

## OPINION

## Borenstein: State ignoring that Californians are voting twice

Secretary of State Alex Padilla disregards election system flaw allowing hundreds to cast two ballots

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For three years, Secretary of State Alex Padilla has ignored a flaw in California's election system that has apparently allowed at least hundreds of voters to cast two ballots.

The problem, first brought to light by Contra Costa election officials, enables Californians who request mail-in ballots to also vote at the polls. In a July 2016 editorial we called on Padilla to solve the problem. It needs a simple fix. But he has done nothing.

Padilla has campaigned nationally – and righteously – for voter access and election integrity, and against President Trump's bogus election commission and attempts to skew the 2020 Census.

But, at home, he has disregarded a procedural flaw that, if left uncorrected, will continue to leave the election systems for about half the state's voters vulnerable.

Padilla's spokesman, Sam Mahood, says the secretary of state is following California law but will work with local counties to resolve the issue administratively.

That's an inadequate response for California's top election official. If there's an administrative fix, he should have implemented it by now. If there's a legal problem, he has had three years to seek corrective legislation.

If Padilla won't lead on this issue, legislators and the governor should – and quickly. The status quo of hundreds of people voting twice is unacceptable.

The vulnerability stems from our bifurcated election system which gives voters the choice of casting ballots by mail or at the polls, and the option to toggle between the two.

The problem is exacerbated during presidential primary elections. That's when voters who decline to state a party preference can exchange their mail-in ballots for partisan ones from parties, including Democratic, that allow crossover voting.

Hence, the urgency to fix the problem before California's next presidential primary, in less than 10 months.

To understand the issue, consider the example of a voter we'll call Fred, who registered with no party preference and typically votes by mail.

After Fred's presidential nonpartisan primary ballot arrives, he opts to instead vote in the Democratic primary and requests that the elections office mail him a replacement partisan ballot.

Fred now has two mail-in ballots. As Election Day nears, he fills out the Democratic ballot and mails it in. On Election Day, he takes the original non-partisan ballot to his neighborhood polling location and exchanges it for another Democratic ballot, which he also casts.

The election workers at the polls have no way of knowing that he has already voted. Elections officials will eventually crosscheck the list of Election Day voters with those who mailed in ballots and determine that Fred voted twice. But by then both ballots will have been co-mingled with all the others and counted – and there's no way to trace back Fred's.

The solution: Fred's Election Day ballot should be set aside in a sealed envelope as a "provisional ballot," to be counted only if election officials later verify that he hasn't already voted.

However, officials from Padilla's office insist that would violate state law. Indeed, a provision in the Elections Code requires Fred to be able to cast a nonprovisional ballot if he surrenders his vote-by-mail ballot.

But the law doesn't account for the problem when someone like Fred receives multiple vote-by-mail ballots, for reasons such as exchanging for a partisan ballot, moving or changing party registration.

It's a real problem. In June 2016, the last presidential primary, Contra Costa election officials discovered 113 instances of double-voting, and Santa Clara County reported 78 cases. (Alameda County did not have data for that primary easily available.)

Three of the Contra Costans were charged with misdemeanor voting fraud and, as part of a diversion program, were sentenced to 20 hours of community service time.

In the other cases, the district attorney could not determine criminal intent. But the bigger problem is that their votes were counted twice – and the system has a vulnerability that remains uncorrected.

The problem does not affect counties that have converted to Padilla's Voters Choice Act program that places a major emphasis on voting by mail. The program reduces the number of polling locations and requires real-time computer access at each location to determine who has already voted.

San Mateo County participates in the program; Santa Clara County will start next year. Contra Costa and Alameda counties have held off participating in the program because of concerns about its significant cost.

The East Bay counties and others that face the same double-voting problem should be given legal options to protect the integrity of the election system. It's time for Padilla and state lawmakers to act. It's overdue.

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Dan Borenstein is an award-winning columnist for the Bay Area News Group and editor for the Times and its affiliated newspapers since 1980, including previous assignments as po editor and assistant metro editor. A Bay Area native, he holds master's degrees in public poli Berkeley.



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