

COUNTY CLERKS ASSOCIATION OF CALIFORNIA ELECTIONS LEGISLATIVE COMMITTEE

"POLICY PAPER ON ACCESS TO VOTER REGISTRATION INFORMATION"

As adopted by the Committee
on June 6, 1997

BACKGROUND

In recent years, the laws pertaining to access to voter registration information have been amended to control access to the voter registration file.

Prior to 1990, with the exception of those voters who sought a court order, all voter registration information was public information. Legislation enacted in 1989 (Chapter 680) made the home address, telephone number, occupation, precinct number and prior registration information for specified peace officers and judicial personnel and their families, (upon completion of a confidential voter registration form) available only to persons meeting certain criteria, upon request.

The law provided for a system of "limited confidentiality," where only those with legitimate reasons could access the confidential voter's registration information. It allowed for the information to appear on indexes posted at the polling place. However, anyone who purchased indexes or requested the information "over-the-counter" was required to complete a written application stating the intended use of the information requested. The law did not require applicants to provide proof of identity.

Over the years, the definition of peace officers covered by the confidentiality provisions of Government Code §6254.4 expanded, to eventually include some 22 different capacities of peace officers and, in most cases, their families. In 1994, the Legislature decided to expand the protection provided to peace officers and judicial personnel to include all voters (Chapters 1207 and 777).

Election officials currently operate under the 1994 statutes (E.C. §2187, 2188 and 2194) that made the home address, telephone number, occupation, precinct number and prior registration information confidential for all voters, regardless of occupation. Persons wanting access to the restricted information have to complete a form indicating exactly what information they are seeking and for what purpose. Access is only provided for governmental, election, political, scholarly and journalistic purposes upon showing identification to an elections official (individuals requesting the information for governmental purposes are not required to complete the form, but must be identified as such). As before, voters may obtain a court-order, to make their home address, telephone number, occupation, precinct number and prior registration information unavailable to all persons and organizations (E.C. §2166). The law was expanded in 1996 to also make the driver's license confidential. The driver's license is available only to elections officials for the conduct and administration of elections.

CURRENT LEGISLATIVE EFFORTS

AB 188 (Murray) and SB 489 (Alpert) would make voter registration information for peace officers and victims of domestic violence, respectively, unavailable to all persons and organizations. These voters would be permanent absentee voters. Amendments are being considered to allow voter information to

appear on the list of absentee voters available for challenge (E.C. §15005) during the canvass; however, it is questionable whether journalists and scholars would have access to this list.

SB 1271 (Kopp) proposes to expand the list of those who may obtain voter registration information to include attorneys. The bill also would make voter registration information for active or retired judges, district attorneys, public defenders, peace officers, persons who are the subject of stalking or feel there is a threat of death or great bodily injury, or any spouse or child of the above, unavailable to all persons and organizations. Because of these various legislative efforts, the County Clerks Association of California Elections Legislative Committee is compelled to present this "Policy Paper On Access to Voter Registration Information".

OUR POLICY

The County Clerks Association of California Elections Legislative Committee is neutral as to whether the voter registration file should be public or confidential. Under either classification, we support the current method available to all persons who may, upon showing good cause that a life threatening circumstance exists to the voter (or a member of the voter's household), have a superior court declare the person's voter information confidential. (E.C. §2166). We would support expanding the reasons such voters may obtain confidential status providing the criteria was not so broad as to include a significant percentage of the voter file.

The Committee is opposed to creating special classes of voters based on status or occupation who may obtain confidentiality. Depending on the political climate, it is conceivable that this list could be expanded or contracted, with various categories of individuals added or omitted from year to year, thereby adversely impacting the management of voter registration files. Moreover, if each legislative proposal creates slightly different criteria and various allowances on who may obtain the information for distinct purposes, the integrity of the voter file and our democratic process could be in jeopardy.

If there is to be a system of different protections for voters, the Committee proposes three levels of confidentiality, into which categories of individuals could be added or omitted.

THREE LEVELS OF CONFIDENTIALITY

LEVEL ONE -- ELECTIONS OFFICIAL ACCESS ONLY. *The home address, telephone number, occupation, precinct number, identification card number and prior registration information provided on the voter registration card is confidential to all persons, except election officials for the conduct and administration of elections.* This level of confidentiality would be reserved for those individuals with the most serious need (i.e. those who have obtained a court order; are victims of stalking or other life-threatening situations which necessitate complete confidentiality). Individuals granted this level of confidentiality would be required to complete an application for Level I confidential status and to vote by absentee ballot (mailed automatically by the elections official). The names, residence addresses and all other information on the voter registrations of these individuals would not appear on the indexes of registration either posted at the polls, or those currently provided for election, scholarly, journalistic, political or governmental purposes, nor on any other medium; and would be available only to elections officials for the conduct and administration of elections. The granting of this level of confidentiality should be acutely restricted, as the names, residence addresses, and other voter registration information

would not be available (except to elections officials) during the semi-official or official canvass period for challenge purposes. Presumably, the only way in which such information would be made available to any person, other than an elections official, would be through a court order.

LEVEL TWO -- ACCESS DURING CANVASS ON ABSENTEE BALLOT AND ABSENTEE VOTER LIST AVAILABLE FOR CHALLENGE. *The home address, telephone number, occupation, precinct number, identification card number and prior registration information provided on the voter registration card is confidential to all persons, except election officials. Information will be available on the absentee ballot envelope and on the list of absentee voters available to the public for the purpose of challenge during the processing of absentee ballots upon written application and showing identification to an elections official.* This level of confidentiality would be available to those individuals whose occupations target them for unwanted contact and possible retaliation. Except during the canvass period, these individuals' names and residence addresses would be available only to elections officials for the conduct and administration of elections; and would not appear on the indexes of registration either posted at the polls, or those currently provided for election, scholarly, journalistic, political or governmental purposes, nor on any other medium. Individuals granted this level of confidentiality would be required to complete an application for Level II confidential status and vote by absentee ballot (mailed automatically by the elections official). The names and residence addresses would appear on the absentee ballot envelopes and on the list of absentee voters available during the semi-official and official canvass period for challenge purposes. This information would be available only to those individuals who completed the application to view or purchase voter registration information for election, scholarly, journalistic, political or governmental purposes set forth in E.C. §2188.

LEVEL THREE -- ACCESS FOR ELECTION, SCHOLARLY, JOURNALISTIC, POLITICAL OR GOVERNMENTAL PURPOSES. *The home address, telephone number, occupation, precinct number, identification card number and prior registration information provided on the voter registration card is confidential to all persons, except that such information shall be available for election, scholarly, journalistic, political or governmental purposes upon written application and showing identification to an elections official.* This is the original level of confidentiality provided to law enforcement, and the current level of confidentiality provided to all registered voters. The residence address, telephone number, occupation, precinct number, identification card number and prior registration information provided on the voter registration card are not available at the public counter except for election, scholarly, journalistic, political or governmental purposes. These names and residence addresses do appear on the indexes of registration posted at the polls as well as those provided for election, scholarly, journalistic, political or governmental purposes.

METHOD OF ACCESS

The Committee is indifferent on the question of who has access to the voter file; however, if an application process is to be required, the same application and the same information must be required of all persons who request access to voter registration information. It would be imprudent to require a different form requiring different information depending on the applicant's occupation or intended use of the information (i.e. a candidate, journalist, attorney, etc.). There must be one uniform application (currently described in Elections Code §2188). The Committee feels that the form of application described in this section provides all the information necessary to track applicants' proposals. If the Legislature requires any additional information, such information should be required of all applicants, across the board, and E.C. §2188 should be amended accordingly.

PROPOSAL

In order to implement these changes, The County Clerks Association of California hereby proposes the following legislative remedy, encompassing all current and pending voter registration access issues: (see attached legislative proposal). In addition to those listed in the attached proposal, the following categories of individuals have previously been granted some level of confidentiality. In the interest of efficiency, the legislature might wish to consider including any or all of these categories of individuals in legislation which establishes levels of confidentiality.

- 1. Judge, magistrate, or court commissioner;**
- 2. District attorney, assistant district attorney, or deputy district attorney;**
- 3. Public defender, assistant public defender, or public defender investigator**
- 4. Any non-sworn employee of a public law enforcement agency, including, but not limited to, jailer, matron or dispatcher.**

LEGISLATIVE PROPOSAL

Government Code Section 6254.4 Voter Registration Information Confidentiality is amended to read:

~~(a) The home address, telephone number, occupation, precinct number, and prior registration information shown on the voter registration card for all registered voters is confidential and shall not be disclosed to any person, except pursuant to Section 615 of the Elections Code.~~

~~(b) For purposes of this section “home address” means street address only, and does not include an individual’s city or post office address.~~

~~(c)~~ (a) The California driver license number or identification card number provided on any affidavit of voter registration, or appended to any voter registration record, shall be confidential and shall not be disclosed to any person, *except to elections officials for the conduct and administration of elections.*

(b) The name, home address, telephone number, occupation, precinct number, identification card number and prior registration information shown on the affidavit of registration for any voter granted confidentiality pursuant to Elections Code Section 2166 shall not be disclosed to any person, except that such information shall be available to elections officials for the conduct and administration of elections.

(c) The home address, telephone number, occupation, precinct number, identification card number and prior registration information shown on the affidavit of registration for any voter granted confidentiality pursuant to Elections Code Section 2166.5 shall not be disclosed to any person, except that such information shall be available to elections officials for the conduct and administration of elections, and shall appear on the absentee ballot envelope and on the list of absentee voters available to the public, upon completion of the application prescribed by Elections Code Section 2188, for the purpose of challenge during the processing of voted absentee ballots pursuant to Elections Code Section 15005.

(d) The home address, telephone number, occupation, precinct number identification card number and prior registration information shown of the affidavit of registration for any voter other than those granted confidentiality pursuant to Elections Code Section 2166 and 2166.5, shall not be disclosed to any person, except that such information shall be available for election, scholarly, journalistic, political or governmental purpose, as determined by the Secretary of State, upon completion of the application prescribed by Elections Code Section 2188. For the purpose of this subdivision, service of process by a person registered pursuant to Section 22350 of the Business and Professions Code related to a case filed or to be filed in a state or federal court; or a request by an attorney if the information is necessary to represent his or her client, shall constitute a governmental purpose.

(e) For purposes of this section “home address” means street address only, and does not include an individual’s city or post office address.

Elections Code Section 2166 is amended to read:

~~(a) Any person filing with the county elections official a new affidavit of registration or reregistration may have the information relating to his or her residence address and telephone number appearing on the affidavit, or any list or roster or index prepared therefrom, declared confidential upon~~ Upon the filing of an affidavit of registration and either 1) an order of a the superior court issued upon a showing of good cause that a life threatening circumstance exists to the voter, or a member of the voter's household, naming the county elections official as a party; or 2) a certification by the Secretary of State that: a) there exists a threat of death or great bodily injury to the voter as defined in subdivision (e) of Section 12022.7 of the Penal Code; or b) that the individual or the individual's spouse or child living with the individual is a victim of domestic violence; or c) that the individual or the individual's spouse or child living with the individual is a subject of stalking as defined by 1708.7 of the Civil Code or Section 646.9 of the Penal Code, a voter shall be granted confidentiality pursuant to Government Code Section 6254.4 (b).

(b) Any voter granted confidentiality under subdivision (a) shall:

(1) Be considered an absent voter for all subsequent elections or until the county elections official is notified otherwise by the court or in writing by the voter. Application for confidential status pursuant to this section shall constitute an application for an absent voter's ballot. Such application shall remain active for any and all elections held in the jurisdiction in which the voter resides for the duration of the voter's registration. A voter requesting termination of absent voter status thereby abdicates his/her confidential status consents to placement of his or her residence address and telephone number in the roster of voters.

(2) In addition to the required residence address, provide a valid mailing address for the purpose of mailing the absentee ballot. The voter's registration may be canceled upon receipt of mail returned by the Post Office as undeliverable.

(c) any previous affidavit of registration showing the same residence address for any voter granted confidentiality under subdivision (a) shall be removed from file of voters and shall not appear on any current list of active or inactive voters.

(d) A governmental entity, or officer or employee thereof, may not be held civilly liable as a result of the disclosure of the information referred to in Section 6254.4 (b) unless by a showing of gross negligence or willfulness.

Elections Code Section 2166.5 is added to read:

(a) Upon the filing of an affidavit of registration and an application prescribed by the Secretary of State, any voter who meets the qualifications in subsection (e) below shall be granted confidentiality pursuant to Government Code Section 6254.4 (c).

(b) Any voter granted confidentiality under subdivision (a) shall:

(1) Be considered an absent voter for all subsequent elections or until the county elections official is notified otherwise by the court or in writing by the voter. A voter requesting termination of absent voter status thereby abdicates his/her confidential status.

(2) In addition to the required residence address, provide a valid mailing address for the purpose of mailing the absentee ballot. The voter's registration may be canceled upon receipt of mail returned by the Post Office as undeliverable.

(c) Any previous affidavit of registration showing the same residence address for any voter granted confidentiality under subdivision (a) shall be removed from file of voters and shall not appear on any current list of active or inactive voters.

(d) A governmental entity, or officer or employee thereof, may not be held civilly liable as a result of the disclosure of the information referred to in Section 6254.4 (c) unless by a showing of gross negligence or willfulness.

(e) The persons listed below, whether actively employed or retired, as well as the spouse or children of any person who so qualifies (providing the spouse or child is living with the qualifying person) are eligible to be granted confidentiality pursuant to Government Code Section 6254.4 (c):1. A "peace officer" (as defined by Penal Code sections 830. 1; 830.2 (a), (b), (c), (d), and (e); and 830.5), including:

- a. Any sheriff, undersheriff or deputy sheriff of a county;**
- b. Any police officer of a city;**
- c. Any police officer of a district (including police officers of the San Diego Unified Port District Harbor Police authorized by statute to maintain a police department;**
- d. Any marshall or deputy marshall of a municipal court;**
- e. Any constable or deputy constable of a judicial district;**
- f. Any port warden or special officer of the Harbor Department of the City of Los Angeles;**
- g. Any inspector or investigator employed by the district attorney;**
- h. The deputy director, assistant directors, chiefs, assistant chiefs, special agents and narcotics agents of the Department of Justice, and such investigators who are designated by the Attorney General;**
- i. Any member of the California Highway Patrol;**
- j. Any member of the California State Police Division;**
- k. Any member of the University of California Police Department;**
- l. Any member of the California State University and College Police Departments;**
- m. Any member of the Law Enforcement Liaison Unit of the Department of Corrections, provided the person's primary duty is to investigate, apprehend, transport, or otherwise monitor parolees or escapees;**
- n. A parole officer of the Department of Corrections or the Department of the Youth Authority;**
- o. Any probation officer, or deputy probation officer;**
- p. Any parole agent employed by the Youthful Offender Parole Board;**
- q. A correctional officer employed by the Department of Corrections;**
- r. Any employee of the Department of Youth Authority having custody of wards;**
- s. Any employee of the Department of Corrections designated by the Director of Corrections as a peace officer;**
- t. Employees of the State Department of Mental Health designated by the Director of Corrections and working in the California Medical Facility;**
- u. Employees of the Board of Prison Terms designated by the Secretary of the Youth and Adult Correctional Agency;**
- v. Employees of the Department of Youth Authority designated as peace officers by the Director of the Youth Authority;**
- w. Any superintendent, supervisor, or employee having custodial responsibilities in an institution operated by a probation department;**

- x. Any transportation officer of a probation department;**
- y. Employees of the Department of Fish and Game whose primary duty is the enforcement of the law;**
- z. Employees of the Department of Parks and Recreation whose primary duty is the enforcement of the law;**
- aa. The Director and the employees of Forestry and Fire Protection whose primary duty is the enforcement of the law;**
- bb. Employees of Department of Alcoholic Beverage Control whose primary duty is the enforcement of the law;**