



May 5, 2023

VIA Online Portal to Author & Senate Committee on Appropriations

The Honorable Monique Limón
California State Senate
1021 O St., Ste. 6510
Sacramento, CA 95814

**Re: OPPOSE – SB 846; Voter
registration: California New Motor
Voter Program.**

Dear Senator Limón:

We regret that we must respectfully oppose your SB 846, which would change California's "Motor Voter" system into a "back-end opt-out" automatic voter registration (AVR) model that would remove voter information questions from certain California Department of Motor Vehicles (DMV) applications and make it considerably harder for DMV customers to choose not to register or update their registration or to indicate their voting preferences. As spelled out more fully in Section 4 below, implementing SB 846 will require millions of dollars annually, after the taxpayers have already expended millions of dollars streamlining and refining the existing system. This is a poor use of significant state resources that could be better used elsewhere to close voter disparities.

Although we very much share the goals of increasing California's voter registration rate and protecting ineligible individuals from accidental registration, we believe that the approach proposed by SB 846 has significant potential to increase voter confusion, incorrectly deny eligible voters registration opportunities, create erroneous registrations, and strip important voter preference information from registration records.

California has made significant advances in voter registration accessibility in recent years. Almost 88 percent of eligible Californians were registered to vote before the November 2020 General Election – the highest percentage in the past 80 years.¹ This historic rate of voter registration is, in large part, a result of the Motor Voter program currently in place at the DMV,² which allows eligible people to conveniently register or update their voter registration when completing a driver's license or state identification card (DL/ID) transaction at the DMV. When

¹ Cal. Sec. of State, *Record 22 Million Californians Registered to Vote Heading into General Election*, (Oct. 30, 2020), available at bit.ly/SoSPressRelease103020.

² The DMV has been required to provide voter registration opportunities at the time of DL/ID transactions since the passage of Section 5 of National Voter Registration Act (NVRA) in 1993 (the original "Motor Voter" law). 52 U.S.C. § 20504. The front-end AVR system currently in place at California's DMV was implemented in 2018 a result of AB 1461 (the "New Motor Voter" law). Cal. Elec. Code § 2260 et seq.

California launched the DMV automated voter registration program in April 2018, it became the largest and one of the first states in the nation to implement automated voter registration through the DMV.

Over the last five years, the program has resulted in more than 20 million new or updated voter registrations.³ A recent study by USC's Center for Inclusive Democracy showed that the number of new registrants and re-registrants who registered to vote using the DMV increased sixteen-fold between the 2016 and the 2020 general elections.⁴ It also found that California's AVR system has become the top registration method for Latino, Asian-American, and Black registrants.⁵

Yet even with the accomplishments of the Motor Voter program, we know that continued voter participation gaps in California mean that critical issues of local and statewide importance are being made by a predominantly whiter, older, and wealthier electorate that does not represent what this state truly looks like. While registration rates are increasing overall, we still have almost 5 million unregistered eligible Californians – a disproportionate number of whom are youth, people with disabilities, Black, Latino, Asian American, Native, Indigenous, and other people of color, those with limited English proficiency or who have low incomes.⁶ Nonetheless, despite our shared goals of closing these voter registration and participation gaps, we believe the approach proposed by SB 846 is not the solution.

1. The Model Proposed by SB 846 Increases the Potential for Harm from Erroneous Voter Eligibility Determinations by the DMV

When it comes to preventing erroneous registrations, SB 846 seeks to solve a problem that we have no indication actually exists. The solution it recommends, however, would impose significant risk of creating real and serious new problems in the Motor Voter system. Under the existing system, DMV customers who attest to their eligibility and who do not opt-out of the program are automatically registered to vote. Because this system allows customers to choose whether to be registered to vote or have their registration updated at the time of their DL/ID

³ Cal. Sec. of State, *DMV New Motor Voter Registration Transactions Monthly and Yearly Totals by Category*, April 2018 to Present (accessed May 3, 2023).

⁴ Romero, Mindy S., Center for Inclusive Democracy, USC Sol Price School of Public Policy, *California New Motor Voter Law: Changing the State's Voter Registration Landscape*, available at tinyurl.com/USCPriceMotorVoter.

⁵ *Id.*

⁶ Cal. Sec. of State, 15-Day Report of Registration for the November 8, 2022, General Election, Oct. 24, 2022; Romero, Mindy S., Center for Inclusive Democracy, USC Sol Price School of Public Policy, *November 2020 General Election: Latino and Asian-American Vote*, available at bit.ly/USCPriceReportNov2020; Romero, Mindy S., Center for Inclusive Democracy, USC Sol Price School of Public Policy, *California's Youth Vote: November 2020 Election*, available at bit.ly/USCPriceYouthNov2020.

application, renewal, or change of address – that is, at the “front-end” of their DMV transaction, it both gives them clear notice about the DMV voter registration process and allows them to evaluate and verify their own eligibility status.⁷ Supporters claim that by instead making the DMV responsible for determining voter eligibility, and by preventing certain customers from having any opportunity to answer questions about their ability to vote while completing their DMV transaction, SB 846 will be more protective for noncitizen Californians than the current system. Evaluating this claim requires two inquiries. First, will the approach proposed by the bill decrease or increase the number of ineligible people who are accidentally registered to vote? Second, if, hypothetically, any ineligible individuals do become accidentally registered to vote as a result of their DMV transaction, will SB 846’s approach provide additional shelter for them from unfair legal consequences?

Regarding the first question: as the result of a settlement agreement⁸, and the related chaptering of AB 796 (Berman 2021) which codified aspects of the settlement agreement and created the Motor Voter Task Force, the signatories to this letter receive detailed voter registration processing data from the DMV and regularly consult with the Secretary of State and the DMV on the effective implementation of the New Motor Voter Program. Despite the information and insights that this access has provided us, we have not seen any evidence that the current system results in the accidental registration of a significant number of ineligible people. In fact, the existing “front-end opt-out” Motor Voter forms were specifically designed, with input from voter protection organizations like ours, to prevent such erroneous registrations. Currently, when a DMV customer reaches the end of the DL/ID portion of their application, renewal, or change of address form, they are presented with a series of voter registration questions. First, they are asked to select their preferred language for voter registration. Second, they are asked whether they are a US citizen; the form will not progress through the voter registration process unless the customer answers “yes.”⁹ Third, they are presented

⁷ This is consistent with both the provisions in the NVRA that require DL/ID applications to provide customers with the opportunity to attest to their eligibility to vote and with all other modes of voter registration in California, including paper voter registration affidavits and the California Online Voter Registration system. See, e.g., 52 U.S.C. § 20504(c)(2)(C).

⁸ In 2015, the ACLU, LWVC, and our allies notified the DMV and California Secretary of State that they were noncompliant with the NVRA because the DMV violated the “simultaneous application” requirement by attaching a separate voter registration form to DL/ID applications and renewal-by-mail forms, forcing customers to provide duplicate information to register to vote or update their registration. Ultimately, this led to a lawsuit - *League of Women Voters v. Annis* – which was settled in 2018. See, e.g., *League of Women Voters, et al. v. Kim, et al.*, No. 3:17-cv-02665 LB, Doc. 105 (Mar. 9, 2021).

⁹ The other answer choices for this question, as well as for the following question, are “no” and “decline to state.” If a customer chooses either of these options, the DMV form will skip to the end, the DL/ID transaction will be submitted, and the customer will not be registered to vote. The page of the form that asks about citizenship also includes this language: “Under state law, eligible citizens will be registered to vote unless they choose not to in this section. If you’re already registered to vote, this service helps make

with a complete list of the California voter eligibility qualifications (including U.S. citizenship) and asked whether they meet all of those qualifications; again, the voter registration process will not progress unless the customer answers “yes.” Even if a customer answers “yes” to both of these eligibility-related questions, their voter registration application will not be transmitted to the Secretary of State unless the customer also indicates on the next page of the form that they want to either register to vote or to update their registration.¹⁰

We have seen no evidence that the forms currently in place are causing DMV customers who are ineligible to vote to become confused and incorrectly answer in the affirmative, over multiple separate screens, regarding their qualifications and desire to register to vote. Not only is the voter registration form in the current Motor Voter system designed to be secure, but it is also designed to be clear and accessible to California DMV users regardless of whether their primary language is English. In fact, a study found that the voter registration portions of the DL/ID forms – which are offered in 10 language options – are the easiest part of the forms to read and understand for limited English proficient customers.¹¹

Although SB 846 would replace this self-attestation system with one in which the DMV determines customers’ level of access to voter registration opportunities, it provides no guidance for how the DMV would make such an important determination. The bill language does not specify whether voter eligibility would be decided by individual DMV field office technicians – which would likely create significant risk of erroneous, arbitrary, or unfair decisions – or by some software that the DMV would need to develop. If the determination is to be made by new software, the bill provides no safeguards that would require the DMV to develop such a complex system overhaul in a way that ensures the accuracy of its voter eligibility determinations and avoids the problems that accompanied the initial roll out of the DMV’s last major change to the AVR system in 2018.¹² Similarly, the bill establishes no requirements for the DMV to adequately train its staff about the new voter registration system or to monitor, track, or report data about the system

sure your information is up to date. It is a crime to intentionally provide incorrect information on a voter registration form.”

¹⁰ Further adding to the security of the current Motor Voter System, if a DMV customer is issued what is sometimes known as an “AB 60 license” because they were not able to submit satisfactory proof to the DMV of their legal presence in the U.S., the DMV will not allow any voter registration for that customer to be transmitted to the Secretary of State. Cal. Elec. Code § 2263(d).

¹¹ Asian Americans Advancing Justice-California et al., *Building Stronger Asian American, Native Hawaiian and Pacific Islander Communities in California in 2019: Policy Recommendations for State of California Governor Gavin Newsom*, (2019), page 15, available at advancingjustice-la.org/sites/default/files/AANHPI-Transition-Memo-2019.pdf.

¹² See, e.g., Bryan Anderson, Sacramento Bee, *Election Officials Said DMV Wasn't Ready to Launch Motor Voter: California Went Ahead Anyway*, (Jan. 31, 2019), available at [sacbee.com/article224696945.html](https://www.sacbee.com/article224696945.html).

in a way that would help stakeholders resolve problems and develop future improvements to the program.

SB 846 is lacking essential good government and accountability mechanisms, even though a 2019 independent audit recommended that “future changes [to the Motor Voter Program] have defined quality assurance measures and clear decision-making protocols” in order to prevent the kinds of mistakes that accompanied the first months of the last Motor Voter roll out.¹³ The problems with the initial release of the current Motor Voter software have now been resolved, and transforming the California Motor Voter program into the success it is today has involved many incremental improvements, significant advocacy and input from community stakeholders, the imposition of specific transparency and oversight mechanisms through court order, and new legislation passed in 2021 and still being implemented by the DMV. We should not replace the safe and effective existing program which has taken significant time and resources to develop, with one that would likely increase the risk that ineligible Californians would be erroneously registered, and eligible Californians would be erroneously denied the opportunity to register.

Regarding the second question – whether SB 846’s approach would provide additional shelter from unfair legal consequences if ineligible individuals do become accidentally registered to vote as a result of their DMV transaction – unfortunately current caselaw does not support the theory that the back-end opt-out registration model would provide meaningful additional legal protection. SB 846’s proponents have argued that by removing the opportunity for noncitizens to accidentally attest to their eligibility to vote, the back-end approach will afford a legal defense to consequences under federal immigration law.¹⁴ However, even if a back-end approach could theoretically provide some protection for noncitizens who are only erroneously registered and take no further action, the greater risk from SB 846 would likely stem from noncitizens who are incorrectly registered as the result of an administrative error by the DMV or Secretary of State, receive official confirmation from elections officials that they have been registered, receive a ballot in the mail automatically, and assume this means that they must be eligible to vote, and then proceed to cast a ballot during the next election.¹⁵ Federal courts have ruled that even noncitizens who did not attest to

¹³ See, e.g., Cal. Dept. of Finance, *Department of Motor Vehicles – Independent System Assessment: System Development Assessment Report*, (Feb. 21, 2019), available at documentcloud.org/documents/6251287-Ernst-Young.html.

¹⁴ See, e.g., 18 U.S.C. §§ 1015(f), 611; 8 U.S.C. §§ 1182(a)(6)(C)(ii)(I), 1227(a)(6)(A). Although California law already builds into the front-end Motor Voter program some protection from *state* consequences for ineligible people who become registered through the DMV, it is unclear how much the California statute can do to protect DMV customers from *federal* immigration consequences if noncitizens become registered or return a ballot. Cal. Elec. Code § 2269.

¹⁵ As a practical matter, voting will likely present much more severe consequences for ineligible Californians than merely registering. Once mistakenly registered to vote, confused ineligible individuals

U.S. citizenship or were arguably misled during the voter registration process could still face severe consequences if they end up voting.¹⁶

In analyzing whether California should replace its current front-end system with a new back-end system, it is important to consider both the specific circumstances in this state and legal doctrine. Not only is the legal theory behind SB 846 dubious, but the realities on the ground in California – including the size of California's DMV, the number of noncitizens using the state's DMV, the functionality of the current system, and the DMV's data quality, technological capabilities, and track record in implementing competent voter registration systems – indicate that converting the Motor Voter program into a back-end opt-out model would simply create far too much danger for Californians due to erroneous voter eligibility determinations by the DMV.

2. SB 846 Would Make It Harder for Many Voters to Participate by Stripping Important Language and Party Preference Information from Registration Records

In addition to potentially increasing the risk of both erroneous registrations and the accompanying legal consequences of such registrations for ineligible people, SB 846 could also deteriorate the quality of California's voter registration records and make it harder for some voters to participate in future elections. As described above, SB 846's back-end model would remove all voter registration questions and information from certain DMV transactions and automatically register to vote any customer the DMV has deemed eligible unless the customer completes and returns an opt-out postcard mailed to them after their DMV transaction. We know that many people do not receive or do not notice these sorts of postcards¹⁷ – indeed, this lack of awareness about and engagement with the opt-out postcard is the very vehicle that the back-end model relies on for increasing registration numbers.

may be likely to actually vote. All registered voters receive numerous notices addressed to them about upcoming elections and such government mailings could cause individuals to believe that the government is informing them of their eligibility to vote. And in California, now all voters receive more than just information: they automatically receive a mailed ballot before each election, which could compound the misimpression that the individual is eligible to vote.

¹⁶ See, e.g., *Fitzpatrick v. Sessions*, 847 F.3d 913 (7th Cir. 2017); *Olafa v. Mayorkas*, No. 18 CV 6801, 2021 WL 1057736 (N.D. Ill. Mar. 18, 2021); *Chernosky v. Sessions*, 897 F.3d 923 (8th Cir. 2018).

¹⁷ "In an age when email and other types of electronic messaging have become the dominant form of communication, many eligible voters will inevitably overlook a single notice sent via U.S. Mail. The U.S. Mail simply no longer plays the vital role it once did in American life. Email, texting, and online options for paying bills have supplanted the U.S. Postal Service, leading to a large decline in mail volume. The overall volume of mail has fallen by 36% since 2007. In the meantime, the percentage of junk mail has surged. Unwanted advertisements now account for 59% of all mail delivered by the U.S. Postal Service¹⁴⁶ and the average American receives forty-one pounds of junk mail per year." Anthony J. Gaughan, *Notice, Due Process, and Voter Registration Purges*, 67 Clev. St. L. Rev. 485 (2019), available at engagedscholarship.csuohio.edu/clevstlrev/vol67/iss4/5.

By moving both the opt-out opportunity and important voter preference questions from the DMV transaction to a postcard that customers may receive in the mail weeks after their interaction with the DMV – if at all – and then relying on customers to return that postcard in order to indicate their language and party preference, SB 846 would undoubtedly mean that many voters who would have provided these preferences through the existing front-end questions¹⁸ will fail to do so under a back-end model which makes providing this information much more challenging.¹⁹ As currently written, SB 846 could also result in an overwrite of existing party preferences as “No Party Preference” on the records of voters who are already registered to vote if those voters fail to return a back-end opt-out postcard mailed to them after their DMV transaction. SB 846’s changes to how voter preference information is collected by the DMV would create additional and unexpected barriers to participation for many voters when they receive election materials that are not in their primary language or find that they cannot vote in a presidential primary election because they are not registered with their chosen party.²⁰

3. The Back-End Opt-Out AVR Model Proposed by SB 846 Is Not the Solution to California’s Voter Registration Disparities

Although it would impose significant dangers, challenges, and costs for California, back-end opt-out AVR would likely not even be a particularly effective tool for closing our state’s voter registration gaps. Over 85% of Motor Voter transactions since 2018 have either resulted in new or updated registrations or have been opt-outs by people whom the Secretary of State confirmed as already having current, active registrations.²¹ This means that less than 15% of current California AVR users opt-out despite being eligible and unregistered.

¹⁸ These voter preference questions are currently integrated into the customer experience at the DMV; once a customer affirms their eligibility and desire to register or update their registration as described above, the DL/ID forms require the customer to answer these questions before submitting the voter registration portion of the application.

¹⁹ “Sixteen states [including California] have either closed or partially closed primaries, which makes party registration an important part of the voter registration process. In AVR systems that register voters unless they decline via a mailer (also known as a “back-end” opt-out), voters must return a postcard to indicate the party with which they wish to register. This extra step is often not taken by voters. In Oregon, for example, only 14.5 percent of people registered through AVR in 2018 returned the mailer to select a party. As a result, close to 85 percent of new voters registered through AVR were automatically marked as nonaffiliated, an outcome that would matter greatly in some states [like California] and hardly at all in others.” Kevin Morris and Peter Dunphy, Brennan Center for Justice, *AVR Impact on State Voter Registration*, (2019), page 4, available at brennancenter.org/sites/default/files/2019-08/Report_AVR_Impact_State_Voter_Registration.pdf.

²⁰ See, e.g., Paul Mitchell, Capitol Weekly, *Surprise! How Some Voters Chose Partisanship*, available at capitolweekly.net/ca120-surprise-how-some-voters-chose-partisanship.

²¹ Email from Sam Au, VoteCal & Elections Support, Cal. Sec. of State, April 25, 2023.

A significant majority of states that have adopted AVR policies at their DMVs use a front-end opt-out model like California's existing Motor Voter system.²² A nationwide study by the Brennan Center for Justice found that the rare states that have chosen to adopt the back-end opt-out model do “not produce higher registration rates than states that chose a front-end opt-out model.”²³ Only Colorado has done what SB 846 proposes to do to California: convert a front-end AVR system at the DMV into a back-end AVR system. However, Colorado's front-end system was far less successful than California's current system, where 70% of unregistered DMV users opted out of Colorado's previous system.²⁴

4. Converting the DMV's Existing Front-End AVR System into a Back-End System Would Be Highly Resource-Intensive

SB 846 would require the DMV to build and operate an expensive new system, creating additional burdens on an agency that is already focusing its resources on a major technological upgrade. It would mandate yet another major system overhaul to develop a complex three-track registration system that would sort DMV users into separate forms and procedures depending on which identity and residency documents they show to a field office technician. It would require the DMV to hire new staff and consultants to oversee the creation of a new back-end registration system, as well as to retrain hundreds of existing staff at all levels of the agency. The bill would also place new mandates on the Secretary of State's Office to work towards expanding back-end AVR to other agencies, creating the potential for currently unknown and unfunded future costs to the state.

When a similar bill, SB 583 (Newman), was introduced in 2021, the DMV indicated that it would incur both one-time and ongoing costs “in the millions of dollars annually.”²⁵ Creating, implementing, and incrementally improving the AVR system currently in place at the DMV has also cost millions of dollars. In addition

²² As of February 2023, seventeen states plus D.C. have adopted front-end opt-out AVR systems, while only five states have adopted back-end opt-out AVR systems. National Conference of State Legislatures, *Automatic Voter Registration*, (2023), available at nsl.org/elections-and-campaigns/automatic-voter-registration. Congress also expressed its preference for a front-end opt-out AVR system by including it in the For the People Act (H.R.1, 2019) and the Freedom to Vote Act (S.2747, 2021).

²³ A 2019 study by the Brennan Center found that California's front-end AVR model had increased the state's registration rate by 26.8%, but Oregon's back-end model had only increased that state's registration rate by 15.9%. *AVR Impact on State Voter Registration*, *supra* note 17.

²⁴ Justin Grimmer & Jonathan Rodden, *Changing the Default: The Impact of Motor-Voter Reform in Colorado*, January 2022, 5, available at sos.state.co.us/pubs/newsRoom/pressReleases/2022/CO-AVRAnalysisRoddenGrimmer.pdf. Colorado and California DMVs also serve very different populations: 160,000 undocumented immigrants live in Colorado, compared to more than 2.7 million in California. Migration Policy Institute, *Unauthorized Immigrant Population Profiles*, available at migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles.

²⁵ Sen. Cmt on Approps., SB 583 analysis for May 20, 2021 hearing.

to the initial costs to create the current Motor Voter system, the DMV has needed repeated budget increases in order to resolve unforeseen challenges and keep up with workflow. For example, the DMV asked the Legislature for an additional \$2.2 million budget increase to register voters ahead of the March 2020 election, after receiving a \$242 million increase the previous summer.²⁶

Although these costs have ultimately yielded inspiring results through the front-end AVR program, there is no evidence that incurring these substantial costs again would yield positive outcomes for Californians. Instead of placing false hopes on a back-end Motor Voter registration system, California should focus its resources on more effective, evidence-based approaches to increasing voter registration and closing turnout disparities. For example, thoughtfully and carefully extending the AVR model currently in use at California's DMV to other social services points-of-contact – such as applications for health coverage through Covered California – has the potential to bring voter registration to additional groups of under-represented Californians, including low-income voters who may be less likely to interact with the DMV.²⁷ Experts have also pointed to the urgent need to devote millions of additional dollars to closing voter disparities by increasing voter education and outreach.²⁸

Although we greatly appreciate and share SB 846's goals of increasing voter registration and preventing the harms of accidental registrations, we believe this bill is not the way to accomplish those goals. Its approach is simply too high risk for a low and speculative reward. For all of these reasons, our organizations unfortunately must oppose SB 846.

Sincerely,

²⁶ Bryan Anderson, *The Sacramento Bee*, *California DMV wants \$2.2 million to register voters ahead of 2020 election*, Nov. 29, 2019, available at [sacbee.com/news/politics-government/capitol-alert/article237803589.html](https://www.sacbee.com/news/politics-government/capitol-alert/article237803589.html).

²⁷ "States should choose implementing agencies likely to reach many residents... The addition of agencies beyond the DMV would be especially useful in ensuring a diverse electorate, as low-income residents are the least likely to own cars and interact with the DMV." *Id.* at 16.

²⁸ Mindy Romero, *CalMatters*, *California needs to step up funding for voter education and outreach*, June 10, 2022, available at calmatters.org/commentary/2022/06/california-needs-to-step-up-funding-for-voter-education-and-outreach. See also, Letter from Asm. Aguiar-Curry et al. to Asm. Ting et al., *Budget Request for 2022-2023: Funding for Voter Education and Outreach*, March 31, 2022, available at my.lwv.org/sites/default/files/legislative_budget_request_for_2022-2023_-_funding_for_voter_education_and_outreach.pdf (requesting \$85 million for the 2022 and 2024 elections "to address continuing gaps in voter registration and participation for youth, Latino, Black, and Asian and Pacific Islander voters").



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