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May 22, 2023

Brief on Elections Code 9170 (Assembly Bill 1416)

Dear Nevada County Supervisors,

I'm pleased to have the opportunity to share with you my reasoning behind item 23-2819, which my office submitted on May 12, 2023 for the May 23, 2023 Consent Calendar. The item was prompted by Assembly Bill 1416, which passed the state legislature in 2022 and became effective on January 1, 2023. In short, AB 1416 requires the supporters and opponents of statewide propositions to be listed on all ballots. There are further provisions for counties that do the same for local measures, with the option for County Boards of Supervisors to opt-out of printing the names of supporters and opponents of local measures on the ballot.

I write to you today not only as the County Clerk-Recorder/Registrar of Voters, but also as one of the co-Chairs of the state Ballot Design Advisory Committee, which convened in 2021-2022 and looked specifically at this bill before it became law. Before jumping in, I'd like to share a few important points.

First, the law would require us to pull the names of supporters and opponents from the arguments that are submitted for or against a local measure and print them on the ballot. In other words, there's no new process that is being created to identify who supporters and opponents are. The law explicitly requires the elections official to draw information about supporters and opponents from the submitted arguments—not, for example, from committee campaign finance filings.

Second, the list of signers for all submitted arguments is included in every County Voter Information Guide (CVIG) for which there are local measures on the ballot. If no arguments are submitted, we state as such. The most recent example of how this occurs in an election can be found in the November 8, 2022 CVIG. You might remember that, for Measure V, we printed the measure letter, ballot label, what a "yes" and "no" vote means, the measure text, impartial analyses, arguments for and against, rebuttal arguments, names and a brief description of all signers, and the names and descriptions of all authors. The suggestion is not to discontinue this process—it will continue to be included in the CVIG. Rather, the ask is for the Board to opt out of printing this same information on the ballot.

Third, by law, ultimately a policy decision on this issue can only be made by the Board. As the Registrar of Voters (ROV), I will fulfill all duties that the Elections Code requires—including printing the names of supporters and opponents of local measures if the Board thinks the benefits outweigh the costs. My recommendation is based on my own analysis. By sharing this analysis in greater detail my hope is to provide you each with the additional information so that you can make an informed decision.

To begin, I note that based on my experience with our elections and my familiarity with the law in question, I believe everyone's intentions are good. As a rule, when considering these types of issues, I err on the side of transparency. Like you, I want to make sure that voters have the information that they need to make informed decisions. The harder it is for the voter to vote, the more likely they don't—I certainly believe it is my duty to encourage voting, not discourage it.

All this said, I do have some concerns around the cost of elections and the risk of litigation that have informed my recommendation, and of which you should be aware of.

Increased printing costs: The legislators that passed AB 1416 spoke with key members of the California Association of Clerks and Election Officials and the state Ballot Design Advisory Committee. All elections officials provided lawmakers with concerns on ballot length and the associated expenses to ballot printing and printing the CVIG.

If all other things remain the same, the law may result in some ballots that are three or more cards long. In past elections in Nevada County, ballots have not exceeded two cards, with ballot choices printed on the front and back of each card. Each ballot card in a Nevada County election currently costs \$0.28. For a single card for a countywide ballot, the paper alone can cost around \$25,000.00 per election. Adding a ballot card for all ballot styles can push the cost of a single election up to an additional \$25,000.00 for the paper. For elections with a high number of contests included, additional lines on a local ballot measure might push some or all ballot styles to another card. I am concerned that opting in could add another card to include supporters and opponents of a local measure and increase the cost of our elections higher than desired, particularly where this information is already printed in the CVIG.

Because the CVIGs include a sample ballot, the CVIGs may also have added pages. The financial impact on printing the CVIG is not clear at this time.

Furthermore, local districts are also likely to feel the impact of AB 1416, as they are required to reimburse the county for elections services. It is not clear whether or to what degree counties will be reimbursed for printing supporters and opponents of statewide ballot measures. Opting in locally, because it is optional, likely will not result in state reimbursements for cards added as a result of printing supporters and opponents of local measures.

Increased time for ballot proofing and processing: The more ballot cards there are, the more data that has to be reviewed before going to print. All ballot data must be verified, translated, and sent for printing and mailing. It is the ROV's obligation to make sure there are no misspellings or other errors before ballots are printed. In addition to printing costs, there may be some additional overtime required to accommodate review of more information.

Once a ballot is cast, election workers must make sure that the ballot is complete. When staff extract ballots from their envelopes, they must ensure that there is only one ballot in one envelope, that the precinct printed on the envelope matches the ballot that's submitted, and that all pages are included. Frequently, we will receive two ballots in a single envelope from the same household, ballot cards accidentally switched out with another precinct, and missing cards. Our office expects that more cards will also increase staff hours spent on ensuring this aspect of election integrity, as our staff must take the time to contact the voter to cure defects and, in some cases, duplicate incomplete ballots so that the voter's choices may be tabulated.

Character limits and the potential for litigation: When listing the supporters and opponents of local ballot measures, we may not exceed 125 characters. The character limit includes spaces and punctuation. There are several rules around whether you can add a signer's job title and limits on nonprofits.

However, there are no rules or regulations about how the elections official should make determinations when the character limit is exceeded.



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Example: Measure V supporters and opponents.

According to Elections Code Section 9170, if our office printed the names of supporters and opponents for Measure V, taking into account all rules (and assuming that all organizations and businesses supported or opposed the measure) we would have to determine how to get the following information down to 125 characters:

Ann Guerra; Bill Seline, retired Truckee Fire Chief; Edward Sylvester; Kristin York, Sierra Business Council; Edward C. Scofield, Nevada County Supervisor (154 characters)

Dan Miller, County Supervisor; Ray Byers, Byers Ent. Owner; Mary Byers Ramos, Byers Ramos Owner; Robert G. Ingram, County Planning Commissioner; John Spencer (157 characters)

The new law would require the ROV to reduce these lists to 125 characters but provides no clear process or regulations on doing so. This lack of guidance will require local election officials to make judgment calls, which will inevitably lead to grievances by some who disagree with those decisions.

The real-life example above could have been much more complicated. Had, for instance, Ms. Guerra, Mr. Sylvester, and Mr. Spencer offered official titles of organizations or businesses that supported or opposed the measure when they signed arguments, it would be that much more difficult to edit down to 125 characters. Which organizations and nonprofits are listed, and which are not? For this reason, I believe that the voter is provided a greater benefit from reading the CVIG, which does not have a 125 character limit on supporters and opponents, to find out more information about these signers. The information contained in the CVIG has much more robust details that are beneficial to voters. While I do not suggest that the intent of the law is to ignore the CVIG, it may incentivize voters to skip doing that research.

Also note that, for the purposes of this example, I have assumed that the organizations and businesses listed took a position on Measure V and that they could be printed on the ballot pursuant to Section 9170. As the ROV, our office would need to decide whether to print all official titles and edit them down to the required character limits, none of the official titles, or some combination, and how that decision might affect other local ballot measures for which the character limits were not exceeded. Without guidance that all the counties are following, making those kinds of decisions at the local level seems like it comes with a high risk of delays in ballot processing due to court challenges.

This law also opens the door for candidates to see their name printed more than once on the ballot: it is possible that candidates may become signers in support or in opposition of local ballot measures appearing on the same ballot. Some have argued that this might give some candidates an unfair advantage in electoral contests and others have gone as far as to call this a form of electioneering.

Neighboring counties might have the ability to decide for the County: Elections Code Section 9170 paragraph (d)(2) states:

“A district measure or school measure on a county ballot shall not include a list of supporters or opponents if the same district or school measure appears on the ballot of another county that does not include a list of supporters or opponents for the measure, in which case the requirements of subdivisions (a) through (c), inclusive, do not apply for the measure.”

Twelve counties have formally opted out of these printing requirements, including Placer County and Yuba County. Nevada County shares districts with each of them. Paragraph (d)(2) states that, if we have a shared ballot measure between one or both of these counties, then we cannot print a list of supporters and opponents on that same ballot measure in Nevada County.

Furthermore, Elections Code Section 9170(d)(1) states:

“A county shall not include a list of supporters or opponents for any county, city, district, or school measure if the county does not include a list of supporters or opponents for all measures for which the county receives a list that meets the requirements of this section. If the county elects not to list supporters and opponents for county, city, district, or school measures on the county ballot, the requirements of subdivisions (a) through (c) do not apply.”

At first read, it appears that if we have a shared measure with a neighboring county, and if that neighbor is Placer or Yuba, then we may not print the supporters and opponents of any local ballot measure. While it is possible for each of those Boards to make a different decision, as it stands right now we might face a situation where we print this information on ballots for some elections but not others. I have asked County Counsel to take a closer look at this section of the law, as it may result in litigation for those counties who desire to print the names of supporters and opponents when their neighbors have opted out.

To date, the following counties have opted out of AB 1416:

- Contra Costa
- Colusa
- Butte
- Imperial
- Kern
- Mendocino
- Mono
- Napa
- Placer
- Plumas
- Sutter
- Yuba

If this item is pulled from consent tomorrow, I am available to make a short presentation and answer any questions you might have. You are also welcome to contact me directly.

Sincerely,



Natalie Adona  
Nevada County Clerk-Recorder/Registrar of Voters