

August 8, 2022

The Honorable Board of Supervisors  
County of Los Angeles  
Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

I am writing this letter to you on behalf of the Committee to Recall District Attorney George Gascon (RDAGG). The Committee has grave concerns that the Los Angeles County Registrar-Recorder's Office (RR/CC) did not use current laws and uniform guidelines set forth in the Elections Code, and California Code of Regulations, Title 2, §§ 20910 – 20970, when it examined signatures during the random sampling of the recall petition filed with it on July 6, 2022. It is believed they are not doing so now as it continues to conduct its full examination and review of every signature. The new laws and uniform guidelines were issued in September 2020 as emergency regulations by the California Secretary of State (SOS). They were made permanent by state law in March 2022 and govern the signature verification of recall petitions.

The new laws and uniform guidelines assure voters that **every vote counts**, and dramatically impact the way a signature can be rejected by elections officials in the processing and signature verification of initiatives, referendums, recall petitions, other petitions, and vote-by-mail ballots. (See Cal. Code Regs., Tit. 2, §§ 20910 – 20970).<sup>1</sup> They provide that comparison of a signature shall begin with the *basic presumption that the signature on the petition or ballot envelope is the voter's signature*. A signature that the initial reviewer identifies as "possessing multiple, significant, and obvious differing characteristics from the signature(s) in the voter's registration record can only be rejected if two different elections officials unanimously find *beyond a reasonable doubt* that the signature differs in multiple, significant, and obvious respects from all signatures in the voter's registration record." (Cal. Code Regs. Tit. 2, § 20960.)

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<sup>1</sup> The SOS issued uniform guidelines for signature verification as emergency regulations on September 28, 2020, shortly before the November 3, 2020, general election. The regulations were subsequently enacted into law effective March 15, 2022, pursuant to Government Code § 11343.4(b)(3). These regulations provide, among other things, that a signature cannot be rejected unless it doesn't match the voter's signature on file beyond a reasonable doubt. (Cal. Code Regs. Tit. 2, §§ 20910 – 20970.)

“Beyond a reasonable doubt” is the legal burden of proof required for a conviction in a criminal case. In a criminal case, the prosecution bears the burden of proving that the defendant is guilty beyond a reasonable doubt. This means that the prosecution must convince the jury that there is no other reasonable explanation that can come from the evidence presented at trial. In other words, the jury must be virtually certain of the defendant’s guilt to render a guilty verdict. This standard of proof is much higher than the civil burden of proof, called “preponderance of evidence,” which only requires a certainty greater than 50 percent.

The reason the reasonable doubt standard is so high is because the stakes are high -- a defendant’s liberty. The stakes are high in the electoral process as well. A voter has the right to participate in the electoral process and have his or her vote count in our democracy. To reject a signature is to effectively disenfranchise a voter/petitioner.

Under current law, the RR/CC should have applied the reasonable doubt standard when it examined signatures during the random sampling. In other words, *if there is any logical reason why a voter’s signature on the petition may be different from the voter’s signature on file, the RR/CC must validate the voter’s signature.* And there is a myriad of reasons outlined in Cal. Code Regs. Tit. 2, § 20960, to explain why a voter’s signature on the petition may be different from the voter’s signature on file, including but not limited to, the voter’s signature may have changed over time, the voter signed the petition or affidavit of registration in haste, the voter did not use his or her initials, the voter transposed his or her name, the voter is young and young people are known to experiment with their signature, English is not the voter’s first language, the voter may be disabled, or the voter suffers from a condition that affects the voter’s writing.

The RDAGG has strong evidence to believe that the RR/CC did not follow the new signature verification uniform guidelines, due to the shockingly large rejection rate of 22% of the signatures in the random sampling, particularly when we take into account the most recent Los Angeles County rate of rejection of vote-by-mail ballots for non-matching signatures in the November 3, 2020 general election, and compare that rate to the general election 2 years before.

In the November 6, 2018, general election, the RR/CC had a 2.0% rejection rate of vote-by-mail ballots for non-matching signatures. After the emergency regulations were issued in September 2020, the RR/CC substantially reduced the rejection rate of vote-by-mail ballots to .354% for non-matching signatures. This was an 83% reduction in rejection rates in the County of Los Angeles for non-matching signatures.<sup>2</sup> (See the VBM Statistics dated 1/21/21 issued by the SOS, attached hereto, and incorporated herein by reference as Exhibit A.)

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<sup>2</sup> The average statewide rejection rate for non-matching signatures in November 2020 was even lower at .324%.



It does not appear the RR/CC has implemented the same laws and uniform guidelines for the review and signature verification of recall petitions, by reason of the 22% rejection rate for the random sampling.

The RDAGG is also concerned about *voter disenfranchisement* of the recall's supporters. In a letter dated July 17, 2020, the ACLU, and other interested parties, wrote then Secretary of State Alex Padilla, and urged him to issue emergency regulations relating to the processing and signature verification of vote by-mail and provisional ballots before the November 3, 2020, general election. They expressed their concern that voters would be disenfranchised if emergency regulations were not passed. They made a point to cite studies that show that Asian American voters, Latino voters, Black voters, and voters with disabilities, experience higher ballot rejection rates for non-matching signatures.<sup>3</sup> This factor alone could significantly impact whether the recall petition is found sufficient by the RR/CC, particularly since large segments of the Asian American, Latino, and Black communities, signed the recall petition. Members of these communities, along with every other voter who signed the petition, risk *voter disenfranchisement* if the RR/CC failed to follow the appropriate laws and uniform guidelines during signature verification. To facilitate the issuance of emergency regulations, the ACLU attached draft emergency regulations to their letter. (See ACLU letter dated July 17, 2020, attached hereto, and incorporated herein by reference as Exhibit B).

The ACLU's draft regulations were largely incorporated into emergency regulations issued by the SOS on September 28, 2020. However, the SOS expanded the application of the regulations to not only vote-by-mail, and provisional ballots, but also to the examination of initiatives, referendums, recalls, nominating petitions or papers, signature in-lieu of filing fees,

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<sup>3</sup> See, e.g., Declaration of Paul Mitchell in Support of Plaintiffs' Motion for Writ of Mandate at 3, *La Follette v. Padilla*, No. CPF-17-515931 (Cal. Super. Jan. 19, 2018), available at <https://www.rubenmajor.com/wp-content/uploads/208/03/Mitchell-Declaration.pdf> (finding higher rates of vote-by-mail ballots rejected for Latino and Asian American voters); Joanna Lee and Deanna Kitamura, *Asian Americans Face Higher than Average Vote-by-Mail Ballot Rejection Rates in California*, Asian Americans Advancing Justice – California (Aug. 2017), available at <https://www.advancingjustice-la.org/sites/default/files/issuebrief-vbm-FINAL-1.pdf> (finding the vote-by-mail ballot rejection rate for Asian Americans in four populous counties was 15% higher than the overall rejection rate in those counties, and over half of rejected vote-by-mail ballots from Asian Americans had a mismatched signature, compared to 44% for all voters); Anna Baringer, Michael C. Herron, and Daniel A. Smith, *Vote-by-mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus* (Apr. 25, 2020), available at [https://electionscience.clas.ufl.edu/files/2020/04/Baringer\\_Herron\\_Smith\\_VBM\\_FL.pdf](https://electionscience.clas.ufl.edu/files/2020/04/Baringer_Herron_Smith_VBM_FL.pdf) (finding vote-by-mail ballot rejections impact Black voters, voters with disabilities, and young voters at higher rates); *Voting by Mail is Essential for Voters with Disabilities, but it's Not Enough*, ACLU (July 7, 2020), <https://www.aclu.org/news/votingrights/voting-by-mail-is-essential-for-voters-with-disabilities-but-its-not-enough/> (noting that “[s]ignature match requirements present an additional barrier to voters who have conditions that make it hard to consistently sign their name.”).

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and any other petitions or papers, as well as for signature verification on local and statewide election-related petitions. (Cal. Code Regs. Tit. 2, §§ 20910 - 20970).

On July 21, 2022, I requested access to records in possession of the RR/CC for the purposes of inspection and copying pursuant to the California Public Records Act, California Government Code § 6250 et seq. ("CPRA"). I requested copies of writings that reflect the policies and/or practices, including training materials and/or manuals, adopted and/or implemented by the RR/CC to comply with the new laws and SOS emergency regulations.

On July 22, 2022, on behalf of the RDAGG, I also requested the RR/CC provide me with information on the procedures and practices employed by the RR/CC for the examination and signature verification of the recall petition, including whether it had employed the signature verification uniform guidelines outlined in Cal. Code Regs. Tit. 2, §§ 20910 - 20970, for both the random sampling and full examination of each signature. (See email dated July 22, 2022, attached hereto, and incorporated herein by reference as Exhibit C.)

To encourage the RR/CC to follow current laws and uniform guidelines during the signature verification process, I reminded the RR/CC that "only a signature possessing multiple, significant, and obvious differing characteristics with all signatures in the voter's registration record will be subject to additional review by the elections official. A signature that the initial reviewer identifies as possessing multiple, significant, and obvious distinctive differing characteristics from the signature(s) in the voter's registration record shall only be rejected if two different elections officials unanimously find beyond a reasonable doubt that the signature differs in multiple, significant, and obvious respects from all signatures in the voter's registration record." (Cal. Code Regs. Tit. 2, § 20960).

Due to valid concerns that the RR/CC was not following the appropriate laws and uniform guidelines during its examination, *and to give the RR/CC the opportunity to fulfill its mission of public transparency*, I made multiple requests on behalf of the RDAGG, that the RR/CC permit the proponents or their representatives to observe the full examination of the recall petition. Under the California Voter Bill of Rights, the proponents of a recall petition have the right to not only ask questions of elections official, but also to observe the *election process*. Signature verification of the recall petition is a part of the recall *election process*. (Elections Code § 2300(9)(a)). These requests were repeatedly denied for no apparent reason.

I also learned in a conversation with a Division Manager for the RR/CC, that the division responsible for conducting both the random sampling and full examination, was still using signature verification training materials that were in use by the county agency in 2017. This admission was corroborated when I received responsive records to the July 21, 2022, CPRA,



referenced above, that included signature verification training materials, and signature verification uniform guidelines. These records not only pre-date the September 2020 SOS emergency regulations, but they were also never revised to replace old standards previously used for signature verification of petitions.

The responsive records entirely conflict with the new laws and uniform guidelines outlined in Cal. Code Regs. Tit. 2, § 20960. For example, in the responsive record entitled, "Signature Comparison Training," the reviewer is instructed to reject a signature when there are "repeated small differences," despite a "great number of general similarities." (See Signature Comparison Training, pp. 1 -5, dated June 10, 2015, attached hereto, and incorporated herein by reference as Exhibit D). In the responsive record entitled, "Science of Signature Matching," which appears to date from 2000, the reviewer is instructed, when determining a signature match, "the majority of characters on (the) document should be the same." (See Science of Signature Matching, pp. 1 -3, attached hereto, and incorporated herein by reference as Exhibit E). This is not the current state of the law for signature verification of recall petitions, other petitions, vote-by-mail, or provisional ballots. Under Cal. Code Regs. Tit. 2, § 20960(d), if there are any "similar characteristics between a signature being compared and any signature in the voter's registration record," this is sufficient to determine a signature is valid.

When the SOS issued the emergency regulations, it also wanted to ensure that any training provided by elections officials for staff who are responsible for the signature verification process, address, at a minimum, the following:

- a. Standards established by this Article and any applicable provisions of the California Elections Code.
- b. Variations in signatures by voters whose primary language uses non-Roman characters.
- c. General handwriting identification principles.
- d. Variations in signatures that can be caused by disabilities.
- e. Variations in signatures caused by aging of the signer.
- f. Variations in signatures caused by the collection of electronic signatures.
- g. The elimination of implicit bias.

If any training was conducted by the RR/CC to review the recall petition, that training was based on old standards and resource materials that entirely conflict with current law and uniform guidelines. The RR/CC's failure to follow current law and uniform guidelines in the examination of the random sampling, and as it examines every signature in the full examination, is a violation of the rights of every Los Angeles County voter who signed their name to the recall petition to a fair, lawful, and appropriate signature verification.

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Finally, I also asked the RR/CC to share whether any quality control measures were in place to detect error for bias or corruption during the signature verification process. None of the responsive CPRA records provided by the RR/CC reflect the implementation of any quality control measures in the signature verification process. Quality control measures are vital in the petition review process. Unlike vote by mail, or provisional ballots, which are sealed during the signature verification process, how a person exercised his or her rights to recall a public official is obvious to every single reviewer. Every signature represents a voter who supports the removal of District Attorney George Gascon. If this is in fact the case, this failure alone could have a significant impact on whether the petition is certified in today's divisive political climate.

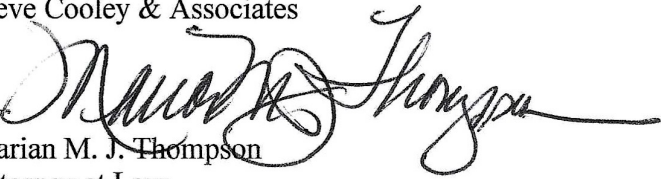
It has been said that "democracies die in darkness." The RDAGG believes that the RR/CC's refusal to allow proponents to observe the signature verification process, along with its assurance that the outcome would be determined "based on the procedures and legal thresholds for sufficiency set forth in the California Elections Code and the California Code of Regulations," was a misleading statement designed to instill confidence in a recall election process that was effectively hidden from the public, and fatally flawed in many respects.

The Los Angeles County Board of Supervisors should exercise its oversight authority with the RR/CC, based upon the compelling public interest in transparency, and the need for Los Angeles County voters to have confidence in their elections officials and the election process.

Your full and immediate attention to this matter is greatly appreciated. If you have any questions, please do not hesitate to contact me at (818) 599-4072, or [mmjthompson@gmail.com](mailto:mmjthompson@gmail.com).

Best regards,

Steve Cooley & Associates

By   
Marian M. J. Thompson  
Attorney at Law

cc: Dawyn Harrison, Acting County Counsel  
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Cassandra Vandenberg, Senior Adviser & Finance Director, RDAGG



2020 November General Election VoteCal VoteBy Mail (VBM)  
Acceptance statistics as of 1/21/2021

COUNTY	VBM Accepted		VBM Rejected							Total Challenged VBM ballots
	Total Accepted VBM Ballots	Accepted % of Voter-Returned Ballots	Ballot missing from envelope	Multiple ballots returned in one envelope	Ballot was not received on time	Missing or incorrect address on envelope	No voter signature	Non-matching signature	Voter already voted / Otherwise rejected (note: May include ballots that were voided/suspended and not returned by voter)	
Alameda	729,129	99.50%	10		710		761	2,096	99	3,676
Alpine	719	99.72%					1	1		2
Amador	20,639	99.59%	1		15		14	55		85
Butte	99,700	99.52%	1	2	101		174	207		485
Calaveras	23,815	99.27%	15		16	2	10	103	28	174
Colusa	7,132	98.81%		2	10		11	62	1	86
Contra Costa	539,665	99.64%			486		222	1,231	33	1,972
Del Norte	9,697	98.29%			5	72	10	42	40	169
El Dorado	106,441	99.63%	8	4	93		98	185	6	394
Fresno	318,633	98.63%	10	8	249		573	3,559	38	4,437
Glenn	10,777	98.54%			4		19	118	19	160
Humboldt	62,627	99.17%		1	85		48	382	6	522
Imperial	48,969	99.24%	5		34		27	301	6	373
Inyo	8,411	99.14%	3		2	21	10	29	8	73
Kern	265,971	99.14%	21	7	446		474	1,343	5	2,296
Kings	39,286	99.63%	1		50		32	56	5	144
Lake	25,353	99.03%			35		28	150	35	248
Lassen	11,936	99.71%					8	27		35
Los Angeles	3,422,585	99.38%	224	113	2,940	2	4,744	12,135	1,143	21,301
Madera	47,986	98.94%	2		35		38	440	1	516
Marin	145,534	99.64%	14	3	98		73	339	3	530
Mariposa	10,354	99.38%			12		7	45	1	65
Mendocino	41,989	99.77%	4		7		12	67	6	96
Merced	89,316	98.92%			125		220	619	10	974
Modoc	3,930	98.97%				1	3	36	1	41
Mono	5,680	99.23%			3		11	27	3	44
Monterey	154,251	99.58%	3		200		133	304	14	654
Napa	69,671	99.69%			74		43	76	24	217
Nevada	60,286	99.55%	1		16	2	16	228	10	273
Orange	1,259,205	99.57%	12		1,006		730	2,430	1,207	5,385
Placer	223,848	99.63%	10	1	258	5	106	414	39	833
Plumas	11,360	99.76%						27		27
Riverside	899,305	99.37%	6	1	1,407		990	2,811	471	5,686
Sacramento	671,379	99.74%	31	13	612		302	648	129	1,735
San Benito	26,495	97.80%	5	2	21	3	90	455	21	597
San Bernardino	703,585	98.97%	70	56	896		1,548	3,713	1,051	7,334
San Diego	1,437,111	99.51%	160	18	1,418		181	5,185	149	7,111
San Francisco	412,167	99.77%	29		447		147	242	97	962
San Joaquin	263,810	99.64%	1		369		198	392	2	962
San Luis Obispo	152,670	99.40%	4		121		62	687	53	927
San Mateo	347,271	99.61%	9		288		128	932	13	1,370
Santa Barbara	183,622	99.41%	10	6	130		339	567	39	1,091
Santa Clara	805,569	99.80%	32		788		254	533	1	1,588
Santa Cruz	133,652	99.65%	19	1	113		146	193	1	473
Shasta	80,219	99.72%	2		107		28	84	6	227
Sierra	1,963	99.59%			3			5		8
Siskiyou	20,645	99.24%			30		16	108	5	159
Solano	179,817	99.49%	44	16	138		143	49	536	926
Sonoma	256,125	99.49%	7		152		203	888	59	1,309
Stanislaus	214,492	99.23%			246		103	1,248	75	1,672
Sutter	42,496	99.65%	1		59		44	46		150
Tehama	23,877	99.35%		1	15		21	116	4	157
Trinity	6,333	98.95%			6		8	51	2	67
Tulare	125,848	98.56%	34		136	4	329	1,332	5	1,840
Tuolumne	29,001	99.82%	1		2		17	22	11	53
Ventura	384,626	99.54%	4		266		564	838	107	1,779
Yolo	90,899	98.18%	19	2	136	1	108	1,369	46	1,681
Yuba	25,962	99.05%		2	39		41	168		250
<b>Total</b>	<b>15,393,834</b>	<b>99.44%</b>	<b>833</b>	<b>259</b>	<b>15,040</b>	<b>113</b>	<b>14,666</b>	<b>49,816</b>	<b>5,674</b>	<b>86,401</b>

\*Statistics included in this report are as of a specific date and time and are derived from data provided to VoteCal from each of California's 58 counties. The Secretary of State continually works with each of California's counties to provide accuracy.



July 17, 2020

The Honorable Alex Padilla  
California Secretary of State  
1500 11th Street, 6th Floor  
Sacramento, CA 95814  
[Secretary.Padilla@sos.ca.gov](mailto:Secretary.Padilla@sos.ca.gov)  
[Elections@sos.ca.gov](mailto:Elections@sos.ca.gov)

*Via email*

**Re: Request for the Secretary of State to Promulgate Emergency Regulations in Accordance with AB 1970**

Dear Secretary Padilla:

We request that your office comply with the Elections Code ahead of the November 3, 2020, general election by promulgating emergency regulations relating to the processing of vote-by-mail and provisional ballots.<sup>1</sup> We understand that you are focused on addressing new and pressing challenges. However, your office has failed to issue regulations as required by Assembly Bill 1970, and the rate of vote-by-mail ballot rejections has more than doubled since the law took effect in 2017. It is precisely because of the COVID-19 pandemic, which increases the need for vote-by-mail and provisional ballots, as well as inconsistencies with signature verification practices throughout the state and the rising rate of ballot rejections, that the Secretary of State must immediately propose emergency regulations to provide uniform guidance to counties and to avoid voter disenfranchisement. In particular, we request that you propose emergency regulations that standardize training, the processing of vote-by-mail and provisional ballots, signature verification criteria, and notice and cure procedures. To facilitate this process, we have included draft emergency regulations as Exhibit A to this letter.

**AB 1970**

The Secretary of State has been under a mandatory duty to establish uniform and specific guidelines relating to the processing of vote-by-mail and provisional ballots since 2017.<sup>2</sup> Yet, almost four years later, you have not issued these guidelines. The authors of AB 1970, Assemblymembers Evan Low and Kevin Mullin, introduced that bill in response to concerns over discrepancies in rejection rates for signature mismatches across counties.<sup>3</sup> The bill's authors

<sup>1</sup> See Elec. Code §§ 3026 (vote-by-mail ballots), 14314 (provisional ballots).

<sup>2</sup> *Id.*; see also Gov't Code § 11342.600 (defining a regulation as a "rule, regulation, order, or standard" adopted by an agency to "implement, interpret, or make specific the law enforced or administered by it[.]").

<sup>3</sup> See Assem. Bill 1970 (2016), Bill Analysis, Assembly Committee on Elections and Redistricting, March 30, 2016, at 3, available at [https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201520160AB1970](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1970).



hoped that by “providing elections officials with a proper and uniform set of guidelines, there will be [a] decreased number in uncounted [vote-by-mail] ballots and an increased opportunity for citizens to make their vote count.”<sup>4</sup>

Unfortunately, the problem has only grown, and your failure to issue uniform guidance has not been without consequence. Since 2016, the year AB 1970 was signed into law, the state’s ballot rejection rate has more than doubled. In the 2020 primary, 111,361 vote-by-mail ballots were rejected across the state, a 1.58% rejection rate.<sup>5</sup> This rejection rate is up from 1.0% in the 2018 general election, and 0.69% in the 2016 general election.<sup>6</sup>

While AB 1970 did not set a deadline to promulgate regulations, there remains an obligation for the Secretary to do so. In fact, courts have ordered government agencies to issue regulations in other instances when they have ignored a legislative mandate to draft rules.<sup>7</sup> Despite that obligation, there does not appear to be any effort by the Secretary to fulfill this obligation. Indeed, promulgating regulations on the processing of provisional and vote-by-mail ballots is absent from the Secretary’s recent CCROV outlining plans to prepare for the election.<sup>8</sup>

### **Signature Matching Guidance is Essential for Preventing Disenfranchisement**

Signature matching can play an important role in verifying the identity of voters. But the lack of uniform signature verification practices from county to county are likely contributing to higher rates of rejection in some counties, especially among Latinx and Asian American voters. Thousands of vote-by-mail and provisional ballots are rejected in California each election cycle because of a perceived signature mismatch.<sup>9</sup> Often, the failure to successfully compare signatures occurs when a person who is not an expert in signature comparisons attempts to compare images of signatures that may be less than pristine, from voters who were likely unaware that their signature was going to be used for this purpose.<sup>10</sup>

Many essential areas of the signature verification process remain undefined. For example, the Elections Code does not prescribe how elections officials should make a determination that

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<sup>4</sup> *Id.*

<sup>5</sup> Vote-By-Mail Statistics 2003 to 2020, California Secretary of State (accessed July 9, 2020), available at <https://www.sos.ca.gov/elections/voter-registration/vote-mail/vbm-other-elections/>.

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., *Newland v. Kizer*, 209 Cal. App. 3d 647, 652, 656 (Cal. Ct. App. 1989) (holding that an interpretation of a statutory directive that an agency “shall adopt regulations for the administration of this article” to be other than mandatory “would defeat the very purpose of its enactment”).

<sup>8</sup> Memorandum from Jana M. Lean, Elections Division Chief, to County Clerks/Registrars of Voters, *General Election: Revised Guidance Related to the November Election* (June 30, 2020), available at <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/june/20135jl.pdf>.

<sup>9</sup> See, e.g., Michael R. Blood, *California Rejected 100k Mail-in Ballots Because of Mistakes*, Associated Press (July 13, 2020), available at <https://apnews.com/a45421048cd89938df7c882891a97db5>; *California’s Uncounted Vote-by-Mail Ballots: Identifying Variation in County Processing*, UC Davis Center for Regional Change/California Civic Engagement Project (Sept. 2014), available at <http://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/5881a1622994ca06fb1484ac/1484890469869/CCEP+VBM+Issue+Brief+2+Revised+%281%29.pdf>.

<sup>10</sup> See, e.g., *Signature Verification and Mail Ballots: Guaranteeing Access While Preserving Integrity*, Stanford Law School Law and Policy Lab 30-32, (May 15, 2020), available at [https://www-cdn.law.stanford.edu/wp-content/uploads/2020/04/SLS\\_Signature\\_Verification\\_Report-5-15-20-FINAL.pdf](https://www-cdn.law.stanford.edu/wp-content/uploads/2020/04/SLS_Signature_Verification_Report-5-15-20-FINAL.pdf) (hereinafter “Stanford Law Report”).



signatures do not compare, nor does it require officials to receive handwriting identification or comparison training.<sup>11</sup> While California implemented a requirement to provide voters notice and an opportunity to cure mismatched signatures in 2018 after a court ruled its existing practices were unconstitutional,<sup>12</sup> those notice and cure practices vary across counties as well. A recent report by Stanford Law School's Law and Policy Lab (Law and Policy Lab) surveyed 33 counties across California (representing more than 80% of the state's population) to understand how counties verify ballot signatures and comply with the signature mismatch notice requirements. They found that signature verification criteria and processes used in vote-by-mail ballot processing are not standardized and vary significantly across counties.<sup>13</sup>

County data on rejection rates further demonstrate the impact of these varying criteria for signature matching, and indicate that the opportunity to cure mismatches has not resolved disparities in rejection rates among counties.<sup>14</sup> In the 2018 midterm elections, some counties rejected ballots for perceived signature mismatches at much higher rates than other counties. For example, Merced County rejected 1.51% of all vote-by-mail ballots for signature mismatch, whereas San Francisco rejected only 0.08%.<sup>15</sup>

It is critical that signature verification and notice and cure processes are standardized ahead of the November election for two related reasons. First, all active registered voters will be sent a vote-by-mail ballot this November as a result of the pandemic.<sup>16</sup> This means that an increased number of voters will be subject to varying signature match and notice and cure provisions, either because they cast a vote-by-mail ballot, or because they do not surrender their vote-by-mail ballot when they vote in-person and are required to cast a provisional ballot. Second, many voters are wary of vote-by-mail precisely because of concerns about ballot rejections.<sup>17</sup> Studies show that Asian American voters, Latinx voters, Black voters, and voters with disabilities experience higher ballot rejection rates.<sup>18</sup> Standardizing signature verification

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<sup>11</sup> The only statutory guidance for the signature comparison process is that officials must not invalidate ballots when voters substitute their initials for their first or middle names. Elec. Code. § 3019(a)(4).

<sup>12</sup> See *La Follette v. Padilla*, No. CPF-17-515931, 2018 WL 3953766 (Cal. Super. Mar. 5, 2018).

<sup>13</sup> Stanford Law Report, *supra* n.10 at 1-4.

<sup>14</sup> Data sourced from *Election Administration and Voting Survey (EAVS) Datasets, Codebooks, and Survey Instruments*, U.S. Election Assistance Commission, available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>.

<sup>15</sup> *Id.*

<sup>16</sup> Assem. Bill 860 (2020), available at [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB860](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB860); Governor Gavin Newsom Executive Order N-64-20, available at <https://www.gov.ca.gov/wp-content/uploads/2020/05/05.08.2020-EO-N-64-20-text.pdf>.

<sup>17</sup> See, e.g., Mindy Romero, Ph.D., *The California Voter Experience: Why African-American Voters Choose to Vote at the Polls or Vote-by-Mail, and How They Perceive Proposed Changes to California's Voting System*, UC Davis Center for Regional Change/California Civic Engagement Project 1-2 (Sept. 2016), available at <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/57ffe66ff7e0abb9f7b5f3e6/1476388465082/UCDavisCCEPCVEBriefTwo.pdf>; see also Thad Kousser, Mindy Romero, Mackenzie Lockhart, Seth Hill, and Jennifer Merolla, *How Do Californians Want to Cast their Ballots During the COVID-19 Crisis?*, The New Electorate Project at 1 (May 2020), available at <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/5ed0c49c89d12f1ce6fc85e8/1590740125323/New+Electorate+Study+-+How+Do+Californians+Want+to+Cast+their+Ballots+During+the+COVID-19+Crisis.pdf> (finding that Latinx and African American voters are less likely to prefer voting by mail than Asian American and non-Latino white voters).

<sup>18</sup> See, e.g., Declaration of Paul Mitchell in Support of Plaintiffs' Motion for Writ of Mandate at 3, *La Follette v. Padilla*, No. CPF-17-515931 (Cal. Super. Jan. 19, 2018), available at <https://www.rubenmajor.com/wp-content/up>



and notice and cure procedures to reduce the rejection of valid vote-by-mail ballots will increase voter confidence that their vote will count if they cast a ballot by mail.

## Guidelines on the Processing of Provisional Ballots

Elections officials must verify the signatures on provisional ballot envelopes using the same procedures that apply to the comparison of signatures of mail ballots.<sup>19</sup> In addition, elections officials must also confirm that a voter who casts a provisional ballot is entitled to vote in that county.<sup>20</sup> Because data from courts about ineligibility related to felony convictions and conservatorships are often incorrect or unreliable, it is key for any regulations on the processing of provisional ballots to include a presumption that voters are entitled to vote unless there is clear and convincing evidence to the contrary.

In most cases, the voter's attestation to their eligibility to vote at the time of their registration is sufficient for the elections office to establish their right to vote.<sup>21</sup> However, if available, elections officials may consider certain other information in their records when evaluating a voter's right to have their provisional ballot included in the canvass. For instance, an otherwise-eligible person is not entitled to register or vote while they have been found by a court within the context of specified proceedings to be mentally incapable, with or without reasonable accommodations, of expressing a desire to participate in the voting process.<sup>22</sup> Similarly, an otherwise-eligible voter in California is disqualified from voting while they are in state or federal prison or on parole for a felony conviction.<sup>23</sup>

When a person is disqualified from voting because of mental incapacity or their conviction status, state law requires county courts to send notification of the relevant information to the Secretary of State and county elections officials.<sup>24</sup> However, county courts frequently send unreliable notices to elections officials during conservatorship cases and, in many of these cases,

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[loads/2018/03/Mitchell-Declaration.pdf](#) (finding higher rates of vote-by-mail ballots rejected for Latinx and Asian American voters); Joanna Lee and Deanna Kitamura, *Asian Americans Face Higher than Average Vote-by-Mail Ballot Rejection Rates in California*, Asian Americans Advancing Justice – California (Aug. 2017), available at <https://www.advancingjustice-la.org/sites/default/files/issuebrief-vbm-FINAL-1.pdf> (finding the vote-by-mail ballot rejection rate for Asian Americans in four populous counties was 15% higher than the overall rejection rate in those counties, and over half of rejected vote-by-mail ballots from Asian Americans had a mismatched signature, compared to 44% for all voters); Anna Baringer, Michael C. Herron, and Daniel A. Smith, *Vote by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus* (Apr. 25, 2020), available at [https://electionscience.clas.ufl.edu/files/2020/04/Baringer\\_Herron\\_Smith\\_VBM\\_FL.pdf](https://electionscience.clas.ufl.edu/files/2020/04/Baringer_Herron_Smith_VBM_FL.pdf) (finding vote-by-mail ballot rejections impact Black voters, voters with disabilities, and young voters at higher rates); *Voting by Mail is Essential for Voters with Disabilities, but it's Not Enough*, ACLU (July 7, 2020), <https://www.aclu.org/news/votingrights/voting-by-mail-is-essential-for-voters-with-disabilities-but-its-not-enough/> (noting that “[s]ignature match requirements present an additional barrier to voters who have conditions that make it hard to consistently sign their name.”).

<sup>19</sup> Elec. Code § 14310(c)(1).

<sup>20</sup> *Id.*

<sup>21</sup> See *id.* § 14310(c)(2)(i); see also *Fish v. Kobach*, 840 F.3d 710, 738 (10th Cir. 2016) (concluding within the context of voter registration through DMV transactions that the National Voter Registration Act “establish[es] the attestation requirement in every case as the presumptive minimum amount of information necessary for a state to carry out its eligibility-assessment and registration duties”).

<sup>22</sup> Elec. Code § 2208; Cal. Const. Art. II § IV.

<sup>23</sup> Elec. Code § 2101; Cal. Const. Art. II § IV.

<sup>24</sup> Elec. Code §§ 2209, 2212.

it is not clear that the court made the proper voting rights determination required by law.<sup>25</sup> Further, county courts often send over-inclusive lists of people who have been involved with criminal court proceedings to elections officials. In fact, several counties have recently been targets for litigation by civil rights groups after their elections officials relied on faulty information from their local courts to improperly cancel the registrations of thousands of voters who had not been convicted of a prison felony and who were legally eligible to vote.<sup>26</sup>

Additionally, even when a person was previously eligible to vote while they were in prison or incapable of communicating a desire to vote, their right to vote is legally restored once they complete their parole or they regain the capacity to communicate a desire to vote. Just as voters should not be disenfranchised based on over-inclusive or unclear notices from courts, these newly re-eligible voters should not have their ballots rejected based on stale court notices. Due to reduced operations at county courts during the pandemic, records on file with election officials may be more likely to contain errors or be out-of-date at the time of the upcoming election. Therefore, it is urgent that emergency regulations be put in place before November that include a presumption that a voter is entitled to have their provisional ballot included in the canvass unless there is clear and convincing evidence establishing that they are ineligible.

### **Secretary Padilla Must Promulgate Emergency Regulations Before the Election**

There is insufficient time for your office to promulgate regulations before the November election using the usual regulatory process, but the COVID-19 pandemic, combined with the expected increase in the use of vote-by-mail and provisional ballots this November, necessitates immediate action by the Secretary through emergency regulations.<sup>27</sup> Your office already recognized the need for immediate action as a result of the pandemic when just last month it amended regulations on ballot drop boxes using the emergency rulemaking process.<sup>28</sup> We ask that your office move with the same level of urgency to ensure that voters who cast vote-by-mail or provisional ballots this November do not risk disenfranchisement.

There is already ample guidance on best practices for signature verification and notice and cure procedures, and we have attached proposed regulation language that incorporates those best practices as Exhibit A to this letter. For further guidance, we have also included Michigan's recently issued three-page guidelines on signature matching as Exhibit B.<sup>29</sup> This simple, straightforward guidance can help ensure that voters are treated equitably from county to county. After the November election, your office can permanently adopt these emergency regulations

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<sup>25</sup> ACLU of Northern California has identified thousands of incomplete, unclear, or inaccurate conservatorship notifications received by the Secretary of State between January 2016 and spring 2020.

<sup>26</sup> *All of Us or None Puts Ten CA Counties on Notice Over Unlawful Removal of People with Felony Convictions From Electoral Rolls, A New Way of Life* (Apr. 3, 2018), available at <https://bit.ly/3eyXlaR>.

<sup>27</sup> See Gov't Code § 11342.545 (defining emergency as "a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare").

<sup>28</sup> Memorandum from Raj Bathla, Sr. Legal Analyst, to County Clerks/Registrars of Voters, *Regulations: Vote-by-Mail Ballot Drop Boxes and Vote-by-Mail Drop-Off Locations – Section 20136* (June 26, 2020), available at <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/june/20132rb.pdf>.

<sup>29</sup> *Absent Voter Ballot Application and Ballot Processing: Signature Verification and Voter Notification*, Michigan Bureau of Elections (accessed July 9, 2020), available at <https://bit.ly/2ZPTS2p>. Michigan's guidance was issued in response to a lawsuit challenging the lack of uniform guidance in the state.



through the regular rulemaking processes, which will provide the public with an opportunity to provide feedback or suggest amendments, as well as address other areas that would benefit from uniform guidance.

## Proposed Regulations

We propose that, at a minimum, the regulations include the following guidance:

- **Basic Presumption.** The regulations should require all review of vote-by-mail and provisional ballots to begin with the basic presumption that the signature on the ballot envelope is the voter's signature and that the voter is entitled to vote.
- **Resolutions of Discrepancies.** There should be uniform review processes across counties that includes unanimous determination that a signature does not compare, and the review must include a permanent staff member. Similar characteristics between a voter's signature on a vote-by-mail or provisional ballot envelope and a signature on file should be sufficient to determine a signature is valid. Before rejecting a ballot, reviewers must unanimously find beyond a reasonable doubt that the signature differs in multiple, significant, and obvious respects from all signatures on file for the voter.<sup>30</sup>
- **Signature Comparison.** The regulations should provide uniform guidelines for signature comparison at all levels of review. This includes a requirement that, upon initial review, officials must seek to eliminate the visibility of identifying information. The regulations should also require qualitative review so that staff consider the many reasons why a person's signatures may vary. Our proposed regulations identify common reasons why a ballot may vary, including the rearrangement of components of a voter's full name common with some voting populations, while Michigan's guidelines provide visual examples of signatures that contain similar characteristics but vary because of, for example, aging or a health condition. We encourage the Secretary to include visual examples in their emergency regulations. Finally, the regulations should waive signature match requirements for voters with disabilities if they certify they have a disability, condition, or illness preventing them from consistently signing their name.
- **Provisional Ballots.** As discussed above, some county courts provide inaccurate information to elections officials about conservatorship and felony convictions. For this reason, staff should not reject provisional ballots unless there is clear and convincing evidence that the voter is not entitled to vote.
- **Notice and Cure.** The regulations should require elections staff to notify voters of a missing signature, a signature mismatch, or, for provisional ballots, a determination that the voter is not eligible to vote, within 24 hours of that determination. Within six days of sending the initial mail notice, elections staff should also be required to attempt to notify voters by phone and email when that information is available. A phone call or email is important because they are more likely to reach some voters with disabilities than printed mail.<sup>31</sup> Counties should send a follow-up notice of opportunity to cure by mail if a voter

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<sup>30</sup> Florida similarly requires elections staff to find beyond a reasonable doubt that a signature does not match before rejecting a ballot. Fla. Stat. § 101.68(c)(1)(b).

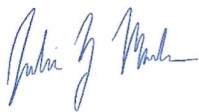
<sup>31</sup> Mailed notices are not an effective way to reach people with print related disabilities. The National Federation of the Blind and Disability Rights California recently settled a case with the Internal Revenue Service requiring delinquent tax notices to be sent to blind taxpayers in formats other than mail. *IRS to Implement Process to Provide*

fails to cure within seven days of the county sending the initial notice of opportunity to cure.<sup>32</sup> Notice letters should be sent in the voter's preferred language with a pre-paid postage return envelope. Finally, the notification letters should include a notice to voters that the signature used in the signature verification statement will be used to update the voter's signature for future elections if the signatures compare.

- **Timeline.** The regulations should include a uniform timeline for training elections staff, completing the initial signature verification review process, and deadlines for sending out initial and follow-up notices to cure, including a deadline by which counties must send a second notice to cure by mail.
- **Training.** The regulations should require elections staff working on signature verification and notice and cure procedures to receive training on these regulations, and permanent staff should additionally be trained on implicit bias. The California Association of Clerks and Election Officials (CACEO) already conducts training with forensic experts on signature verification.<sup>33</sup> CACEO, community organizations, and voter advocates could be great partners in ensuring that all elections officials receive uniform training ahead of the November election.
- **Election Observers.** Election observers should not be allowed to challenge any individual voter's ballot. This limitation will protect the right of the public to observe the signature verification process, while also removing potential racial, partisan, or other bias from the process and protecting the privacy of voters.

We respectfully request a meeting to discuss your office's progress in complying with AB 1970 and how we can best assist you in promulgating emergency regulations on signature verification and notice and cure processes ahead of the November election. In addition, we request that you let us know no later than July 31, 2020 whether your office plans to move forward with proposing emergency regulations ahead of the November election.

Sincerely,



Julia Marks  
Staff Attorney, Voting Rights and Census  
[juliam@advancingjustice-alc.org](mailto:juliam@advancingjustice-alc.org)  
**Asian Americans Advancing Justice - ALC**



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**ACLU of California**

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*Accessible Tax Notices to the Blind*, National Federation of the Blind (July 15, 2020) available at <https://www.nfb.org/about-us/press-room/irs-implement-process-provide-accessible-tax-notices-blind>.

<sup>32</sup> The Law and Policy Lab found that a second mail notification was one of the best methods to increase cure rates. Stanford Law Report, *supra* n.10 at 39.

<sup>33</sup> See, e.g., *Signature Verification Training*, CACEO (last accessed July 9, 2020), available at <https://caceo.memberclicks.net/signature-verification-training>.





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cc:

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Marian Thompson <mmjthompson@gmail.com>

## Authorization

Marian Thompson <mmjthompson@gmail.com>

Fri, Jul 22, 2022 at 1:20 PM

To: Alex Olvera <aolvera@rrcc.lacounty.gov>

Bcc: Cassandra Vandenberg <cassandra@vandenberginc.com>, Tim Lineberger <tim@venturestrategic.com>, Steve Cooley <steve.cooley@stevecooley.com>

Hi Alex,

I am officially representing the Recall District Attorney George Gascón Committee. In the event the recall petition is found to be insufficient, we would like to begin assembling a team now to review the sufficiency of the examination of the recall petitions under Government Code section 6253.5. We would like to move quickly. In order to expeditiously respond in that event, we would like the following information right away in order to anticipate our manpower needs to review which signatures were disqualified and the reasons therefor:

1. When does the RR anticipate completing the examination?
2. Has the RR already arranged and/or tentatively scheduled a hearing date before the BOS to order an election in the event the recall petition is found to be sufficient? If so, what date has been tentatively scheduled?
3. How many persons have been assembled by the RR to conduct the examination?
4. How many elections officials have been assigned to independently review each signature rejected by the initial reviewer?
5. Is the RR using the same standards outlined in CA Code of Regulations Section 20960 for signature verification?
6. Is there an opportunity now to review the signature verification process? If not, what is the basis for denying the proponents or their representatives the opportunity to observe?

With respect to my independent inquiry discussed this morning, I believe that information will also be particularly helpful in determining our manpower needs in the unfortunate event the recall petition is found insufficient.

As a reminder, "only a signature possessing multiple, significant, and obvious differing characteristics with all signatures in the voter's registration record will be subject to additional review by the elections official. A signature that the initial reviewer identifies as possessing multiple, significant, and obvious distinctive differing characteristics from the signature(s) in the voter's registration record shall only be rejected if two different elections officials unanimously find beyond a reasonable doubt that the signature differs in multiple, significant, and obvious respects from all signatures in the voter's registration record." (CA Code of Regulations, Section 20960).

Hope to talk to you soon.

Best,

Marian M. J. Thompson  
Attorney at Law

----- Forwarded message -----

From: **Cassandra Vandenberg** <cassandra@vandenberginc.com>

Date: Fri, Jul 22, 2022 at 11:32 AM

Subject: Authorization

To: Marian Thompson <mmjthompson@gmail.com>

Cc: Steve Cooley <steve.cooley@stevecooley.com>

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EXHIBIT C



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# SIGNATURE COMPARISON TRAINING

Presented by CACEO  
&  
Riverside County Elections in Riverside, California

June 10, 2015



with  
Larry C. Liebscher  
Forensic Document Examiner

• • •

FORENSIC HANDWRITING SERVICES  
Redding, California

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EXHIBIT D

# SIGNATURE COMPARISON TRAINING

Schedule for June 10, 2015

## MORNING CLASS

Session 1	09:00 AM-09:50 AM
Break	09:50 AM-10:00 AM
Session 2	10:00 AM-10:50 AM
Break	10:50 AM-11:00 AM
Session 3	11:00 AM-12:00 PM

## AFTERNOON CLASS

Session 1	01:30 PM-02:20 PM
Break	02:20 PM-02:30 PM
Session 2	02:30 PM-03:20 PM
Break	03:20 PM-03:30 PM
Session 3	03:30 PM-04:30 PM



Ascender (Upper Zone) ————— *f l k*  
 Body (Middle Zone) ————— *a c e g i o r s*  
 Bow ————— *D*  
 Compound Curve ————— *2 5*  
 Cross Bar ————— *L*  
 Cusp ————— *s*  
 Descender ————— *g g y*  
 Eyelet ————— *e a*  
 Foot (Feet) ————— *m*  
   ↑↑↑  
 Hiatus ————— *none*  
 Hook ————— *L a*  
 Lower Loop (Descender/Lower Zone) ————— *g g y*  
 Retrace ————— *p*  
 Spur ————— *u b*  
 Staff (Stem) ————— *L*  
 Trough ————— *w y*  
 Upper Loop (Ascender/Upper Zone) ————— *f l k*



When the same distinctive, personal writing characteristics are found in both the known and unknown writing in sufficient number that the likelihood of accidental coincidence is eliminated—and there are no basic fundamental differences between the two sets of writing—then both must have been prepared by the same person.

Orway Hilton, *Scientific Examination of Questioned Documents*

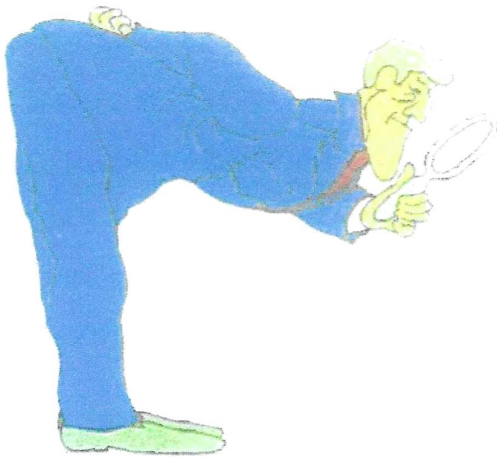




Repeated small differences establish clearly that two specimens are the work of two individuals despite a great number of general similarities... If two writings are by the same person, then no fundamental differences should exist.

Ordway Hilton, *Scientific Examination of Questioned Documents*





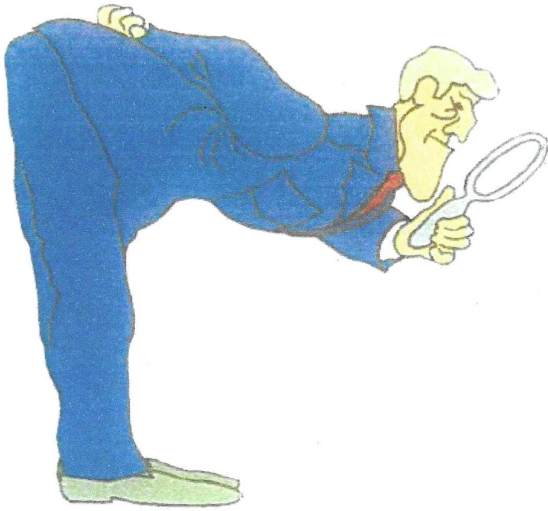
SCIENCE OF

SIGNATURE MATCHING

Large area containing multiple black redaction boxes of various sizes and shapes, covering the majority of the page's content. Some faint lines and a small box with an 'X' are visible through the redactions.

EXHIBIT E





## SCIENCE OF SIGNATURE MATCHING

The Science Of Signature Matching as it relates to election material is defined as a **Match** or **Non-Match**.

### WHAT IS A MATCH?

A signature match can be categorized under the following:

1. **EXACT MATCH**
2. **SIMILAR CHARACTER RECOGNITION**
3. **SIGNATURE VARIATION**

### EXACT MATCH

Voter's signature is an Exact Match and will appear the same on the document and registration file. Signature may be in script or printed, as long as this is the way the voter will sign all documents.

### SIMILAR CHARACTER RECOGNITION

Voter's signature with Similar Character Recognition in signature will appear similar in hand writing with identical light or heavy impressions or small or large loops in the signature characters.

**SCIENCE OF SIGNATURE MATCHING**  
**PAGE - 2**

**SIGNATURE VARIATION**

Voter's Signature Variation will appear as name change (first or last due to marriage), shortened form of first name (first and middle use of initials instead of full name), and other slight variations, but the majority of characters on document should be the same.

**WHAT IS A NON-MATCH?**

Voter's signature is a Non-Match if the signature does not appear to match in any way to the voter's signature on the file.