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January 11, 2018

Mr. Alan Dechert
1132 Meadowgate Drive
Roseville, CA 95661

ELECTION TRANSPARENCY AND SECURITY ACT OF 2018 - # 1802881

Dear Mr. Dechert:

Pursuant to your request, we have prepared in appropriate form, the enclosed initiative measure to be submitted to the electors, relating to open source voting. We remind you that a title and summary prepared by the Attorney General are also necessary. (See Cal. Const. Art. II, § 10 (d); Elec. C. § 9002.)

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By
Alyssa R Kaplan
Deputy Legislative Counsel

ARK:pjb

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

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The Attorney General of California has prepared the following circulating title and summary of the chief purpose and points of the proposed measure:

(Here set forth the unique numeric identifier provided by the Attorney General and circulating title and summary prepared by the Attorney General. Both the Attorney General's unique numeric identifier and the circulating title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

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smaller than
12-point</u>

We, the undersigned, registered, qualified voters of California, residents of ____ County, hereby propose amendments to the Constitution of California and to the Elections Code, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or as otherwise provided by law. The proposed constitutional and statutory amendments read as follows:

SECTION 1.   This act shall be known and may be cited as the Election Transparency and Security Act of 2018.

SEC. 2.   Section 7.5 is added to Article II of the California Constitution, to read:

SEC. 7.5.   The Legislature shall enact those laws necessary to implement statutes providing for voting technology updates, including the introduction of open source voting systems and smartphone-enabled voting.

SEC. 3.   Section 14291 of the Elections Code is amended to read:

14291.   (a) After the ballot is marked, a voter shall not show it to any person in a manner that reveals its contents, except as provided in subdivision (b).

(b) ~~A voter may voluntarily disclose how he or she voted if that voluntary act does not violate any other law.~~ <u>A voter may take a photograph or digital image of his or her marked ballot and distribute or share the photograph or digital image using social media or by any other means.</u>

SEC. 4.   Section 18540 of the Elections Code is amended to read:

18540.   (a) ~~Every~~ <u>A</u> person who makes use of or threatens to make use of any force, violence, or tactic of ~~coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election~~ <u>coercion, intimidation</u> is guilty of a felony punishable

by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three ~~years.~~ years if that action:

(1) Induces or compels any other person to do either of the following:

(A) Vote or refrain from voting at any election.

(B) Vote or refrain from voting for any particular person or measure at any election.

(2) Is undertaken because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election.

(3) Induces, compels, or prevents any other person from distributing or sharing a photograph or digital image of his or her marked ballot.

(b) ~~Every~~ A person who hires or arranges for any other person to ~~make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election~~ violate the prohibitions set forth in subdivision (a) is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years.

SEC. 5. Chapter 5 (commencing with Section 19400) is added to Division 19 of the Elections Code, to read:

CHAPTER 5. OPEN SOURCE VOTING SYSTEMS

Article 1. General Provisions

19400. The Secretary of State shall promulgate regulations to further implement the provisions of this chapter.

19401. For purposes of this article, the following terms have the following meanings:

(a) "Ballot definition file" means a file that contains data about the contests and candidates specific to a particular election.

(b) "Messaging service provider" means an entity with the capacity to send and receive election materials in conjunction with a smartphone-enabled voting application.

(c) "Open source software" means software actually distributed to the public under software licenses that provide that every licensee is free to make copies of the software or derivative works thereof, to distribute them without payment of royalties or other consideration, and to access and use the complete source code of the software.

(d) "Open source voting system" means a voting system that uses open source software for all voting-specific components.

(e) "Shortcode" means a 4, 5, or 6 digit alphanumeric code used to send and receive election materials, including completed ballots, and to otherwise communicate with voters using smartphone-enabled voting applications.

(f) "Smartphone" has the same meaning as defined in paragraph (1) of subdivision (a) of Section 22761 of the Business and Professions Code.

(g) "Smartphone-enabled voting application" means an application that presents data from a ballot definition file to a voter and enables the voter to cast a ballot on his or her smartphone.

Article 2. Open Source Development Grant Program

19410.   (a) The Open Source Development Grant Program is hereby established. The purpose of this program is to facilitate the development of open source software to be used in California voting systems.

(b) The sum of thirty million dollars ($30,000,000) is hereby appropriated from the General Fund to the Secretary of State to be issued as grants pursuant to this article.

19411.   (a) The Secretary of State shall administer the Open Source Development Grant Program and shall make available three ten-million-dollar ($10,000,000) grants through a competitive process.

(b) By March 1, 2019, the Secretary of State shall allocate each of the three grants to a different consortium that satisfies the requirements of subdivision (c). In considering applicants for the grant, the Secretary of State shall take into account each consortium's demonstrated commitment to the development of open source software intended for use in public elections.

(c) To be eligible for a grant pursuant to this article, a consortium shall be organized as a nonprofit organization that is exempt from federal income taxation under Section 501(c)(6) of the Internal Revenue Code and shall have the stated purpose of making and maintaining open source software for elections systems.

19412.   A consortium receiving a grant pursuant to Section 19411 shall use the funds to develop open source software and a smartphone-enabled voting application for use in California elections. A consortium may also use the funds for ancillary costs that are necessary to ensure the viability of the voting system, including documentation, testing, certification, training materials, and membership.

Article 3. Open Source Voting Systems

19420.   Notwithstanding any other law, after December 31, 2019, the Secretary of State shall not certify any voting system other than an open source voting system. The state's use of an open source voting system does not preclude the use of the underlying open source software by other entities for other purposes.

19421.   The sum of ninety million dollars ($90,000,000) is hereby appropriated from the General Fund to the Secretary of State to award grants to counties and cities to procure hardware necessary or helpful to run open source voting systems.

SEC. 6.   Chapter 6 (commencing with Section 19500) is added to Division 19 of the Elections Code, to read:

CHAPTER 6. SMARTPHONE-ENABLED VOTING

19500.   The Secretary of State shall promulgate regulations to further implement the provisions of this chapter.

19501.   (a) On or before January 1, 2020, the Secretary of State shall do both of the following:

(1) Contract with a messaging service provider to make a smartphone-enabled voting application available to voters.

(2) Lease a shortcode to be used across the state in smartphone-enabled voting.

(b) Each county shall make smartphone-enabled voting available to voters in every election conducted after execution of the contract described in subdivision (a). In order to effectuate this provision, the county shall provide the messaging service provider with the ballot definition file and the relevant personal information of each voter who has elected to vote by smartphone, including the voter's need to receive materials in a language other than English, as required by the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or by any other law.

(c) (1) If a voter wishes to vote by the smartphone-enabled voting application but is unable to do so, the elections official shall permit that voter to cast a vote by other means.

(2) If a voter casts a vote by the smartphone-enabled voting application and also by other means, the elections official shall not count the ballot cast by the smartphone-enabled voting application.

(d) A city may conduct a municipal election in accordance with the procedures set forth in this article.

SEC. 7. The statutory provisions of this act may be amended or repealed only by the procedures set forth in this section.

(a) This act may be amended to further its purposes by statute, passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring.

(b) This act may be amended or repealed by a statute that becomes effective only when approved by the electors.

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