-Short Act in 1967.[201] The intent of the Act was "to eliminate legal disabilities," [202] and it expressly provided that "unless specifically stated, a person complained against in any petition or proceeding initiated by virtue of the provisions of this part shall not forfeit any legal right or suffer any legal disability by reason of the provisions of this part." [203] The act also repealed the requirement in the Elections Code that judges notify the county clerk of declarations of insanity or incompetency for purposes of cancelling the mentally incompetent person's voter registration.[204]

Efforts to lessen the prejudice against mentally ill and mentally retarded persons achieved some success in 1972, when the pejorative term "idiot" was finally deleted from the Constitution. The new section directed the Legislature to "provide that no severely mentally deficient person, [or] insane person . . . shall exercise the privileges of an elector in this state." [205] The major problem with this change was the lack of any judicial or legislative definition of "severe-

199. Sec. 388 of the Elections Code of 1961 which was repealed by Stats.1967, c. 1667, operative July 1, 1969.

200. Sec. 388.6 of the Elections Code, added by Stats.1965, c. 1667, p. 3798.

201. Stats.1967, c. 1667, p. 4053, operative July 1, 1969 as Division 5, Community Mental Health Services, of the Welfare and Institutions Code.

202. Welfare and Institutions Code, Sec. 5001(a).

203. Welfare and Institutions Code, Sec. 5005.

204. Sections 388, 388.2, 388.4, and 388.6 were repealed. However, the section directing the cancellation of the registration of a person whose insanity is legally established was not repealed and is, at present, still a part of the code (Sec. 701(b)).

205. Article II, Sec. 3 as amended by Proposition 7, November, 1972. The Constitution Revision Commission in 1970 had criticized the former language because it appeared to mean that "persons found to be insane, are disqualified from voting even . . . after recovery of their mental health." It recommended that disqualification apply only while the voter is actually mentally ill. (Proposed Revision of the California Constitution, 1970, Part 2, p. 18.)

ly mentally deficient." [206] Moreover, since the Lanterman-Petris-Short Act emphasized the transfer of mentally disordered persons from institutional environments to local care units, commitment to a state mental institution could no longer serve as an adequate standard for cancelling a person's registration.[207]

A survey undertaken in the latter part of 1973 by the Joint Committee for Revision of the Elections Code demonstrated the different responses of county election officials to the problem of voting by the mentally handicapped. Only nine of the fifty-eight counties had any sort of official guidelines,[208] and it was apparent that a person who might be disenfranchised in one county would be allowed to register and vote in another. The most confusing area, according to the survey, was that of sanity hearings, notification to election clerks, and subsequent purging. The confusion resulted from the repeal of Section 388 of the Elections Code which outlined the method of purging mentally unqualified voters,[209] while the section specifying that their affidavits of registration were to be cancelled remained in the code.[210] Many clerks felt that the repeal of Section 388 released them from the duty to cancel affidavits of registration.[211] With respect to reinstatement of a purged voter's registration, twenty-six counties required a certificate of competency before returning the name to the voter roster, one county required a court order, another required a sworn oath, and four others simply required the voter to re-register.

In the midst of this confusion, the Legislative Counsel issued an opinion which stated that a "voter may not be considered legally insane and deprived of his right to vote unless he has been specifically denied that right in conservatorship proceedings." [212] This was because, under the Lanterman-Petris-Short Act, mentally disordered per-

206. See, for example, Orange County Counsel, letter to Registrar of Voters, Orange County, file no. R–375, July 16, 1973.

207. In 1959, at the peak of the state hospital program, the total resident-patient population reached 37,000; by July of 1972, the total was down to 8,235. Valorie J. Bradley, "California Moves Rapidly to Community-Centered Mental Health Programs Under 1967–68 Legislation," 3 California Journal (June-July, 1972), pp. 182–184.

208. Three used as their guidelines commitment to a mental institution, or placement under conservatorship; two others relied on the old "idiot or insane" constitutional language, apparently unaware of the 1972 revision.

209. Repealed by Stats.1967, c. 1667, p. 4053, operative July 1, 1969.

210. Present Sec. 701(b), added by Stats. 1976, c. 1275, formerly Sec. 383(b).

211. The survey noted, however, that in twenty-six counties the Superior Court still notified the elections clerk of the results of sanity hearings, and eighteen of these clerks purged their voter rosters.

212. Legislative Counsel Opinion No. 20675, February 12, 1974.

sons [213] may no longer be judicially committed.[214] Instead, a person may be certified for involuntary intensive treatment for certain statutory time periods, but beyond these maximum periods of time, the act contemplates the appointment of a conservator of the person and/or the estate.[215] When the order appointing a conservator is made, the mentally disordered person retains all rights not specifically denied,[216] and thus the right of suffrage would be retained unless an express finding was made of an inability to vote. The Legislative Counsel opinion further noted that a person who voluntarily commits himself retains full legal rights, that drug addicts incarcerated in a mental institution retain all rights not specifically denied them, and that the section of the Elections Code directing the county clerk to purge a person whose insanity has been legally established did not impose a duty upon the court to furnish the county clerk with a list of persons denied their voting rights.[217]

In November of 1974, the California Constitution was amended again, deleting the uninterpretable phrase "severely mentally deficient" and substituting another undefined term. The new section provided, in part, that "the Legislature . . . shall provide for the disqualification of electors while mentally incompetent . . . ." [218]

Thus, the total proscription on voting by the mentally ill and the mentally retarded was finally removed in favor of disenfranchisement only during a period of mental incompetency. The question, then, was where to draw the line between mental illness which incapacitates a person for electoral purposes and mental illness which has no bearing on the subject.

An attempt to answer this problem was made in 1975 when AB 1974 was introduced by Assemblyman Keysor. The bill provided that a person was mentally incompetent whenever (a) he was declared to be "gravely disabled," as defined in Section 5008 of the Welfare and Institutions Code; (b) he was confined to an institution for the mentally ill or the mentally retarded; and (c) he had been declared by the courts to be incapable of participating in the electoral process.

213. The terms "insanity" or "insane" are no longer used.

214. Welfare and Institutions Code, Sec. 5002.

215. Welfare and Institutions Code, Sec. 5350 and 5352.

216. Welfare and Institutions Code, Sec. 5005 and 5356.

217. Opinion No. 20675, February 12, 1974, pp. 4–6.

218. Article II, Sec. 3; renumbered Article II, Sec. 4, June 8, 1976. This language was the original recommendation of the Constitution Revision Commission's proposal in 1970, op. cit.

The bill was dropped, however, due to opposition from some mental health organizations.

In 1976, the Legislative Counsel issued another opinion [219] which gave the assurance that current language in the Elections Code [220] was sufficient to disenfranchise the mentally incompetent. Three months later, however, the Attorney General issued an opinion which came to the opposite conclusion, namely, that "there are no existing statutes enacted by the Legislature that provide for the disqualification of electors while mentally incompetent," as required by the California Constitution.[221] The section of the Elections Code which directs the county clerk to cancel the registration of a person whose insanity is legally established was identified as the only statute which might be said to authorize the disenfranchisement of voters during periods of mental incompetency. But it appears that the only way "insanity" may be legally established under present statutes, according to the Attorney General, is after a trial collateral to a criminal proceeding,[222] or possibly in a civil proceeding to appoint a guardian.[223] He also noted that "it would seem that the Legislature no longer considers a person who is judicially declared insane or incompetent (for whatever reason) to also be automatically legally incompetent to make decisions regarding election matters."

Since the issuance of the Attorney General's opinion in 1976, the Legislature has been unable to resolve the question of how to provide for the disqualification of the mentally incompetent. The problem was dramatized by the registration to vote for the November, 1976 general election of 240 developmentally disabled patients in the state's eleven mental hospitals.[224] Forty such persons located at the Napa State Hospital made their party preferences known by choosing between pictures of Gerald Ford and Jimmy Carter.[225]

In 1977, two measures were introduced on the subject. One of them, AB 372, by Assemblyman Antonovich, would have allowed a county clerk to seek to cancel the registration of a prospective voter who appeared not to have the mental capacity to fill out a registration form. Ultimately, a jury trial would have decided the issue. After a

219. Legislative Counsel Opinion No. 22686, January 8, 1976.

220. Specifically, Sec. 383(b), now Sec. 701(b).

221. 59 Ops.A.G. 263, April 29, 1976.

222. Pursuant to Penal Code, Sections 1026 et seq., and 3701 et seq.

223. Pursuant to Probate Code, Sections 1460 et seq.

224. Sacramento Union, October 31, 1976.

225. See, e. g., Vallejo Times-Herald, October 30, 1976; Sacramento Union, October 31, 1976; San Francisco Examiner, October 29, 1976; Fresno Bee, November 7, 1976; Napa Register, October 30, 1976.

debate on the Assembly floor, the measure was referred back to committee.[226] The other bill, SB 82 by Senator Nejedly, proposed to repeal the section of the Elections Code requiring cancellation of registration when the insanity of the person registered was established; [227] instead, a procedure would be substituted whereby county clerks would be required to cancel the affidavit of registration of a voter upon receipt of a certified order of a court which indicated, in connection with the appointment of a guardian or conservator or upon the remand of the voter for post-certification treatment, that the voter's mental condition was such that the voter should be disqualified from voting. Upon discharge from the custody of the State Department of Health or termination of the guardianship or conservatorship, however, a person would be entitled to re-register. The bill failed to gain approval in the Senate policy committee to which it was assigned.[228]

B. MAKING IT EASIER TO BECOME AND REMAIN A REGISTERED VOTER

1. Voter Registration By Means of Deputy Registrars

It has been suggested that the decline in voter participation in national elections from the high level that existed in the late nineteenth century to the embarrassingly low level characteristic of modern day elections is attributable in large part to the systems of personal registration adopted in many states in the early years of this century. Before then those states had not required voters to register or had had systems of automatic registration.[229] One statistical study found that "registration requirements are a more effective deterrent to voting than anything that normally operates to deter citizens from voting once they have registered. . . ." [230] The statistically significant relationship that its authors found between variations in the convenience of times and places of registration and variations in rates of registration was such that it seemed to them

226. Sacramento Bee, April 22, 1977.

227. Sec. 701(b).

228. Although both bills can be taken up again in 1978, they are faced with early deadlines for approval by their houses of origin which must be met if they are to have any chance of passage.

229. Stanley Kelley, Jr., Richard E. Ayres, and William G. Bowen, "Registration and Voting: Putting First Things First," 61 American Political Science Review (June, 1967), 359, 374. See also James R. Steilen, "Access to Voter Registration," 9 Harvard Civil Rights-Civil Liberties Law Review, (May, 1974), 482–483, and Richard J. Carlson, "Personal Registration Systems Discourage Voter Participation," 60 National Civic Review (December, 1971), 2.

230. Kelley, Ayres, and Bowen, op. cit., p. 362.

that local officials, by varying the convenience of registration procedures, may be able to affect appreciably not only the size, but also the composition, of local electorates.[231]

Until mail registration went into effect in 1976, the convenience of registration in California was almost entirely dependent upon the availability of deputy registrars but the training, appointment, payment (if any), and degree of freedom of the deputies was the responsibility of the 58 different counties. The result was considerable variation from county to county in the ease with which a person could register to vote. A survey of county practices in 1960 made this quite clear: 22 counties did not appoint volunteer deputies, only eight conducted a door-to-door canvass for unregistered voters, twelve would not allow their deputies to rove from place to place in search of unregistered voters, seventeen did not ordinarily appoint deputies to register voters in places where large numbers of people congregated, and 18 did not provide for reimbursement of deputies, the remainder paying from 5¢ to 25¢ per registration.[232]

This state of affairs, not surprisingly, produced recommendations that the Legislature adopt policies which would guarantee the maximum possible number of deputy registrars in each county who would have freedom of movement to register voters anywhere they wished.[233] The 1961 Legislature dealt with part of the problem the survey had revealed by requiring the county clerks to cooperate with interested citizens and organizations in promoting voter registration and by requiring them to allow deputies to register anywhere in the county.[234]

It was all very well to require freedom of movement of the deputies but this still did not guarantee sufficient numbers of deputies,[235]

231. Ibid., pp. 368–369. Another study which found a major impact by registration laws on voter participation was Steven J. Rosenstone and Raymond E. Wolfinger, "The Effect of Registration Laws on Voter Turnout," a paper prepared for delivery at the September 2–5, 1976 annual meeting of the American Political Science Association.

232. Assembly Interim Committee on Elections and Reapportionment, Preliminary Report, December, 1960, pp. 38–47. Testimony on county registration practices was also heard at several legislative committee hearings: Assembly Interim Committee on Elections and Reapportionment, Transcript of Hearing, December 9, 1959, Fresno, pp. 19–20 and 60–66; Transcript of Hearing, December 15 and 16, 1959, Los Angeles, pp. 15–20; Transcript of Hearing, July 29, 1960, pp. 47–49.

233. See, for example, Report of the Assembly Interim Committee on Elections and Reapportionment, March, 1957, pp. 37–38; and Assembly Interim Committee on Elections and Reapportionment, Transcript of Hearing, July 29, 1960, Sacramento, pp. 74–75 and 81–82, and Transcript of Hearing, December 10–11, 1963, Brawley, pp. 52–53, 146–149, 154–157, 169–173, 177–178, 180–182, 196–198.

234. Stats.1961, c. 392 and c. 1051.

235. AB 1350 (Veysey), as amended May 14, 1963, would have required

particularly if a county clerk declined to appoint as deputies persons volunteering for the positions. In fact, this became an issue in the 1972 presidential election. Despite a ruling by the Secretary of State that county clerks could not decline to deputize persons seeking to serve as deputies,[236] several counties set a limit to the number they were willing to accept.[237] The position of the counties was supported by an opinion of the Legislative Counsel [238] and upheld by at least one trial court.[239] The next year the Legislature added to the Elections Code a statement of intent that "no limitation be imposed on the number of persons appointed to act as deputy registrars of voters." [240]

Not all restrictions on the movements of deputies were the result of policies of particular counties. With the ratification of the Twenty-sixth Amendment in 1971, registration of the 18 to 20 year olds wherever they gathered was an immediate objective of deputy registrars cooperating with the political parties and various student groups. High school and college campuses were a natural hunting ground for the deputies but school authorities did not always give them complete access. In the case of public high schools, a measure was approved by the Legislature in 1972 to specify that deputies could register on the high school campuses but was vetoed by Governor Reagan who felt that school officials should retain power to control uses to which school property is put.[241] Two years later, however, legislation was successfully enacted to require that during the last full week in April and the last full week in September deputy registrars be allowed to register on high school campuses.[242]

"sufficient deputies to conduct a countywide door-to-door canvass of residents of the county once every two years. . . . " but it died in committee.

236. Secretary of State, Opinion 1971–4, October 26, 1971.

237. Memorandum dated September 28, 1972 from Joe Jimenez to Alan Rosin, Senate Committee on Elections and Reapportionment entitled "McGovern vs. Magini (sic)." Also a telephone memorandum dated September 14, 1972 on a call from the Northern California McGovern Headquarters.

238. Opinion #17555 dated September 28, 1972.

239. Los Angeles Times, September 14, 1972, part II, p. 2.

240. Stats.1973, c. 385. Similar legislation had been attempted in 1971 and 1972 but was unsuccessful: AB 1279 (Waxman) died on the Senate floor in 1971 and AB 2171 (Waxman) died in committee in 1972.

241. AB 699 (Vasconcellos). Sacramento Bee, August 17, 1972.

242. SB 1610 (Kennick), Stats.1974, c. 230. See also the Sacramento Bee, May 12, 1974.

Voter registration on college campuses, naturally, was not likely to be as subject to restrictions as in the case of high school campuses but one dispute over access to a college campus did find its way into the courts. Deputy registrars during the 1972 presidential election sought to register students in their rooms in the large dormitories on the University of California at Los Angeles campus. University authorities sought to restrict their activity to the first floor of each dormitory building where the lobbies, cafeterias, and other public rooms were located. The trial court concluded, and the District Court of Appeals for the Second District in a 1975 decision agreed, that the university policy, which was prompted by a concern for the privacy and security of students in their dormitory rooms, was reasonable and that the dormitory lobbies impliedly fell within the meaning of "residence" as used in the Elections Code directive that deputies be allowed to register at the "places of residence" of the voters.[243]

The very nature of election administration in California, namely that it is organized on a county basis, has, until recently, acted as a restraint on the full freedom of deputies to register whomever and wherever they pleased. Deputies are recruited, trained, and appointed by each individual county; they pick up from and return to the county clerk that county's affidavits of registration which, until the advent of mail registration and the accompanying standardization of affidavits, were likely to be incompatible due to size and shape with the filing system used for affidavits in an adjacent county. Thus, until 1965, there were no circumstances under which a deputy in, say, Los Angeles County, could register an Orange County resident to vote even if that person happened to encounter the deputy in Los Angeles County. In 1965, however, the Legislature directed that during the last seven days of voter registration a registration by a deputy of one county of a resident of another county would have to be honored for the ensuing election, but only for that election.[244] Four years later, the Legislature took the next logical step and provided that such out-of-county registrations would be permanent.[245] However, it was not willing to go beyond this and give deputies authority to register out-of-county residents at any and all times.[246]

Since prior to the adoption of mail registration, voter registration was entirely dependent on the efforts of deputy registrars, it seems that a reasonable level of recompense would have helped to en-

243. National Movement for Student Vote v. Regents of University of California, 50 C.A.3d 131.

244. Stats.1965, c. 451.

245. Stats.1969, c. 810.

246. AB 1279 (Waxman) in 1971 died on the Senate floor and AB 2171 (Waxman) in 1972 died in committee. The former would have allowed registration anywhere in the state, the latter in each adjacent county.

sure a consistent level of effort on the part of these deputies when it came to searching out unregistered individuals and adding them to the voter rolls. However, except for a relatively small number of full time city or county employees, most deputies have been volunteers. The pattern found to exist in 1960 (see the survey cited above), continued into the 1970's, with many counties paying the volunteer deputies little or nothing.

A recurring problem, as a result, has been the question of the legality of the common practice of political parties, campaign organizations, labor unions, and other groups, of paying or rewarding deputies allied with them for registering voters. It also has been a convenient issue for use in political campaigns, Democrats and Republicans periodically assailing each other for violating the law by paying deputies.[247]

The little there is in the way of legal opinions on the subject consists of a 1962 opinion of the Attorney General to the effect that paying bonuses to deputies for registering voters may be a violation of various Penal Code sections concerning paying gratuities and bribes to public employees [248] and a 1972 opinion of the Legislative Counsel that paying compensation to deputies might be permissible if authorized by county ordinance.[249]

The Legislature has failed to clarify the matter. Bills introduced in 1961, 1963, and 1967 to explicitly prohibit compensation died in committee.[250] Legislation proposed in 1971, by contrast, as introduced, would have required all counties to pay a uniform amount to each deputy registrar. Although the bill was amended so that it provided instead for authorizing payment of deputies by private groups, it died on the Assembly floor.[251] It wasn't until the arrest of a candidate for the Assembly in 1974 for offering to pay deputies for registrations [252] that any legislation actually was adopted but its only effect was to make clear that local counties by ordinance could authorize

247. Los Angeles Herald-Examiner, August 23, 1962; Los Angeles Times, August 24, 1962, part. I, p. 2, and September 6, 1962, part I, p. 2; Sacramento Bee, September 21, 1972, p. B7; and May 6, 1976, p. B4; and San Jose Mercury, July 18, 1976.

248. 40 Ops.A.G. 106, September 5, 1962. The Report of the Assembly Interim Committee on Elections and Reapportionment of March, 1957, p. 45, refers to a request of Legislative Counsel at that time for an opinion on the subject.

249. Opinion #17556, September 28, 1972.

250. AB 1206 (Sumner) in 1961, AB 1510 (Veneman) in 1963, and AB 1319 (Conrad) in 1967.

251. AB 1758 (Miller). ACA 52 (Miller), to which AB 1758 was accompanying legislation at the outset, died in committee.

252. Ontario Daily Report, September 4, 1974, p. 1; September 26, 1974, p. 1; October 25, 1974, p. 1; and October 26, 1974, p. 1.

deputies to receive compensation from political groups.[253] An attempt in 1976 automatically to allow such compensation unless *prohibited* by local ordinance died for lack of Assembly concurrence in Senate amendments.[254]

With the adoption of mail registration (see below), the role and importance of deputies naturally has diminished. Los Angeles County, for example, which had a peak of 11,491 deputies in the 1972 presidential general election and 5,528 in the 1976 presidential primary election, had dropped to 3,842 in the 1976 general election.[255] In fact, the mail registration legislation adopted in 1975 initially contemplated the complete elimination of deputies. Only due to the opposition of some election officials, particularly in Los Angeles County, did the legislation retain a role for them.[256] It was just as well because at a hearing conducted in late 1976 by the Assembly Committee on Elections and Reapportionment there was convincing testimony that outside of districts where there were highly competitive political campaigns, there was little evidence of the distribution of the mail registration forms. Rather, voter registration was still largely dependent on the traditional efforts of deputy registrars.[257] In fact, statistics compiled for the period of July to November 1976 by the Los Angeles County Registrar of Voters show a total of 575,000 registrations of which 54 percent were recorded by deputies, the remainder by voters themselves using mail registration forms. More recently the proportions have been running 50–50.[258]

2. Obstacles to Registration

In addition to the various features of the system of deputy registrars described above which hindered voter registration, there have been other obstacles encountered by persons who wished to register to vote. The 1960's and 1970's saw the elimination of several of these.

One such obstacle consisted of the special requirements that had to be met by foreign born United States citizens who wished to register. Not only did they have to provide details of how they became

253. Stats.1975, c. 2102.

254. AB 2684 (Dixon).

255. Los Angeles County, Department of Registrar-Recorder, 1973–1975 Biennial Report of the Registrar Recorder, October 1, 1975, p. 6, and supplemental statistics provided by telephone, August, 1977.

256. AB 822 (Keysor), Stats.1975, c. 704.

257. Testimony by Mary Solow, Los Angeles County Democratic Voter Registration Chairman, Interim Hearing on Voter Registration Reform, November 19, 1976, San Diego. Author's notes of untranscribed hearing.

258. Bea Valdez, Assistant Chief Deputy, Los Angeles County Registrar-Recorder, telephone conversation, August 24, 1977.

citizens, but naturalized citizens also had to provide the date and place of naturalization [259] and were restricted from registering to vote in an election unless by the date of the election they had been citizens for at least 90 days.[260] Because dates are easily forgotten, and an erroneous date might expose someone to a perjury prosecution, the 1963 Legislature eliminated the date requirement although it left intact the requirement of providing all the other citizenship information.[261] And since native born citizens could swear to the facts of their citizenship rather than having to produce documents, such as birth certificates, finally in 1967 the Legislature allowed naturalized citizens to do likewise, instead of having to produce certificates of naturalization or former affidavits of registration to establish when and where they were naturalized.[262]

The requirement that naturalized citizens have held citizenship for at least 90 days before voting originated in the late nineteenth century when naturalization requirements were less demanding.[263] With longer waiting periods required now of persons seeking to become naturalized citizens, the Constitution Revision Commission in 1970 recommended deletion of the requirement.[264] The Legislature, in 1971, concurred and placed a constitutional amendment on the June, 1972 ballot as Proposition 6 which the voters approved.[265]

What appears to have been the first attempt to eliminate the requirement that foreign born American citizens provide information as to how they acquired citizenship occurred in 1971. A bill was introduced that year to make that change and to bring the Elections Code into conformity with recent developments with respect to literacy and age requirements. But, although it passed the Assembly, it

259. Secs. 310 and 321 of the Elections Code of 1961.

260. Article II, Section 1 of the Constitution until amended June 6, 1972.

261. AB 1196 (Petris), Stats.1963, c. 729. An amendment which would have made registration all the more difficult for such people by requiring that they produce their naturalization papers at the time of registering was defeated on the Senate floor. (Sacramento Bee, May 16, 1963.)

262. Stats.1967, c. 377.

263. Secretary of State, Proposed Amendments to Constitution, Propositions and Proposed Laws, Primary Election, Tuesday, June 6, 1972, (Sacramento: Office of State Printing, 1972), p. 14.

264. The Commission regarded the requirement as "unnecessary and possibly unconstitutional." California Constitution Revision Commission, Proposed Revision of the California Constitution, 1970, Part II, p. 17.

265. ACA 21, Stats.1971, Resolution chapter 272. Accompanying legislation to conform the Elections Code was AB 210, Stats.1971, c. 1760. The vote on Proposition 6 was 3,347,087 yes, 2,286,804 no. (Secretary of State, Statement of Vote, State of California, Consolidated Primary Election, June 6, 1972 (Sacramento: Office of State Printing, 1972), p. 43.)

died in the Senate floor.[266] It was not until the format of the affidavit of registration was being revised in connection with the mail registration legislation of 1975 that, in order to save space on the new registration forms, the questions about citizenship were eliminated altogether.[267]

Since citizenship is a fundamental requirement for becoming a voter and since voting symbolizes the privileges and obligations of citizenship, many naturalized citizens have sought to register to vote immediately upon becoming citizens. This was not always possible if the place of naturalization was not in the individual's county of residence. Thus, in 1974, the Legislature authorized registration to vote of persons at naturalization hearings no matter where in the state the naturalization was taking place.[268]

More an obstacle to wanting to be registered than to the act of registration was the requirement that the names of prospective members of juries be taken exclusively from the lists of registered voters. It was believed that this discouraged registration in the case of persons who, for one reason or another, were unwilling to be called for jury duty. Therefore, in 1975, the Legislature directed that lists of prospective jurors in the future would no longer be drawn exclusively from the lists of registered voters but could also be drawn from the lists of licensed drivers and persons issued identification cards by the state Department of Motor Vehicles.[269] An attempt in 1976 to eliminate altogether the use of lists of registered voters was unsuccessful as had been the case with similar bills the previous year.[270]

Nevertheless, the addition of the DMV lists, which are about twice as large as the registration lists, vastly enlarges the pool for juror selection and, even though use of DMV lists is permissive, not mandatory, by early 1976, 49 of the 58 counties were using them to supplement voter rolls.[271]

266. AB 1278 (Waxman).

267. AB 1959 (Keysor), Stats.1975, c. 1211; AB 822 (Keysor), Stats.1975, c. 704. Enactment of the relevant provisions in the former was made dependent on enactment of the latter, the mail registration legislation.

268. AB 3851 (Keysor), Stats.1974, c. 1135.

269. AB 1683 (William Thomas), Stats. 1975, c. 657.

270. SB 1589 (Rains) died in Senate Judiciary Committee in 1976. SB 177 (Moscone) failed to pass on the Senate floor and AB 808 (Keysor) died on the Assembly Inactive File, both in 1975.

271. Statement by Senator Rains in connection with his SB 1589. (Lompoc Record, February 16, 1976.) For a discussion of the use of registration rolls for jury selection, see the remarks in the Transcript of the Assembly Elections and Reapportionment Committee Hearing on Voter Registration, Sept. 24, 1973, San Francisco, p. 54, and Assembly Committee on Elections and Reapportionment, Voter Registration, transcript of hearing, Oct. 31, 1975, pp. 48–50, 59–60, 63, and 91–98.

Because of the way in which voter interest in an election builds progressively until the day of the election, one of the more formidable obstacles to voter registration in California, until it was revised in 1972, was the state's early close of registration. Set at 54 days before an election, it made California one of the most restrictive states in the country in this respect. A survey in 1968 of state registration deadlines found only four that closed registration as early as California—Kentucky, Mississippi, Rhode Island, and Texas.[272]

Although the 54 day close coincided with the then still extant 54-day residence requirement, there was no need for them to be the same. Since a voter had to swear to his having lived in the state a year and in the county ninety days, he could just as readily have sworn to a residence in the precinct of 54 days even if he was registering on a date much closer to the day of the election than that. Nevertheless, the 54-day close remained intact until the State Supreme Court forced the issue by striking down the 54-day residency requirement in Young v. Gnoss in early 1972 (see above).[273]

Long before that, however, there had been proposals calling for a later close of registration. The report of the President's Commission on Registration and Voting Participation in 1963 had recommended that registration should close not more than three or four weeks before election day.[274] A 1969 academic study of how to increase voter participation had recommended a cutoff one or two weeks prior to the election.[275] In addition, a later cutoff had been a continuous objective of the Democratic Party organization in the state.[276]

Nevertheless, repeated attempts to move the close of registration to a point closer to election day were defeated during the 1960's and the beginning of the 1970's until the *Young* decision made it impossible to avoid any longer. In all those years just one bill to change the date succeeded in being passed by the Legislature only to be vetoed by the Governor and that occurred in 1971.[277] Most of the rest

272. Edmond Costantini and Willis D. Hawley, Increasing Participation in California Elections: The Need for Electoral Reform, 10 (Berkeley: Institute of Governmental Studies, June, 1969). (No page numbers.)

273. 7 C.3d 18, 101 Cal.Rptr. 533, 496 P.2d 445.

274. Op. cit., pp. 35–36.

275. Costantini and Hawley, op. cit.

276. For example, the Election Reform Report of the California Democratic Council, 1963 Convention, Bakersfield, p. 7, recommended registration up to the 5th day before the election. The Isenberg memorandum of October 10, 1970, op. cit., recommended registration up to 19 days before the election (p. 2). All authors of bills moving the close of registration closer to election day were liberal Democrats from metropolitan areas.

277. SB 60 (Moscone).

died in committee or on the floor of the house of origin.[278] Four managed to get approval from their houses of origin only to die in the other house.[279]

The difficulty in getting such legislation passed seems to have stemmed from partisan considerations and problems of election administration. Any later date for the close of registration could be expected to increase voter participation in the election. One national study, for example, estimated a 3.6% increase in voter registration if a state's closing date were moved from one month to one week before an election and observed that "for politicians, varying the closing date for registration would thus appear to be a very effective way in which to manipulate the size of the potential electorate." [280] Since the Democratic Party leaders felt that their own supporters were more likely to include a larger proportion of persons less motivated to register and vote than the Republicans, any change to a later close of registration would be politically beneficial. The Republicans could not have been oblivious to this either.[281] It seems likely, then, that a later close of registration would have come about eventually once the Democrats had regained control of the governorship even without the aid of the *Young* decision.

Problems of election administration represented the other roadblock to moving the close of registration closer to election day. It was doubted by the election officials that they could continue to provide voters with the state voter pamphlet, sample ballots, and polling

278. AB 606 (Burton) and SB 121 (Rodda) in committee in 1961. AB 1761 (Petris) in committee in 1963. SB 218 (Moscone) in committee in 1967. In 1969, AB 583 (Brown) died on the Assembly Inactive File and AB 1609 (Greene) died in Assembly committee. Also in 1969, AB 582 (Brown) became a vehicle for a different purpose. AB 275 (Brown) died in committee in 1970.

279. AB 1050 (Danielson), providing for a 46-day close, passed the Assembly in 1965 but died in Senate committee. SB 201 (Moscone), providing for registration and voting at the county clerk's office between the 29th and 19th days before an election, passed the Senate in 1968 but died in Assembly committee. SB 604 (Moscone), setting a 40-day deadline for registration, passed the Senate in 1969 but was defeated on the Assembly floor. AB 275 (Brown), providing for registration between the 40th and 19th day with absentee voting for late registrants, died in Assembly committee in 1970. AB 1226 (Waxman), setting a 30-day close, passed the Assembly in 1971 but died in Senate committee.

280. Kelley, Ayres, and Bowen, op. cit., p. 367. The court in Young v. Gnoss took note of the estimate by Edmond Costantini that moving the close of registration from the 54th day to the 30th day would increase the number of registered voters in the state 2½ percent. 7 C.3d 18, 26–27, 101 Cal.Rptr. 533, 538–539, 496 P.2d 445, 451–452.

281. This point appears in the exchange between a Democratic member of the Assembly and a representative of the Republican State Central Committee in the Assembly Committee on Elections and Reapportionment Committee transcript, entitled Voter Registration, of October 31, 1975, pp. 80–88.

place notices and provide the parties and political campaigns with the lists of voters if the cutoff point was moved. They took this position despite the fact that during the 1960's many counties were applying data processing to various election administration functions.[282] Some of the unsuccessful bills of the 1960's and early 1970's took this into account by proposing the elimination of certain services to late registrants or by requiring that they vote by absentee ballot or at the county clerk's office. When the Legislature and the Governor in 1972 were finally able to agree on moving the registration deadline to the 30th day before the election, the bill provided that persons registering after the 54th day would not need to receive the sample ballot although they still would have to receive polling place notices and the state voter pamphlets.[283]

Proposals for moving the close of registration even closer to election day continue to be introduced. In 1975 a Senate bill to allow registration up to the day before the election died on the Senate floor and an Assembly bill calling for a supplemental registration period from the 29th to the 7th day before the election with the late registrants voting by absentee ballot met its demise in committee in the house of origin.[284] That same year, however, saw the enactment of mail registration [285] but the defeat of a proposal for eliminating advance registration in favor of election day registration at the polling places.[286] Another bill in 1976 providing for a late registration period from the 27th day to the 10th day with absentee voting for such late registrants died on the Assembly floor without action.[287]

During 1977, for a time, there appeared to be a good possibility of Congress adopting a requirement that voters in national general elections be allowed to register to vote on election day and legislation was introduced in the California Legislature to conform state laws to federal requirements. By late in the year, however, the

282. See, for example, Assembly Committee on Elections and Reapportionment, Transcript of Meeting, November 14, 1966, Sacramento, pp. 3–4. See also pp. 57, 64, and 68 of the Oct. 31, 1975 transcript, op. cit. Also, see Edmond Costantini and J. A. O'Connell, Expanding California's Electorate (Davis: Institute of Governmental Affairs, California Government Series II, No. 4, April, 1975), pp. 28–29.

283. SB 840 (Moscone), Stats.1972, c. 1356. It was changed to the 29th day by AB 822, Stats.1975, c. 704.

284. SB 177 (Moscone) and AB 114 (Keysor). The mail registration bill of 1975, AB 822, in its original form would have allowed registration up to the tenth day before an election.

285. AB 822 (Keysor), Stats.1975, c. 704.

286. AB 954 (Meade).

287. AB 3616 (Keysor).

federal measure appeared to be encountering political difficulty and it was questionable whether it would pass.[288]

Whether it is a later close of registration or a form of election day registration, it seems likely that because of the political benefits there will be continued efforts to make it easier to register at the latest possible time. In addition to the estimate of a potential 3.6 percent increase mentioned above, another study estimated a nationwide increase in voter participation of 4.5 percent if nationally the close of registration were set at only one week before the election instead of 30 days.[289]

One of the most common reasons for having to re-register to vote is having changed one's address. Census figures for 1970, for example, show that approximately six million, or thirty percent, of the state's nearly twenty million persons had changed their addresses in the one year period of 1969–1970.[290] Therefore, anything which would simplify re-registering for such people would be a considerable convenience.

The first legislation to be adopted along these lines was in 1963, a bill which made it possible for a voter moving within a county to notify the county clerk of his new address with nothing more than a post office change of address card. The clerk, however, then had to send the voter a prepaid postcard on which the voter was to officially notify him of the change of address and authorize him to correct the affidavit. Once this was received back, the clerk could update the address on the existing affidavit of registration making it unnecessary for the voter to re-register.[291] This procedure obviously could have been simplified at the outset if the clerk could have accepted the initial notification as sufficient authorization to change the address information on the affidavit. One proposal along these lines called for providing the post office with forms designed so as to authorize the affidavit corrections but the post office opposed the idea [292] and legislation to authorize it died in committee in 1965.[293]

288. H.R. 5400 and S. 1072. The bill to conform state law to the federal legislation was to have been AB 1028 (Keysor) but was allowed to die in an Assembly fiscal committee since action on the federal legislation was not forthcoming.

289. Rosenstone and Wolfinger, op. cit., p. 28.

290. U. S. Bureau of the Census, Census of Population: 1970, General Social and Economic Characteristics, California (Final Report PC(1)–C6) (Washington: Government Printing Office, 1972), Table 50, Mobility, Commuting, and Veteran Status by Race, for Urban and Rural Residence: 1970, p. 6–390.

291. AB 295 (Bane), Stats.1963, c. 1536.

292. Sacramento Bee, November 21, 1964, p. A8; November 25, 1964, p. B18; January 7, 1965, p. D13; January 10, 1965, p. A2.

293. AB 130 (Powers).

It wasn't until 1969 that the law was changed to simplify the procedure further by authorizing use of any written notice from the voter, not just the post office change of address card.[294] Even with the adoption of mail registration in 1975, however, this procedure remains essentially the same except that now the clerk sends the voter the mail registration card to fill out.[295]

3. Mail Registration

Short of a system of election day registration, potentially the most convenient system of voter registration is one involving registration by mail, depending, of course, upon how readily available are the mail forms. Mail registration also has been one of the more partisan issues involving election matters, the Democrats usually favoring it and the Republicans usually opposed.[296]

Mail registration proposals were slow in getting under way. During the 1960's there were only three bills, none of them very sophisticated, all of which died in committee.[297] The first proposal to reach the floor of either house of the Legislature was a measure in 1971 which would have allowed a voter to apply to have a blank registration affidavit sent to him by mail which he could fill out and return. It also provided for blank affidavits to be kept in public places where voters could fill them out, with the county clerk picking them up later. The measure was defeated on the Senate floor.[298] Legislation in 1972 allowing voters to apply by mail for registration affidavits also met defeat on the Senate floor as did a similar bill in 1974.[299]

294. AB 1353 (Waxman), Stats.1969, c. 870.

295. AB 822 (Keysor), Stats.1975, c. 704.

296. For example, see the Republican testimony in Transcript of Assembly Elections and Reapportionment Committee Hearing on Voter Registration, September 24, 1973, San Francisco, pp. 3–17, and in Assembly Committee on Elections and Reapportionment, Voter Registration, transcript of hearing, October 31, 1975, p. 88. For a Democratic Party leader's position, see the Sacramento Bee, January 19, 1975. See also the San Francisco Chronicle, August 29, 1975, p. 1.

297. AB 639 (Petris) in 1963 and SB 584 (Petris) in 1969 both provided for leaving duplicate blank affidavit forms in public places for voters to fill out with the forms to be picked up later by the county clerk. They also provided for mailing blank affidavit forms to voters on request. AB 3038 (Bane) in 1963 provided that if a voter submitted an application by mail with all the pertinent information, the clerk was to fill out the affidavit accordingly and mail it to the voter for his signature.

298. SB 753 (Petris). Republicans opposed it because they saw it as increasing the likelihood of fraud. (Sacramento Bee, February 25, 1971, April 3, 1971, June 16, 1971, and June 24, 1971.) AB 1231 (Waxman), also introduced in 1971, was the first bill to provide for an actual mail registration form but died in Assembly committee.

299. SB 133 (Petris) in 1972 and SB 1548 (Petris) in 1974.

It was in 1975, of course, that mail registration in California was finally adopted. That it occurred then and not at some other time probably was the result of several factors including a new Democratic Governor who could be expected to approve the bill, reports of successful use of mail registration in other states,[300] strong backing by organized labor for both state and national mail registration legislation, and the existence of a major effort underway in Congress to enact a system of mail registration at the national level which made it appear that California might be wise to act first and adopt its own system.[301]

Key features of AB 822, the mail registration bill,[302] are as follows: (1) Affidavits of registration are to be prepared and printed under the direction of the Secretary of State and distributed to the various counties instead of being prepared by each county individually. This allows a standardization of the forms so that a registration card distributed in one county will be compatible with the filing system of another. (2) Any affidavit filled out in one county by a person resident in another county is to be forwarded by the clerk of the first county to the clerk of the second county for inclusion in the records of the latter. Thus, county lines no longer will be a barrier to voter registration. (3) Deputy registrars will continue to be used by the counties without administrative limitations but it is assumed that as mail registration comes into widespread use the role of deputies will diminish (see discussion above concerning registration by means of deputies). (4) The county clerk is to distribute sufficient quantities of the mail registration cards to individuals and organizations for distribution by them in addition to his providing the cards at various locations throughout the county for public use. (5) The mail registration forms are to be preaddressed with the postage prepaid. (6) A person from whom a mail registration card is re-

300. Alaska and Texas had mail registration in use prior to 1970. Kentucky, Maryland, Minnesota, and New Jersey adopted it between 1970 and 1974. (Jack E. Rossotti, "Federal Voter Registration by Mail: Problems and Prospects," 64 National Civic Review (December, 1975), pp. 572–576.)

301. H.R. 1686 and S. 1177. Similar legislation had passed the Senate in 1973. Other factors suggested by Monroe Sweetland, Chairman, Advisory Committee to the Joint Committee for Revision of the Elections Code, included (1) increased Democratic strength as a result of the 1974 elections, (2) interest in the problem of voting rights generated by the extension of the vote to the 18 year olds and the impact of the civil rights movement in the 1960's, (3) failure of the County Clerks Association to present a united front against the plan, (4) extensive use of the mails for registration and voting in the case of Korean and Vietnam War military personnel, and (5) organization efforts in the districts of key legislators. (Telephone conversation, August 28, 1977).

302. Stats.1975, c. 704.

ceived by the county clerk is to be mailed a nonforwardable first class post card which notifies him that he is registered to vote and which carries an address correction request. If the post office returns the card as undeliverable, the county clerk is to cancel the registration. This procedure was devised to prevent fraud and allow files to be updated if the registrant has moved to a new address. (7) The Secretary of State is to adopt regulations requiring each county to design and implement programs to identify and register persons not registered and is to adopt regulations prescribing the minimum requirements for such programs.[303]

The last feature of the bill, involving a recognition of the responsibility of the Secretary of State and the counties to identify and register persons not registered, and known among election administrators as "outreach," is a major reform. Until AB 822's enactment, most legislation did little more than try to ensure that private individuals and groups could obtain as many deputy registrars as they might need. Election officials were only obliged to deputize as many persons as might wish to be deputies. They did not have to seek out unregistered voters and register them. AB 822 is a major step in the direction of the adoption of a government policy that ensuring a high rate of voter registration is the responsibility of the state and local governments, not just that of private individuals and organizations. However, the ultimate effectiveness of this aspect of AB 822 will depend on how much money the state government is prepared to budget for reimbursement of county outreach activities and, in any event, it is still a far cry from the degree of involvement in voter registration characteristic of some governments such as the door-to-door canvassing conducted by the Canadian government.[304]

An unexpected product of the adoption of mail registration was a conflict between voter registration activities and private property rights. Prior to AB 822, the only persons carrying on voter registration activity were deputy registrars who were required by county clerks to avoid any partisan behavior. As a result, they were usually welcome at shopping centers and other privately owned locations where large numbers of persons congregated. But because AB 822 went into effect July 1, 1976, the general election campaign that year

303. See 2 Cal.Admin. Code, Sections 20000–20004.

304. Carlson, op. cit., p. 4. Rosenstone and Wolfinger, op. cit., p. 24, concluded that just making mail registration forms available with no further government activity will not increase voter registration rates. At a hearing of the Assembly Committee on Elections and Reapportionment, November 19, 1976, in San Diego, however, the authors testified that they believed that if the forms were mailed to all prospective voters, there could be an increase in turnout of five to six percentage points. (Statement by Steven J. Rosenstone and Raymond E. Wolfinger, p. 3.)

was marked by large numbers of partisan individuals who were not deputy registrars but who were distributing mail registration cards while at the same time promoting their respective campaigns. Business interests obtained a temporary restraining order in superior court barring one such group from registering voters on their property. Although the State Supreme Court suspended the lower court's order during the height of the registration activity, it later declined to hear the issue leaving the constitutional questions unsettled.[305]

Two attempts in the Legislature to settle the matter in favor of persons promoting voter registration have been unsuccessful. A measure in 1976, AB 3318, had the relevant language deleted in committee due to an adverse opinion by the Legislative Counsel. Another attempt in 1977, AB 649, would have authorized voter registration activity on the privately owned premises of commercial shopping centers and malls provided it did not obstruct normal business activity or take place on the interior premises of individual business establishments. Although it passed the Assembly, it was defeated in the Senate.[306]

4. The Purge

California appears to have been one of the earlier states to adopt a system of permanent registration in place of the older practice of requiring periodic registration.[307] But, by its nature, permanent registration requires some means of bringing up to date the lists of registered voters. California, as is the case in most states, has made use of a system of purging persons who fail to vote in certain elections.[308] This has had the effect of eliminating persons who are dead, who have moved, or who are no longer qualified for one reason or another. It has also had the effect of removing from the rolls of voters many people who are still qualified to vote and have not moved but did not vote for various reasons of their own.

305. San Francisco Chronicle, October 1, 1976. In an unreported order on February 17, 1977 the court declined to hear a petition from the Secretary of State seeking an alternative writ.

306. Both bills were authored by Assemblyman Sieroty. By the time AB 649 was taken up in the Senate, its author had been elected to that body. The adverse nature of the Legislative Counsel opinion on AB 3318 stemmed from the bill's broad scope which encompassed other types of political activity as well as voter registration.

307. Elections Code Section 320 warns that any system of periodic registration would violate a 1930 initiative. Rosenstone and Wolfinger, op. cit., p. 2, note that by 1972 only two states remained that required periodic registration. Arnold I. Menchel, in his "Election Laws: The Purge for Failure to Vote," 7 Connecticut Law Review 372 at 372, notes that permanent registration has replaced periodic registration in virtually all jurisdictions.

308. Rosenstone, op. cit., and Menchel, op. cit. list states using various forms of the purge.

For several decades until 1959, California's system of purging voters was quite simple. If a person did not vote at either the direct primary election or the general election in an even numbered year, his registration was cancelled and he was notified by mail not only of the cancellation but also that in order to vote in the future he would have to re-register.[309] Two significant changes were made in 1959 at the suggestion of the County Clerks Association. The first was that a person would be required to have voted in the November general election or else his registration would be cancelled. (Voting at the primary election no longer would matter.) Although this first change was rather restrictive, it was balanced by a second change which provided that the notification mailing would henceforth be a double postcard designed so that a person still living at the same address at which he had been registered could indicate on the return portion that he wished to be reinstated. If he mailed it back within 30 days, his registration would be restored. There was no provision, however, for forwarding the card to a person's new address.

This, then, was the basic system in use in California from 1959 to 1975 with little in the way of change.[310] There were a few proposals for changing the combination of elections in which a person was required to have voted but none emerged from committee.[311]

One additional means of updating lists of registered voters, however, was adopted in 1964 and became known as the Section 225 purge,[312] remaining in the Elections Code until it was deleted by the

309. Sections 293 and 295 of the Elections Code of 1939. By 1959, Sections 293, 293.5, 295, and 296 governed the procedure. See also the description of the procedure in Harold T. Jones, Administration of Elections in Los Angeles City, County and the State of California (Los Angeles: Office of the City Clerk of Los Angeles, November, 1955), p. 23.

310. AB 195 (Conrad), Stats.1959, c. 702. As originally enacted, it also provided that, beginning in 1962, cancellation would occur only upon failure to vote in *both* the direct primary and the general election. This language was repealed by Stats.1961, c. 410. For a discussion of the 1959 and 1961 legislation, see Assembly Interim Committee on Elections and Reapportionment, Transcript of Hearing, December 15 and 16, 1960, Los Angeles, pp. 3–4, 30–31, 109–110, and 117. One change of note was Stats.1965, c. 26, which extended the time available for the return of the card from 30 days to 60 days in order to aid military personnel and persons residing some distance from their homes. (Sacramento Bee, April 1, 1965).

311. AB 1609 (Greene) in 1969 would have repealed the purge system altogether. SB 1240 (Rodda) in 1970 would have required that cancellation be based on failure to vote at either the primary or the general election. SB 191 (Dymally) in 1971 would have based cancellation on failure to vote in both the primary and the general elections. (It was amended to become a vehicle for a different subject but died in committee anyway.) AB 1234 (Waxman) in 1971 also would have based cancellation on failure to vote in both the primary and general elections.

312. SB 76 (Cobey), Stats.1964, c. 65.

purge procedure revision legislation of 1976.[313] It provided that if any sample ballots or other election notices mailed to voters were returned by the post office to the local election official as a result of the voters' having moved, the election official could send double postcards to these persons notifying them that their affidavits of registration had been suspended. If the return portion of the card was not sent back to the election official, the registration would be cancelled. The voter could, however, respond on the return portion, indicating that he had temporarily or permanently changed his address. If it was the former, presumably his registration would be reinstated. (The section was not clear on this point.) If it was the latter, his affidavit of registration would have the address corrected and would be placed in the proper precinct register (This procedure implies that the double postcards were to be forwardable although the section was not explicit on this point. In any event, that is the way the law was interpreted in practice.)

Section 225 was unusual in several respects. It was permissive and, therefore, could be used whenever some local election official thought it might be a good idea. Also, apparently any local official, not just the county clerk, could initiate the procedure and follow through with the double postcards even though affidavits of registration were the responsibility of the county clerk. Finally, it was rarely used. The only well known instances were in Riverside County in 1970 and in San Francisco in 1976. In the former, a losing congressional candidate felt that the Section 225 purge had been undertaken deliberately in order to purge his potential supporters even though that does not appear to have been the case.[314] The purge in San Francisco was conducted largely because of the tremendous controversy in the city over illegally registered voters whose residences were in other counties (see residency discussion above). By guaranteeing return postage on its June, 1976 primary election sample ballot mailing, some 48,000 pieces of mail, or thirteen percent of their total mailing, were returned. Forwardable notices were sent to these individuals with the result that 24,500 persons were purged either because their notices were undeliverable or because the individuals received them but did not mail back the return portions.[315]

313. SB 1654 (Marks), Stats.1976, c. 1401.

314. A congressional investigation dragged on until November 29, 1971 when the House of Representatives authorized the county to destroy the ballots. Altogether, 11,374 persons were purged. (Telephone conversation with Eldon Jones, Riverside County Elections Department, August 29, 1977.)

315. San Francisco Examiner, September 15, 1976. The San Francisco Registrar's Office felt that the number of purges did not justify the amount of effort involved. Similar remarks were expressed by the Santa Barbara County Registrar's Office in connec-

In any event, authority for Section 225 purges was repealed in 1976 because of the feeling that purges should be prescribed in the Elections Code, not left to the whim of local officials.[316]

By the early 1970's, thought was being given to somehow improving the system of mandatory purges adopted back in 1959. Dissatisfaction with it stemmed from several sources. For one thing, the notice to voters was not forwardable. Thus, it was of no use to the voter who had moved. Since it would not ordinarily reach him, such a voter could not even be on notice that his registration was about to be cancelled much less have any opportunity to have the address on his affidavit corrected.[317] In effect, he was being penalized for failure to vote and this was not regarded as a purpose of the purge.[318] Even in the case of voters who had not moved, they still had the burden of having to notify the county clerk in order to retain their registration. In addition, for whatever reasons, relatively few people apparently were making use of the return portion of the card to reinstate themselves. In Los Angeles County, for example, only between eleven and twelve percent were restored to the rolls following the 1968 and 1970 general elections. After the 1972 general election it was eighteen percent and, following the 1974 election, twenty-three percent.[319] (This last figure, however, appears to have resulted from the large number of persons who failed to vote in 1974 due to disgust with Watergate, some of whom had second thoughts and sought reinstatement in 1975, and did not necessarily represent a trend of increasing use of the return cards.) Still, enormous numbers of persons who had been registered were once again unregistered due to the workings of the purge system with the result that voter participation in future elections was undermined.[320] In addition, there was a par-

tion with a Section 225 purge they conducted. (Author's notes of remarks at a meeting of the County Clerks Association, December 3, 1976.) In addition, several hundred people erroneously purged were allowed to vote upon swearing that they were qualified voters. (San Francisco Progress, November 10, 1976.)

316. Statement by Roger Bollinger, Senior Consultant, Assembly Committee on Elections and Reapportionment, January 14, 1977.

317. See, for example, Transcript of Assembly Elections and Reapportionment Committee Hearing on Voter Registration, September 24, 1973, San Francisco, pp. 65 and 73–74. See also Menchel, op. cit., p. 376.

318. See, for example, Assembly Committee on Elections and Reapportionment, Voter Registration, transcript of hearing, October 31, 1975, Los Angeles, pp. 14 and 63. See also Menchel op. cit., p. 391.

319. County of Los Angeles, Department of Registrar-Recorder, 1973–1975 Biennial Report of the Registrar Recorder, October 1, 1975, p. 2.

320. Rosenstone and Wolfinger, op. cit., p. 24, concluded that "periodic purging from the registration rolls of those who have not voted in recent elections lowers the probability that otherwise eligible citizens will go to the polls. A law providing that failure to vote in a single election causes purging reduces turnout 2.1 percent

tisan factor. With larger proportions of Democrats believed to be less motivated to register and vote than Republicans, Democratic Party leaders sought a purge system that would guarantee that their supporters would not needlessly be purged while at the same time maintaining up-to-date mailing lists of voters.[321] Out-of-date lists are enormously wasteful both for election officials who have to mail sample ballots and state voter pamphlets to persons listed as registered and for political campaigns which make heavy use of direct mail.

The first attempts to revise the mandatory purge procedure so that persons who had not voted and who had moved would not have to re-register occurred in 1973. One bill which passed the Legislature provided for a forwardable double postcard. Depending on whether the non-voter was still at his old address or at new address, all he had to do was indicate on the return card that he had not moved or, if he had moved, what his new address was. In either event, his registration would remain uncancelled and, in the case of someone who had moved, the address on the affidavit of registration would be corrected. The bill, however, was vetoed by the Governor.[322] Similar legislation in 1974 died in committee.[323]

It wasn't until Democratic Party leaders were shaken by the enormous number of people who failed to vote in 1974,[324] most of whom were purged from the rolls, that there was finally an attempt in the Legislature to make a substantial change in the purge procedure. AB 51,[325] by Assemblyman Keysor, removed from the non-

below what it would be if a non-voter could stay on the rolls for eight years."

The impact is felt on local elections as well because of their timing in relation to statewide elections. Costantini and Hawley, op. cit., (no page numbers) stated that "one consequence of the biennial purge may be to diminish substantially the number of persons who could otherwise vote in local elections."

321. See, for example, Matt Reese, "Registration and Election Law Reform," confidential memorandum (Washington: Democratic National Committee, December, 1964), p. 5; Richard Rodda, "Democrats' Candidate Wants Changes," Sacramento Bee, January 19, 1975; Los Angeles County Democratic Central Committee, "Resolution to Provide for Permanent Registration," presented at the Joint State Committee and County Committee Conference, January 26–27, 1973, Sacramento.

322. SB 595 (Moscone). Similar legislation that same year, SB 590 (Dymally), died in Senate fiscal committee.

323. AB 3113 and AB 3087, both by Keysor. The latter passed both houses of the Legislature but died in conference committee. Another bill, AB 3060 (Fong), would have gone back to the earlier approach of basing the purge solely on elections in which the voter had failed to vote, in this case, two consecutive general elections.

324. Non-voters in the November election totaled 3,563,767, or 35.9% of the total registration. (Secretary of State, Statement of Vote, General Election, November 5, 1974 (Sacramento: Office of State Printing, (1975), p. 3.)

325. Stats.1975, c. 1197.

voter still living at his old address the burden of having to notify the county clerk that he wished to remain registered. In his case, failure to vote did not penalize him through possible loss of his registration. That he was still at his old address was established by the county clerk not having received an address correction notice for him from the post office. (The bill provided that the double postcard would carry an address correction request.) The non-voter who had moved within the county, however, still had the obligation of sending in the return portion of the card in order to avoid cancellation of his registration since the county clerk would have received a change of address notice for him from the post office. A non-voter moving to another county would have to re-register altogether and a non-voter who had moved and left no forwarding address would be cancelled.

AB 51 was approved by the Legislature and signed by the Governor, thus representing the first major change in the mandatory purge procedure since 1959.[326] Its impact on the 1976 purge was dramatic. Even though 1,844,913 people failed to vote in the general election, only 536,705 were dropped from the rolls as of the beginning of 1977, a decrease in total state registration of only 5.4 percent. In the seven previous purges, registration had never dropped by less than 11.6 percent, the percent decrease usually being more on the order of twenty percent for each of those years.[327]

Even before AB 51 had had a chance to affect the registration rolls at the end of 1976, the Legislature was acting to liberalize the purge procedure even further. Whereas, AB 51 had removed from the non-voter still living at his old address the burden of having to notify the county clerk that he wished to remain registered, SB 1654 [328] by Senator Marks in 1976 lifted this same burden from the person who had moved, as long as the move had taken place within the county. The address on an affidavit was to be corrected automatically by the county clerk on the basis of the address correction notice returned to him by the post office unless he had been informed otherwise by the non-voter. However, instead of using a double postcard mailing *after* the general election, SB 1654 provided for address correction notices to be received in response to the sample ballot mailings to the voters at both the direct primary and the general elections.

326. An alternate version of the bill by the same author, AB 299, died in Assembly fiscal committee. Another bill, SB 177 (Moscone), was similar to the 1973 proposal which was vetoed (see above) but also made many other election changes and was defeated on the Senate floor.

327. Calculated from the Statement of the Vote for the general elections of 1962, 1964, 1966, 1968, 1970, 1972, 1974, and 1976 and from the Statement of Registration for the odd-numbered year following each election year.

328. Stats.1976, c. 1401.

As the result of a drafting error, the final version of SB 1654 had the effect of limiting the purge process to the address correction notices received from only the sample ballot mailings in the direct primary election rather than both the primary and general elections. However, legislation introduced in 1977 corrected this and authorized a similar process in local elections if approved by the county board of supervisors.[329]

In view of all this legislative activity it appears that California will have one of the more liberal laws in the country governing purging of voters. Much of the burden placed on the voter to retain his registration either by voting or by notifying the election official of his desire to be reinstated has been eliminated thereby undercutting possible constitutional challenges to the legitimacy of the purge itself.[330] The only likely threat to retaining the present law or one equally liberal will be possible dissatisfaction with registration lists containing too much deadwood as a result of poor performance by the post office in providing accurate change of address notices.[331]

C. VOTING BY MAIL

If the franchise genuinely is to be available to all persons, state law must take into account the fact that many voters for a variety of reasons will find it impossible or impractical to vote at their polling places. The Legislature seems to have recognized this in the steps it has taken to broaden the availability of the absentee ballot and to authorize under certain circumstances the conduct of entire elections by mail.

1. Absentee Voting

The progress that subsequently took place in the 1960's and 1970's in making the absentee ballot more accessible was not immediately evident in 1961 when the Legislature seems almost to have overreacted to

329. SB 850 (Marks), Stats.1977, c. 780.

330. See, for example, Menchel, op. cit. In 1973, a civil suit was filed in Los Angeles challenging the constitutionality of the law on equal protection grounds. (Los Angeles Times, July 22, 1973.) It has not been pursued, however, probably because of subsequent changes in the law. (Telephone conversation with Ed Pozorsky, Deputy County Counsel, Los Angeles County, August 29, 1977.)

331. A study conducted of a random sample of nonvoters remaining on the rolls in Los Angeles County after the 1976 purge revealed that 34 percent were no longer residents at their registered addresses and had not re-registered elsewhere. (Los Angeles County Registrar-Recorder, "Report on the 1976 Nonvoter Cancellation and Nonvoter Survey," two pages, (no date.) The performance of the post office may be worst in high mobility areas involving apartment houses. (Statement by Jay Patterson, San Francisco Registrar of Voters Office, County Clerks Association meeting, December 3, 1976. See also Sacramento Union, December 7, 1976, p. A1.)

what had happened the previous general election. During the 1960 election, state law still authorized the receipt of absentee ballots up to six days after the election provided they were postmarked by midnight of election day.[332] The 1960 general election, however, was unusual in that the presidential contest was exceedingly close; the returns from the polling places put John F. Kennedy ahead of Richard M. Nixon by only some 37,000 votes.[333] But 230,000 absentee ballots remained to be counted and the counting could not begin until the seventh day after the election. Finally, eleven days after the election, with all the votes tallied, Richard M. Nixon was declared to have carried the state by 16,107 votes.[334]

Many people were dismayed that the national outcome of the presidential election might have depended on the California vote. As it was, however, California's votes were not decisive in determining the winner of the election. Nevertheless, there was an immediate move in the Legislature to set an earlier deadline for receipt of absentee ballots to avoid a similar situation in the future. Several bills were introduced with proposed new deadlines ranging from election day to five days before the election.[335] The issue became a partisan one, probably because absentee votes have tended to be predominantly Republican.[336] In any event, AB 50 by Jess Unruh, a leading Democrat, became the vehicle to move the deadline back to three days before the election. Despite vehement opposition by Republican legislative leaders, the bill was passed by the Democratic-controlled Legislature and approved by the Governor.[337]

332. Sections 5931 and 5932 of the Elections Code as of 1960.

333. Los Angeles Times, November 11, 1960, p. 1.

334. Los Angeles Times, November 18, 1960, p. 24. A discussion of the 1960 absentee ballot problem is to be found in the Assembly Interim Committee on Elections and Reapportionment Transcript of Hearing, December 15 and 16, 1960, Los Angeles, pp. 7–15 and 34–37.

335. AB 12 (Luckel) specified election day, and SB 223 (Cobey), the day before the election. Both died in committee. AB 50 (Unruh), initially set the deadline as five days before the election but was amended to set it at three days before. It was the only successful measure on the subject (Stats.1961, c. 794).

336. One study of 1960 absentee ballots found that "Republican candidates do not always get a majority of the absentee votes cast but they always get a greater percentage share of absentee than of precinct votes. Absentee votes always compose a greater percentage share of Republican totals than of Democratic totals." (Belmont Brice, Jr., "Absentee Voting and the Character of the Electorate," BGR Observer (Los Angeles: Bureau of Governmental Research, University of California, Los Angeles, June, 1961). (No page numbers.) In the June, 1976 primary election in Los Angeles County, for example, absentee votes represented 5.08 percent of the total Republican primary vote, 3.36 percent of the Democratic. (Data provided to the author by the Los Angeles Registrar-Recorder's Office.)

337. Sacramento Bee, February 15, 1961, and March 17, 20, 25, 28, and 30, 1961.

Requiring that the absentee ballots be received by the election officials three days in advance of the election put an unnecessary burden on the absentee voter. This may have been what motivated the Legislature in 1963 to once again change the deadline, setting it at the day before the election instead of three days before.[338] It was not until passage of the Voting Rights Act Amendments of 1970, which required that absentee ballots for electors for President and Vice President be counted if received by the close of the polls, that California finally changed its deadline to what now prevails, namely, receipt by the close of the polls on election day.[339] The first attempt was vetoed in 1971 [340] but enactment finally came in 1972.[341]

Allowing more time for a voter to submit his absentee ballot is of little value, however, if he does not know how to go about applying for one. It was in the absence of such information that the political parties and candidates developed techniques for soliciting absentee ballots from prospective supporters. This practice began at least as early as 1958 [342] with mass mailings containing absentee ballot applications (or requests for applications) being sent by candidates to voters of their party.[343] Sometimes the campaign would arrange to have absentee ballot applications mailed to the campaign headquarters rather than directly to the election officials in order to obtain information on who would be voting by absentee ballot. This could result in serious delays in transmitting the applications to the election officials. In addition, there were charges that some campaign-generated applications were deliberately not delivered to the election officials in the case of voters who were apparently supporting the political opposition.[344]

338. SB 191 (Grunsky), Stats.1963, c. 414. Legislation to allow "war voters" to return their absentee ballots up to seven days after the election, AB 1617 (Conrad), also passed the Legislature but was pocket vetoed by the Governor.

339. 42 U.S.C. 1973aa–1(d).

340. AB 1229 (Waxman), probably because it was part of a larger package of election changes.

341. SB 840 (Moscone), Stats.1972, c. 1356. 55 Ops.A.G. 400, November 2, 1972, made clear to election clerks that, since no such legislation was in effect for the November general election, in the case of any absentee ballots arriving after the state deadline but before the close of the polls, they should count only votes cast for presidential and vice presidential electors due to the conflict between state and federal law that still existed.

342. December 15 and 16, 1960 hearing, op. cit., p. 14.

343. See, for example, Democratic Legislative Campaign Committee, How to Increase the Democratic Share of Absentee Votes (Los Angeles: Democratic Legislative Campaign Committee, 1966).

344. Assembly Interim Committee on Elections and Constitutional Amendments, 1969 Interim Report, pp. 16–17 and 50. Sacramento Bee, June 2, 1969. Los Angeles Herald-Examiner, May 23, 1969, p. A10.

The Legislature did little to regulate these practices.[345] Instead, it finally acted to provide the necessary information directly to the voters, thereby making such mailings on the part of political campaigns less likely. In 1963, it provided that henceforth the sample ballot mailings would contain information as to how, where, and by when one must apply for an absentee ballot.[346] The next logical step would have been to require that absentee ballot applications be included in the sample ballot mailings. Attempts to do that were unsuccessful in 1965, 1971 and 1972.[347] Some county election officials, however, began including applications in the sample ballot mailings on their own authority. Riverside and Sacramento Counties were the first in 1968. Los Angeles and eleven other counties joined in in 1972. By 1974, when the Legislature finally mandated the practice,[348] seventeen counties were already doing it of their own accord.[349] The only drawback to this practice is that if the voters are overly dependent on these applications and the sample ballot mailings are delayed, it may be too late for the voters to use the enclosed applications.[350]

As an additional convenience to the absentee voter, as of 1972, the Legislature directed that he could drop off his absentee ballot at any polling place in the jurisdiction before the close of the polls on

345. AB 638 (Conrad), Stats.1965, c. 423, specified the information to be included in any printed application for an absentee ballot including, presumably, applications prepared by political campaigns. Attempts to require applications to go directly to the election official were unsuccessful (AB 1452, Zenovich, in 1970, and AB 318, LaCoste, in 1971). Election officials' lists of persons who have obtained absentee ballots are useful both to campaigns and burglars. SB 2034 (Biddle), in 1974, would have imposed confidentiality on such lists but died in committee in the house of origin.

346. AB 574 (Z'berg), Stats.1963, c. 609. Similar legislation extended the same requirements to school elections, AB 575 (Z'berg), Stats.1963, c. 553. A termination date of June 1, 1965 in AB 574 was repealed by AB 919 (Z'berg), Stats.1965, c. 229.

347. AB 2052 (Allen), in 1965, died in Assembly committee as did AB 2264 (Garcia) in 1971. AB 1229 (Waxman) was vetoed in 1971 and AB 1113 (Waxman) died on the Assembly Inactive File in 1972.

348. AB 3310 (Keysor), Stats.1974, c. 945.

349. Survey of the counties conducted by the Assembly Committee on Elections and Reapportionment, March 10, 1977.

350. Ibid. The survey found that in the March, 1977 school elections, an average of 78 percent of the voters statewide used the applications from the sample ballot mailings rather than sending letters or using application forms prepared by other sources. The proportion of applications arriving after the deadline for their receipt, in the case of the larger counties, varied from 12 percent in Los Angeles County to 2 percent in Orange County. The possible loss of one's right to vote as a result of this, however, was mitigated somewhat by the practice in about half the counties of accepting such applications after the deadline so long as they were postmarked by the deadline.

election day instead of delivering or mailing it to the election official.[351] It need not be done in person, however; someone else can deliver it for him.[352] It is difficult to be certain just how significant a convenience this 1972 legislation is for absentee voters. If the results of four special elections held in Los Angeles County in 1977 to fill legislative vacancies are representative, few absentee voters make use of it. An average of only 3.56 percent of the absentee ballots voted in those elections were delivered to various polling places.[353]

The Elections Code requires that mail applications for absentee ballots be received by the seventh day prior to an election.[354] Certain narrowly defined types of voters are allowed to obtain absentee ballots after this deadline but very few people qualify for such ballots.[355] For practical purposes, virtually everyone obtaining an absentee ballot does so by mail and is assumed to fall into at least one of the categories in Elections Code Section 1003: illness, absence from the precinct on election day, a physical handicap, conflicting religious commitment, or residence more than 10 miles from the polling place.[356] The only major expansion of this list since the 1950's was the addition of "illness" in 1976.[357]

Such a list makes two questionable assumptions: (1) that the Legislature can satisfactorily provide sufficient categories to accommodate all voters who might legitimately have need of the absentee ballot and (2) that those voters who do not fall into one or the other of the categories but still want to vote by absentee ballot

351. SB 840 (Moscone), Stats.1972, c. 1356. Some local close elections have been left in doubt for some time due to this practice because such ballots have gotten mixed up with other election supplies and not delivered promptly to vote-counting centers. See, for example, Sacramento Bee, November 6, 1975, p. A1; Santa Rosa Press Democrat, November 4, 1976.

352. The first attempts to authorize delivery by someone else were defeated: AB 1541 (Ingalls) in 1973 and AB 397 (McAlister) in 1975. But AB 2606 (Keysor), Stats.1976, c. 1275, deleted the requirement that it be done in person.

353. Calculated from data for the 44th A.D. Special Elections of May 31 and June 28, 1977 and the 46th A.D. Special Elections of May 24 and June 21, 1977, provided by the Los Angeles County Registrar-Recorder's Office.

354. Section 1002.

355. Elections Code Section 1017. The survey of absentee voting in the March, 1977, school elections found that only 2 percent of absentee ballot users on the average statewide were in these categories. (March 10, 1977, survey of the Assembly Committee on Elections and Reapportionment.)

356. A rarely used additional category is residence in a wholly federally owned or controlled precinct. The section was numbered as 14662 until repealed and reenacted by Stats.1976, c. 1275.

357. AB 2606 (Keysor), Stats.1976, c. 1275, not only added illness to the list, but also changed "disability" to "physical handicap" in order to make it more all inclusive, and made minor alterations in the "10 miles" and "religious" categories.

will not simply assign themselves to the categories allowed. Neither assumption appears to be borne out by the facts. The addition of "illness" to the list in 1976 demonstrates this; until that change occurred no voter who was too ill to go to the polls was entitled to an absentee ballot which makes no sense at all in light of the purpose of the absentee ballot.[358] In addition, other states recognize other categories. For example, if you are 65 or older in Arizona or Michigan or a federal or state employee in Delaware or Louisiana, you are entitled to an absentee ballot. In Arkansas you only need to be absent from the polling place to be eligible, which, of course, could apply to anyone.[359]

It is also obvious that voters are claiming one or the other of the allowable reasons for absentee voting even if their actual reasons for not going to the polling places may be quite different. For example, some people in large metropolitan areas fear being mugged in certain neighborhoods and prefer absentee voting to voting in person at the polling places.[360] In any event, California law does not require the application for an absentee ballot to be made under penalty of perjury. Prevarication is not illegal.[361]

In view of all this, it would seem more logical to make the absentee ballot available to anyone who wants it. Such has been the recommendation in the National Municipal League's Model Civilian Absentee Voting Law which says, in part:

> There is no need of limiting the absentee voter to specified reasons for requesting the privilege of voting by mail; attempts to do so will result in untruthful or untested assertions. Voters can be left to determine for themselves when distance, transportation difficulties or other circumstances make personal ap-

358. The only exception was if the illness had caused his confinement in a hospital, sanatorium, or nursing home. If instead, it caused his confinement at home, then he was not entitled to an absentee ballot no matter how ill he was unless the illness began after the deadline for submitting mail applications for absentee ballots. (Elections Code Section 14800 until repealed by Stats.1976, c. 1275.)

359. Office of Federal Elections, U. S. General Accounting Office, An Analysis of Laws and Procedures Governing Absentee Registration and Voting in the United States. (Report No. IU-GAO-53-175-50-75-1), Volume I: Summary Report, Table No. 3, Absentee Voting-Application, pp. 70–89.

360. Statement by Jay Patterson, Assistant Registrar of Voters of San Francisco, to the author.

Former President Richard Nixon voted by absentee ballot in the 1976 general election but did not fit into one of the categories provided for under California law. (Redding Record-Searchlight editorial, Dec. 30, 1976.)

361. Except in the case of the 2 percent of the voters who apply after the deadline (Elections Code Section 1017) whose absentee ballot applications, oddly enough, do have to be submitted under penalty of perjury.

pearance at the polls so inconvenient, uncertain or costly as to justify them in resorting to the absentee voting procedure.[362]

In addition, a national study of state absentee voting laws prepared for the U. S. Office of Federal Elections concluded that such laws are "an unconscious accident of history" and recommended that "all eligible voters regardless of occupation be eligible to vote absentee if for *any reason* they expect to be absent from the polls on election day [emphasis added]." [363]

The earliest attempt to require that this be the policy in California occurred in 1971 but was vetoed by the Governor.[364] Additional attempts in 1975 and 1976 died in committee, but legislation introduced in 1977 to this effect passed the Assembly and will be considered in the Senate in 1978.[365]

Most other legislation adopted in the 1960's and 1970's involving absentee voting has either been to bring state law into conformance with federal requirements [366] or to expand the availability of absentee ballots to persons applying after the deadline for mail applications which is seven days before the election.[367] Legislation in-

362. National Municipal League, Model Civilian Absentee Voting Law (New York: National Municipal League, 1970), p. 12.

363. Office of Federal Elections, op. cit. pp. 65–66. The State of Washington has taken such recommendations to heart. In 1974, it amended its laws to provide that "any duly registered voter may vote an absentee ballot for any primary or election . . . ." (Revised Code of Washington, 29.36.-010.)

364. AB 1229 (Waxman). AB 2264 (Garcia), with similar provisions, died in committee that year.

365. AB 53 (Keysor), AB 134 (Keysor), and AB 954 (Meade) in 1975 and AB 2609 (Keysor) in 1976. The 1977–78 legislation is AB 1699 (Lehman). The survey of the March, 1977, school elections, op. cit., found that when voters forget to specify one of the legal reasons for requesting absentee ballots, most election officials do not insist on the information before issuing the ballots. Administratively it is too much of a burden. (Elections Code Section 1001 directs that the law on absentee voting be "liberally construed in favor of the absent voter" which some election officials cite as authority for this practice.) In addition, six counties have deleted from the absentee ballot applications which they mail out with the sample ballots any reference to the legally required reasons for voting absentee.

366. Stats.1969, c. 75, extended "war voter" provisions to include U. S. citizens temporarily residing outside the territorial limits of the United States. Stats.1976, c. 386, incorporated into the Elections Code the requirements of the Overseas Citizens Voting Rights Act of 1975 (P.L. 94–203). Stats. 1976, c. 1275, replaced the somewhat misleading "war voter" term with that of "special absentee voter."

367. Stats.1965, c. 23, recognized that some voters would find out too late that they would be absent from the precinct on election day to be able to apply by mail before the deadline and authorized them to apply directly at the office of the election official. Stats.1965, c. 484, recognized that persons confined to hospitals, sanatoriums and nursing homes on election day should have access to absentee ballots whether their confinement began before or after the deadline for mail applications. Unfortunately, Stats.1976,

volving unsuccessful attempts to broaden accessibility to absentee ballots has involved proposals to pay the postage costs involved,[368] to set up lists of certain categories of persons who would automatically receive absentee ballots, such as persons in nursing homes,[369] and to authorize voting in polling places by absentee voters wherever they happen to be in the state but only on statewide candidates and measures.[370]

2. Mail Ballot Elections

The absentee ballot is intended to ensure the right to vote of people who encounter difficulties in voting at the polls in conventional elections. But such persons are always a small proportion of the total voters. For example, in the regular statewide elections held from 1960 to 1976, absentee voters averaged only a little over 3 percent of the total, ranging from a low of 1.89 percent in the 1966 primary election to a high of 4.54 percent in the 1968 general election.[371] In mail ballot elections, on the other hand, every voter casts his vote by mail.

California's movement in the direction of mail ballot elections has been cautious to say the least. Even though proposals that elections be conducted by mail have been voiced since at least the early

c. 1275, as a result of poor drafting, inadvertently reinstated the requirement that the confinement have commenced prior to the deadline. Chapter 1275, however, did eliminate the former requirements of written statements from doctors or hospital officials confirming that the absent voters were confined at the various nursing institutions or private homes. Stats. 1969, c. 557, finally took into account that people are confined in private homes as well as hospitals, etc. and authorized such persons to apply for absentee ballots after the deadline for mail applications but required that their confinement have occurred after that deadline. Since not all polling places or the voting equipment in them are easily accessible to persons with physical handicaps, Stats.1974, c. 691, added them to the list of persons who could apply directly to an election official for an absentee ballot after the mail deadline for such ballots.

368. AB 1229 (Waxman) in 1971 would have prepaid the postage costs on the absentee ballot applications but was vetoed by the Governor. AB 136 (Keysor) in 1975, SB 1361 (Rains) in 1976, and AB 624 (Dannemeyer) in 1977 would have prepaid the postage on the absentee ballots but all died in the fiscal committees of their house of origin.

369. AB 53 and AB 113 in 1975 and AB 3009 in 1976, all by Keysor, died in committee. See the discussion in Assembly Committee on Elections and Reapportionment, Interim Hearing on Proposed Reforms in Laws Affecting Absentee Ballots, Los Angeles, October 16, 1974.

370. AB 1861, AB 1615, and AB 1222 in 1969, 1970, and 1971, respectively, all by Z'berg. The 1969 and 1971 bills failed to pass on the Assembly floor. The other died in committee.

371. Calculated from the Secretary of State's Statement of the Vote for each primary and general election. No data on absentee voting, however, was published for the 1962 primary election, 1974 general election, or either 1976 election. But the absentee vote for the 1976 general election is available on work sheets from the Secretary of State's office.

part of this century,[372] it was not until 1965 that the first steps were taken to authorize any form of mail voting other than conventional absentee voting. That year there were two innovations: (1) new resident voters, i. e., voters who did not meet state residence requirements for voting for state or local candidates but who were allowed to vote for presidential electors, were required to vote by mail rather than in the office of the county clerk,[373] and (2) election officials were authorized by the Legislature to direct that voters in exceedingly small precincts would have to vote by absentee ballot.[374]

In the case of the new resident voters, the change to voting by mail almost certainly was to eliminate the need for such persons to travel what might be many miles to the county clerk's or registrar of voters' office in order to vote. In other words, voter convenience. In the case of the exceedingly small precincts, the purpose was cost-savings. From the point of view of the election administrators, it is uneconomical to provide full polling place voting services in areas with too few voters to make effective use of those services. Voting by mail, although it increases mailing costs and certain other costs associated with an election, eliminates the costs of renting polling places, paying precinct board salaries, shipping supplies to the polling places, publishing certain legal notices, and those costs associated with having to process vast numbers of ballots election night instead of being able to prepare them for counting over a period of days as they come in. Elimination of polling place elections in small precincts in favor of mail voting was one such means of achieving such economies. Originally authorized in the case of precincts with 12 or less voters,[375] it was soon raised to 30 or less [376] and there have

372. A postal direct primary bill was introduced at the 1909 session of the Legislature. (Senator L. H. Roseberry, "Outline of and Arguments in Favor of the Postal Direct Primary," in Franklin Hichborn, Story of the California Legislature of 1909 (San Francisco: Press of the James H. Barry Co., 1909), xxvi-xxx.) The late Secretary of State Frank M. Jordan recommended adoption of mail balloting on several occasions. (San Francisco Chronicle, August 19, 1954, p. 1, and August 26, 1954, p. 5; Sacramento Bee, October 24, 1966; Los Angeles Herald-Examiner, October 24, 1966, p. D8.) Another unsuccessful proposal was AB 91 (Allen), which in its February 24, 1961, amended version, proposed that in any county with less than ten precincts all voting should be by absentee ballot.

373. Stats.1965, c. 929.

374. AB 2786 (Moretti), Stats.1965, c. 2004.

375. As introduced, the bill would have authorized mail elections in precincts of 50 or fewer registered voters but was amended to reduce the figure to 12. The file of Governor Edmund G. Brown, Sr., on AB 2786 contains a letter from the then Assistant Secretary of State, Walter Stutler, supporting the bill because it would cut election expenses.

376. AB 522 (Conrad), Stats.1967, c. 186. The Governor's file on AB 522 contains a statement by the author citing voter convenience as a purpose.

been unsuccessful attempts to raise it to 50 or less.[377] In addition, voters in such precincts are no longer required to submit absentee ballot applications; legislation in 1976 directed that they receive their mail ballots automatically.[378]

These two factors, then, economies in the cost of administering elections and voter convenience, with the increased voter participation that can be expected to result from the convenience of voting by mail, appear to be the basis for all the attempts to expand mail voting. On the other hand, fear of possible voting fraud and of undue pressure on voters resulting from a possible loss of the sanctity of the ballot, is the core of opposition to such proposals.[379]

At any rate, the next modest step in the direction of mail ballot elections was 1968 legislation authorizing the creation of cotton pest abatement districts to fight the pink bollworm menace. Voting on the directors of any such new district was to be by mail ballot.[380]

Five years passed before there were any further legislative developments. In 1973, finally, mail ballot elections were authorized in any type of local election with 300 or fewer registered voters (new Election Code Section 22032) [381] and in maximum tax rate elections of 250 or fewer registered voters (new Revenue and Taxation Code Section 2287).[382] The former obviously made the latter unnecessary unless its 250 voter limit was raised (see below).

The idea for the new Elections Code Section 22032 originated with the Humboldt County government. The county clerk felt that mail ballot elections would allow greater service at lower cost particularly since most of their school districts and special districts had relatively few voters and because their punchcard voting system lent

377. AB 1962 (Keysor), died in policy committee in the house of origin in 1975. AB 3197 (Keysor) in 1976 would have required mail voting in precincts of 50 or less rather than leaving it to the election official. Serious opposition to the increase and the mandatory feature caused the bill's defeat on the Assembly floor. Briefly, AB 2606 that same year also contained such a requirement but it was removed by amendment.

378. AB 2606 (Keysor), Stats.1976, c. 1275.

379. See, for example, the response of one legislative leader to the 1954 proposal of Secretary of State Jordan. (San Francisco Chronicle, August 25, 1954, p. 27.)

380. AB 937 (Veysey), Stats.1968, c. 1026. Letter from Assemblyman Victor Veysey to Governor Ronald Reagan, July 24, 1968.

381. SB 35 (Collier), Stats.1973, c. 359. As introduced, the bill would have set no limit on the size of such an election. The 300 size limit was added as an amendment on the Senate floor.

382. AB 2008 (Knox), Stats.1973, c. 358. As introduced, the bill set no limit on the size of the election. It was then amended to impose a maximum size of 2500 voters and, finally, amended again to set the 250 maximum.

itself to this type of election.[383] From the time Section 22032 went into effect, at the beginning of 1974, to mid-1977, it has been the legal authority for over 75 mail ballot elections in 25 different counties involving school, water, irrigation, fire protection, sanitation, community service, pest abatement, lighting, and levee districts as well as county service area elections and city annexation elections.[384]

The new Revenue and Taxation Code Section immediately became the target of attempts to remove the size limitation altogether. The first one, in 1974, was chaptered out by other legislation.[385] Success came in 1975 with the adoption of the present wording in Section 2287 which directs that maximum tax rate elections may be held by mail "whenever the local agency makes a determination that the use of mailed ballots is less costly or in any manner more feasible than other election procedures." [386] Since that legislation did not go into effect until 1976, a statewide election year, the elimination of the size limitation did not really begin to make itself felt until 1977. Probably the biggest such election that year occurred in Monterey County in April in an area with nearly 45,000 registered voters. The turnout, although only 36.7 percent, was nearly double that of comparable polling place elections and total costs were close to 30 percent less than they would have been otherwise. Public acceptance was good and county officials recommended expanded use of mail ballot elections.[387]

Fast on the heels of the 1975 legislation removing the size limit on mail tax rate elections came 1976 legislation setting up a system whereby any special district subject to the Uniform District Election Law (U.D.E.L.) could arrange to conduct any of its elections by mail ballot no matter how many voters were involved. To be initiated by resolution of the local governing board, the first such election would also put the question to the voters as to whether they wished to make mailed ballot elections a permanent feature of their special districts. The bill also required that such elections be conducted on the first Monday in September in order to avoid conflict with any U.D.E.L. elections being held at the polling places on the regular November

383. File of Governor Ronald Reagan on SB 35. Statement by former County Clerk Fred Moore to the author, September 6, 1977.

384. Assembly Elections and Reapportionment Committee survey of all county election officials, June 9, 1977.

385. AB 2799 (Gonsalves), Stats.1974, c. 907, chaptered out by AB 3563 (Kapiloff), Stats.1974, c. 1071.

386. AB 1375 (Knox), Stats.1975, c. 486. Another bill that same year, SB 631 (Holmdahl), proposed to delete the size limitation or raise it to 100,000 voters but it was amended to become a vehicle for a different subject.

387. Letter from Kenneth D. Webb, Registrar of Voters, to Assemblyman Jim Keysor, June 3, 1977.

date.[388] Although the special districts were slow to make use of this new law, only twelve arranging for them at the September 6, 1977 elections,[389] with thousands of special districts in California, the potential for expanded use of mail elections as a result of this bill is enormous.

The only setbacks in the movement to expand the opportunities for mail ballot elections occurred in connection with two separate bills in 1975 and 1976 proposing pilot project mail ballot elections, one for the City of Monterey Park's municipal elections in 1976,[390] and the other for all local elections in Riverside County in 1977.[391] Although in both cases, the respective governing boards strongly supported the plans at the outset,[392] local opposition developed and they dropped their support without which the bills could not be approved.[393]

It seems probable that future legislation will further expand the use of mail ballot elections. Although statewide elections and other very large elections may not lend themselves to conduct by mail, there are many local elections such as general law city elections and school district elections to which the mail ballot approach could be applied successfully. So far the Legislature has experimented with providing for mail voting in the case of a certain class of voters (new residents), a certain type of election (tax rate measures), a certain size of elections (300 voters or fewer), and a certain type of governing body (special districts governed by U.D.E.L.). It could expand any of these approaches. The simplest would seem to be to remove or raise the limit presently in Elections Code Section 22032.

D. ELIMINATION OF PHYSICAL AND ADMINISTRATIVE OBSTACLES

Despite experimentation with mail voting (see above), as long as most voting takes place in the polling place, such voting will be

388. AB 58 (Keysor), Stats.1976, c. 90.

389. Telephone survey of all counties conducted by the Secretary of State's office prior to the election date. Of the twelve, half were resident voter districts and half landowner districts. The districts were located in eight different counties.

390. AB 2424 (Fenton), introduced in 1975 and amended to become a vehicle for a different purpose in 1976.

391. SB 1611 (Presley), 1976. Another proposed pilot project, AB 1465 (Keysor) in 1975, would have applied to all elections in Sacramento County. It died in committee in the house of origin in 1976.

392. County of Riverside, Board of Supervisors, Resolution No. 76-3, dated January 6, 1976; City of Monterey Park, Resolution No. 7860, dated June 23, 1975.

393. See, for example, the Los Angeles Times (San Gabriel Valley edition), August 28, 1975, part VII, p. 1. In both cases the defeat of the proposals seems to have been caused in part by conditions peculiar to each community.

symbolic of the entire process and people will be likely to prefer it. But a variety of administrative and physical obstacles have forced many people to use the absentee ballot. For example, the person with orthopedic disorders may be unable to overcome the very steps at the entrance to a polling place. A person in a wheelchair may find the voting booth too narrow to enter or the voting equipment out of reach. The person who is blind, although entitled to assistance in the voting booth, may resent the loss of the secrecy of his ballot even to a friend or relative. The person working long hours or commuting long distances may find the hours the polling places are open to be too short to allow him to reach his polling place in time.

The 1960's and 1970's have seen a response in the Legislature to several of these problems.

1. Accessibility of the Polling Place

The physical design of the polling place and of its voting equipment may pose an insuperable obstacle to the person with a physical disability who wishes to vote there. In the state as a whole in 1974 there were estimated to be 684,370 persons between the ages of 16 and 64 with amputations and orthopedic problems of a serious nature.[394] For such persons it may be psychologically important to be able to vote in the polling place like everyone else.[395] Moreover, any such person obliged to vote by absentee ballot, until recently, was required to do so by mail and, therefore, had to commit his ballot to the care of the post office sufficiently in advance of election day to ensure its delivery before the close of the polls. This prevented the voter from taking advantage of what might be learned about the candidates or measures during the last few days of the campaign.

Legal challenges of such obstacles, although unsuccessful,[396] may have been a factor in interesting the Legislature in the problems of the disabled in the mid-1970's. In any event, legislation on

394. California State Department of Rehabilitation, Estimated Number of Disabled Persons Aged 16 Through 64 Years, By Major Disabling Condition, For California Counties, As of July, 1974, PDD 77-5-7, May 11, 1977. Not all such persons, of course, would be unable to vote in the average polling place.

395. Testimony of Richard C. Wooten, State Department of Rehabilitation, as a witness in a lawsuit against physical barriers at polling places. (Los Angeles Herald-Express, January 15, 1975, p. A7.) Statement by a representative of the California Association of the Physically Handicapped. (Fresno Bee, April 3, 1977.)

396. San Francisco Chronicle, December 7, 1973, p. 22. Sacramento Bee, December 11, 1973, p. A2. Los Angeles Times, January 9, 1974, Part I, p. 3; February 19, 1975, Part I, p. 24; and August 12, 1975, Part II, p. 4; Los Angeles Herald Examiner, January 15, 1975, p. A7.

the subject was introduced in 1974, 1975 and 1976. The bills in 1974 and 1975 started out by flatly requiring that polling places meet the standards set by the State Architect for making buildings accessible to the physically handicapped.[397] Because of the difficulties of simply finding sufficient polling places for statewide elections much less imposing requirements of physical access for the handicapped on all of them, the bills were amended significantly before final enactment. The final compromise arrived at in the 1974 legislation was that the physically handicapped voter would be allowed to use the absentee ballot up to the day of the election in the same fashion as persons confined in hospitals, sanitoriums, or nursing homes on election day.[398] This reform is responsive to the voter's desire to know the last minute charges and counter-charges in the campaign before voting, but it is an unwieldy way of having to vote because of the need for someone to carry the voter's application to the election official, deliver the absentee ballot to the voter, and then return the voted ballot to the elections official or to any polling place in the jurisdiction.[399]

The 1975 legislation as enacted went somewhat farther than that of the previous year in that it stated the intent of the Legislature that "all reasonable efforts" should be made by election officials "to assure access to polling places by the physically handicapped." In selecting polling places, the county clerks were to make all reasonable efforts to find those that met the requirements of the State Architect with respect to access by the physically handicapped. An interesting innovation that it adopted was the requirement that if a polling place did not comply, a handicapped voter would have to be allowed to vote outside the polling place either using a regular ballot or, if that is impractical, an absentee version of the ballot.[400]

Despite the failure of attempts to include in the 1974 legislation and in a 1976 bill [401] a requirement that the sample ballots carry notification to each voter as to the accessibility of his polling place to the handicapped, some counties have begun doing this voluntarily. The 1976 sample ballots in Los Angeles County, for example, carried such information. Similarily, despite the failure in the Legis-

397. AB 2913 (Dunlap) and AB 1035 (Carpenter). The former would have done so by requiring conformance to the requirements of Government Code Section 4450.

398. Stats.1974, c. 691.

399. Elections Code Section 1017 as added by Stats.1976, c. 1275.

400. Stats.1975, c. 1145. In Los Angeles County, for example, of 8000 polling places, 2500 were accessible to the handicapped as of mid-1977. (Letter to the author from Leonard Panish, Registrar-Recorder, July 29, 1977.)

401. AB 2609 (Keysor).

lature of a proposed requirement that all voting booths be accessible to voters in wheelchairs,[402] counties have begun replacing their old voting booths with new ones designed to be wide enough to allow someone in a wheelchair to enter and with adjustable shelves to permit lowering the shelves to the level of a wheelchair's armrest.[403]

A new obstacle to voting in one's polling place developed during the 1960's and 1970's as voting systems were adopted in virtually every county, namely, the growing size of the precincts. These voting systems were characterized by centralized vote-counting and one of the major justifications of the expense of purchasing the systems was that such centralization allowed the consolidation of many uneconomically small precincts into fewer large precincts. The resulting savings in precinct board salaries and polling place rentals could be considerable. In 1960 the Elections Code still set a maximum size of 200 voters under normal circumstances but allowed consolidation of precincts in the event of centralized vote-counting without setting any maximum.[404] The imminent adoption of the first viable optical scanning centralized vote-counting system prompted recommendations that a maximum size of 600 voters per precinct be set in the event of any such consolidation.[405] Concern repeatedly has been expressed that increased size of precincts will result in excessive distances voters will have to travel to the polls and longer lines at the polling places.[406] Although the 600 voter maximum recommendation was adopted in 1961,[407] the entire issue was raised anew with the technological developments involving punchcard voting and the rapid spread of this type of voting system. Again, there was pres-

402. Amended out of AB 2609.

403. See, for example, Los Angeles Herald-Examiner, March 20, 1976, p. A3. Los Anegeles County, with 8000 polling places, by mid-1977 had 3200 such booths and another 3000 budgeted for the 1977–78 fiscal year. (July 29, 1977 letter, op. cit.)

404. Section 571 which became Section 1561 (Stats.1961, c. 23) the following year. Consolidation of precincts in 1960 was authorized by the then Elections Code Section 571.7 adopted five years earlier (Stats.1955, c. 745). The maximum of 200 "voters polled" in Section 1561 was changed to 250 registered voters in new Elections Code Section 1505 by Stats.1975, c. 1203.

405. Testimony of Robert P. Jeans, Executive Secretary, Los Angeles County Democratic Central Committee, and Los Angeles County Supervisor Kenneth Hahn, Assembly Interim Committee on Elections and Reapportionment, Transcript of Hearing, December 15 and 16, 1960, Los Angeles, pp. 66–67 and 94–96.

406. Assembly Elections and Reapportionment Interim Committee, An Omnibus Report, January, 1963, p. 15. Assembly Committee on Elections and Reapportionment, Transcript of Public Hearing, June 29, 1968, Los Angeles, p. 6. Assembly Interim Committee on Elections and Constitutional Amendments, 1969 Interim Report, p. 10. Sacramento Bee, April 7, 1970.

407. SB 838 (Richards), Stats.1961, c. 457.

sure to allow greater consolidation of precincts and the result was legislation in 1967 authorizing a maximum size of 1000 registered voters per precinct.[408]

Because of the low turnout characteristic of many local elections, local election officials had been authorized to consolidate up to six existing precincts.[409] As long as regular precincts contained no more than some 200 or 250 voters each, the problems this could create might not be too great. Now, however, this can result in precincts of up to 3600 registered voters each in local elections in jurisdictions using voting machines or using optical scanning equipment to count ballots centrally or even up to 6000 registered voters each in jurisdictions using punchcard voting systems and centralized vote-counting.[410] The discretion thus allowed local officials to consolidate precincts even became an issue in the 1977 special city election in San Francisco.[411]

It seems likely that there will be continuing legislative attempts to find the proper balance between the desirable economies to the taxpayers and the undesirable inconvenience to the voters that stem from precinct consolidations.

2. Access to the Ballot by the Blind

Special problems are encountered in voting in the case of the estimated 90,000 persons in California who are blind or have major visual impairments.[412] Although they are entitled to vote by absentee ballot or receive assistance at the polls, not surprisingly many would prefer to be able to vote at the polls without any assistance. In addition, they are faced with the problem of making use of the detailed information on state and local measures and on local candidates that they receive from election officials.

There appear to have been only two legislative attempts so far to aid such persons. In 1975, legislation to require the Secretary of State to prepare and distribute tape recordings of the contents of ballot pamphlets to the county clerks, organizations serving the blind,

408. Stats.1967, c. 483.

409. Elections Code Section 22030.

410. Elections Code Sections 1508, 1510, 15201, and 22030.

411. Opponents of the consolidations filed suit in Superior Court to force a restoration of smaller precincts. The court declined to grant the order requested. San Francisco Chronicle, July 7, 1977, p. 17; July 9, 1977, p. 12; July 12, 1977, p. 11. San Francisco Examiner, July 7, 9 and 12, 1977. San Francisco Sunday Examiner and Chronicle, July 31, 1977, Section A, p. 14.

412. California State Department of Rehabilitation, op. cit. The estimates are of 27,000 blind and 63,710 visually impaired.

and political organizations was introduced but died in committee.[413] Legislation introduced in 1976 would have authorized local election officials to prepare absentee ballots in braille.[414] However, it encountered opposition from county governments because of the cost and the political problems they believed they would be faced with if forced to refuse local requests for such ballots.[415] Braille is of limited usefulness, in any event, because many people who are blind are not proficient in its use or, if suffering from diabetes, have a numbness in their fingers which interferes with learning braille.[416]

Despite the faltering start, there are fertile opportunities for providing additional voting assistance to the blind. Some of the new voting systems could be modified to provide raised surfaces to guide the blind voter in voting without assistance. Tape recordings could be used to help the blind voter at home or in the precinct. Where applicable, braille aids could be prepared particularly if volunteers from groups aiding the blind were to be used. And record-keeping by election officials could be improved to better pinpoint persons whose visual problems require special voting assistance.[417]

3. Hours for Voting

Without a doubt the hours the polls are open are a vital factor in determining how many people will vote. As of the beginning of the 1960's the polls in statewide elections closed at 7 p. m., an hour earlier than they do now. The only exception was San Francisco where they closed at 8 p. m.

One of the obstacles to any later close of the polls at that time was what the precinct board members would be willing to tolerate since they were the ones who would have to stay all the later in order to count the ballots. The various centralized vote-counting systems that were under development at that time could overcome that problem since they would eliminate most of the work the precinct board members were faced with after the polls closed. In fact, legislation in 1959 had anticipated this by requiring that in any county using

413. AB 1542 (Suitt).

414. AB 2606 (Keysor). The bill was suggested by San Francisco officials. (Letter to Honorable Leo T. McCarthy, from Gilbert H. Borman, Acting Clerk of the San Francisco Board of Supervisors, June 25, 1975.)

415. Letter to Assemblyman Jim Keysor from the County Supervisors Association, April 8, 1976. The bill was amended to become a vehicle for a different subject.

416. Martha Riley, Consultant, Joint Committee for Revision of the Elections Code, memorandum entitled "Alternate Voting Methods for the Visually Handicapped," August 4, 1975.

417. Ibid.

electronic tabulating equipment for counting ballots, the polls would have to remain open until 8 p. m.[418]

Even before the spread of the new voting systems, however, the Legislature forced the issue. In 1963 it required that in any county with a population of 300,000 or greater, the polls would have to remain open until 8 p. m. in virtually all elections.[419] Then, in 1967, it eliminated the exclusion of the smaller counties and applied the 8 p. m. closing to the entire state.[420] There have been attempts to restore the 7 p. m. close [421] and, more recently, an attempt to move the close to 9 p. m.[422] but the Legislature has not been disposed to make any change.

It is impossible to know how many of the people who now vote between 7 and 8 p. m. would not vote at all if the polls closed at 7 p. m. One thing that is certain, however, is that there are significantly more people voting between 7 p. m. and 8 p. m. now than was the case in the first elections to make use of the later close of the polls. In the 1964 general election, in Los Angeles County, an average of only three people voted in each precinct between 7 and 8 p. m.[423] In 1976, however, it was estimated that in Los Angeles County 9.3 percent of the votes in the primary election and 6.6 percent in the general election were cast between 7 and 8 p. m.[424]

418. Stats.1959, c. 1905.

419. Stats.1963, c. 940. This was changed to 400,000 by Stats.1964, c. 45. Other legislation in 1963 required an 8 p. m. close in any county using voting machines throughout the county (Stats. 1963, c. 723).

420. SB 187 (Moscone), Stats.1967, c. 566. Stats.1973, c. 1196 applied the 8 p. m. close to special districts subject to the Uniform District Election Law. The 1967 legislation may have been a factor in speeding the adoption of voting systems in the counties due to the unwillingness of precinct boards to have to wait an additional hour before being able to begin counting the ballots.

421. SB 1008 (Deukmejian), failed passage on the Senate floor in 1969. See, for example, Los Angeles Times, April 29, 1969, Section H, p. 4. AB 405 (Priolo) failed passage on the Assembly floor in 1970.

422. AB 3660 (Wilson) in 1976 passed the Assembly 41–32 and Senate policy committee but died in Senate fiscal committee.

423. Letter from Benjamin S. Hite, Registrar of Voters, to the Los Angeles County Board of Supervisors, December 3, 1964.

424. Voter turnout estimates by hour for a representative set of precincts provided the author by the Los Angeles County Registrar-Recorder's office.