



SHIRLEY N. WEBER, PH.D.
CALIFORNIA SECRETARY OF STATE

November 12, 2021

David J. Canepa
President, Board of Supervisors
County of San Mateo
Hall of Justice - 400 County Center
Redwood City, CA 94063

Shamann Walton
President, Board of Supervisors
City & County of San Francisco
City Hall - 1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, Ca. 94102-4689

Dear President Canepa and President Walton,

Thank you for your August 11, 2021 correspondence. In your correspondence, you request that the California Secretary of State adopt regulations pertaining to voting system pilot programs. It is our understanding that both of you want to utilize a voting system that is not certified or conditionally approved in California, but that is an open-source voting system, for your respective counties in a pilot program during the November 8, 2022, General Election. Thank you for your proposed text and other supporting information. You have also requested that the Secretary of State file the regulations on an emergency basis with the California Office of Administrative Law.

Secretary of State staff has met with members of your respective teams on July 15, 2021, and October 6, 2021 to discuss the current statutory requirements and possible pilot projects for an open-source voting system.

Request for Regulations

It is the expressed intent of the Secretary of State to move forward with promulgating regulations regarding the use of open-source voting systems in pilot programs. Preliminary activities relating to drafting proposed regulations are underway. The regulations to be developed may include, but not be limited to, requirements for plans, implementation and use requirements, and testing and review requirements.

1500 11TH STREET, SACRAMENTO, CA 95814, (916) 653-7244

WWW.SOS.CA.GOV



The Rulemaking Process Under the Administrative Procedure Act

The state rulemaking process begins with the research and gathering of necessary materials and information to develop the following four documents required to initiate the formal Administrative Procedure Act (APA) (Chapter 3.5 of the California Government Code, section 11340 et seq.) rulemaking process with the Office of administrative Law, the agency responsible for reviewing and approving state regulations: (a) Express Terms (Proposed Regulations), (b) Notice of Proposed Action, (c) Initial Statement of Reasons, and (e) Economic and Fiscal Impact Statement. The Secretary of State has historically included parties from outside of the agency, typically those who would be subject to the proposed regulations, to participate in this process.

Upon initiation of the rulemaking process, the Secretary of State is required to also publish a notice of proposed action to the California Regulatory Notice Register and provide notice to all persons that have requested notice. Once the APA rulemaking process is officially started, the Secretary of State has one year to complete process and submit the completed rulemaking file to OAL.

The APA requires a minimum 45-day period for the public to comment to the agency in writing on the proposed regulation. The Secretary of State has historically held public hearings for proposed rulemaking actions. Hearings must be scheduled for a date at least 45 days after the notice of proposed action was published. At the public hearing, both written and oral comments are accepted.

After the initial public comment period, any changes made to the initial proposal require further notice to the public and must be made available for public comment for at least 15 days. If a change is substantial and not sufficiently related to the original proposal, the Secretary of State is required to publish another 45-day notice in the California Regulatory Notice Register. In both instances, a notice of opportunity to comment on proposed changes along with a copy of the text of the proposed changes must be sent to each person who has submitted written comments on the proposal, testified at the public hearing, or asked to receive any notices of proposed modification. However, no further public hearing is required. This typically transpires several times prior to the adoption of regulations.

The Secretary of State is required to summarize and respond to comments that are directed at the proposal or at the procedures of the rulemaking action. For each comment, the Secretary of State must include either an explanation of how the proposed action has been changed to accommodate the comment or state the reasons for rejecting the comment. In summarizing and responding to public comments, the agency must demonstrate that it understood and considered the comment. The summary and response to comments is included as part of the rulemaking file in a document called a Final Statement of Reasons. This is also an extensive process that can require a considerable amount of time and resources depending on the quantity of the received comments.

Once submitted, OAL has 30 working days to conduct a review of the rulemaking record to ensure that the agency satisfied the requirements of the APA and Office of Administrative Law's regulations. OAL will then either approve the rulemaking action and file the proposed regulation with the Secretary of State or disapprove the rulemaking action. Regulations typically become effective on quarterly dates based on when the final regulations are filed with the Secretary of State. The typical quarterly effective dates are January 1, April 1, July 1, and October 1.

Request to File Regulations as an Emergency

After analysis, the request to file voting system pilot program regulations on an emergency basis to allow utilization of a piloted uncertified voting system for the November 8, 2022, General Election does not meet the requirements outlined in the California Government Code. Government Code section 11342.545 provides that an emergency means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. For an emergency regulation to be approved, an emergency must be shown to exist. Unless a situation is expressly deemed in statute to meet the emergency standard, an agency must make a finding of emergency by describing specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation. Additionally, pursuant Government Code section 11346.1(b)(2), a finding of emergency based only upon expediency, convenience, best interest, public need, or speculation, is not adequate to demonstrate the existence of an emergency.

Next Steps

As indicated above, the Secretary of State has begun the preliminary activities for drafting and promulgating regulations. We look forward to your participation in the rulemaking process.

As you are aware, the California Elections Code allows that a governing board can provide for the experimental use of a voting system in a pilot program in an election if the voting system is either: (1) certified or conditionally approved prior to its experimental use; or (2) uses only software and firmware with disclosed source, implements risk-limiting auditing, is suitable for the purpose for which it is intended, preserves the secrecy of the ballot, is safe from fraud or manipulation, is accessible to voters with disabilities pursuant to Elections Code section 19242 and applicable federal laws, and is accessible to voters who require assistance in a language other than English if the language is one in which a ballot or ballot materials are required to be made available to voters pursuant to Elections Code section 14201 and applicable federal laws.

Accordingly, you have two paths forward: submit the voting system for testing and review for certification pursuant to California Elections Code and the California Code of Regulations or utilize a system that is solely disclosed source. If you chose to submit the voting system for testing and review for certification, the application and associated information can be found on our website: <https://votingsystems.cdn.sos.ca.gov/cert-and-approval/vsysapproval/vote-tech-applic-2021.pdf>. If you chose to pursue a system that is solely disclosed source, as the regulation

November 12, 2021

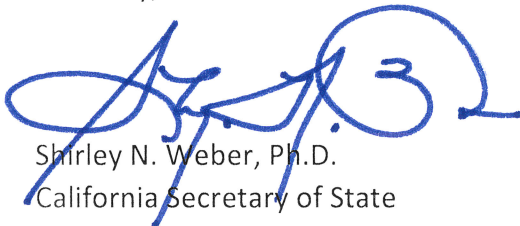
Page 4

process moves forward, the Secretary of State would encourage you to clearly outline and document each of your jurisdiction's intended voting system equipment, implementation and use and provide it to our office for feedback. The outline and documentation should provide, at minimum, (a) a list of each piece of hardware, software and firmware that will be used and how each complies with the requirements in (2) above; and (b) draft Use Procedures on how the system will be implemented and used by county election officials and poll workers. The Use Procedures should be written to conform to the template that is available from the Secretary of State's website at:

<http://votingsystems.cdn.sos.ca.gov/cert-and-approval/vsysapproval/useprocedures-2006.pdf>.

Again, thank you for your correspondence and partnership on this issue. We look forward to working with you.

Sincerely,



Shirley N. Weber, Ph.D.
California Secretary of State



State of California

925 L Street, Suite 805
Sacramento, CA 95814

phone: (916) 445-2125

Milton Marks Commission on California State
Government Organization and Economy

website: www.lhc.ca.gov

January 5, 2022

San Francisco Board of Supervisors Rules Committee
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102

RE: SUPPORT FOR OPEN SOURCE VOTING PILOT LEGISLATION (FILE NO. 211303)

Dear San Francisco Board of Supervisors Rules Committee,

The Little Hoover Commission supports legislation (File No. 211303) sponsored by Supervisor Shamann Walton that would authorize an open source voting pilot program to be conducted during the November 8, 2022 election in San Francisco.

The Commission underscored the importance of strengthening the security of the state's voting infrastructure in its March 2019 [letter](#) to the Governor and Legislature and its April 2021 report, [California Election Infrastructure: Making a Good System Better](#). In [Making a Good System Better](#), the Commission found that California relies on a for-profit model for election equipment security. Under this model, the process to test and re-certify election infrastructure is extensive and does not incentivize security upgrades for existing models.

To help California better address any security vulnerabilities, the Commission recommended that California invest in a publicly-owned, open source elections system. In this system, expert "white hat" hackers and interested members of the public could review the source code and report potential security flaws and other concerns before they could impact elections. Only authorized personnel would be allowed to physically modify the code. The Commission found several benefits to the state investing in and utilizing open source elections systems, including greater transparency, financial savings, and better alignment with a state goal to use open source software across government.

This legislation would partially implement the Commission's recommendation for California to adopt an open source elections system. For this reason, the Little Hoover Commission supports this legislation. If the Commission can provide any further information about our study, please do not hesitate to ask.

Sincerely,

Pedro Nava, Chair

C: Commissioners, Little Hoover Commission

Pedro Nava, Chairman

Cynthia Buiza

Jim Nielsen, Senator

Sean Varner, Vice Chairman

Phillip Chen, Assemblymember

Cathy Schwamberger

Dion Aroner

Bill Emmerson

Janna Sidley

David Beier

Gil Garcetti

Ethan Rarick, Executive Director

Tasha Boerner Horvath,
Assemblymember

Dave Min, Senator

From: [Brandon Philips](#)
To: [Board of Supervisors, \(BOS\)](#); [Young, Victor \(BOS\)](#)
Subject: Comment in Support of the Open Source Voting Pilot Legislation, File No. 211303
Date: Friday, December 31, 2021 9:20:59 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear San Francisco Board of Supervisors-

I write to comment in support of the open-source voting pilot legislation, File No. 211303.

From September 2018 to July 2019 I served on the San Francisco Open Source Voting System Technical Advisory Committee (OSVTAC). I also served as a San Francisco Polling Place Inspector in November 2018 to gain firsthand experience on SF Elections training, processes, and hardware.

I have also spent my entire career working on open source software. Recently, I was Co-Founder and CTO of a company, CoreOS, which built open source and commercial infrastructure software that is used by companies like Nike, Starbucks, Verizon and many others. And we created many open source software products that power critical components of services run at Microsoft, Google, Amazon, and countless others.

My combined experiences with elections and open source development, I believe, give me a useful perspective to comment on the legislation under consideration. In short, I want to encourage you to pass the open-source voting pilot legislation (File No. 211303) and enable the City's open source voting pilot program with VotingWorks to proceed.

In January 2019 as part of my SF OSVTAC research I met Ben Adida, founder of VotingWorks. We discussed the challenges of creating organizations that can both build open source software and also deliver that software to enterprise users with complex requirements. Ben and I shared the same view that early on a successful open source product requires both an engaged set of early users and a core team of engineers who enjoy solving those users' problems.

Throughout the remainder of 2019 VotingWorks built an impressive initial product, piloted in a real election, and received significant donations to expand their work. It was clear that VotingWorks was rapidly becoming an organization up to the challenges we had discussed in January.

In September 2019 my family made our first donation to VotingWorks. The same motivation that motivated my volunteer efforts on the OSVTAC motivated our donation to VotingWorks: I want to see municipalities using the best possible technologies for voting systems, and my experience has shown the best possible technologies for critical systems are open source.

Further, VotingWorks does what no municipality pursuing an open source voting system on its own can accomplish: create a center for collaboration. Having a non-profit organization, like VotingWorks, focused on solving the common problems of many municipalities ensures the open source products are adaptable to municipal requirements, well documented, and encodes

the reliability that naturally emerges from lots of demanding users.

Finally, based on my personal experience as a SF Polling Place Inspector, I believe the proposed plan to pilot VotingWorks as an alternative to existing Dominion ballot marking devices will delight users, SF Elections Staff, and Poll Workers alike. I think all Poll Workers and Staff can agree the accessible ballot marking devices currently deployed in SF are unwieldy and failure-prone. So, a replacement using modern web technologies will be a welcome change.

Moving forward with this VotingWorks pilot will help San Francisco lead California in adopting open source voting technology. And I am confident that SF Staff, Poll Workers, and Voters will see excellent results with the product just as Mississippi has.

Thank You,

Brandon



SHIRLEY N. WEBER, PH.D.
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November 12, 2021

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November 12, 2021

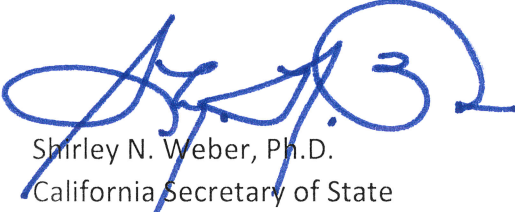
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Again, thank you for your correspondence and partnership on this issue. We look forward to working with you.

Sincerely,



Shirley N. Weber, Ph.D.
California Secretary of State

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Director John Arntz, Department of Elections

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: December 17, 2021

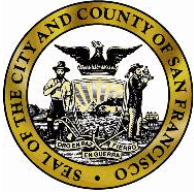
SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 211303

Ordinance amending the Municipal Elections Code to require the Director of Elections to submit information documenting the City's intended open source voting pilot program to the California Secretary of State, on behalf of the Board of Supervisors, and, upon approval of the Secretary of State, to implement such a system for use at the November 8, 2022, election.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 211303 **File Type:** Ordinance **Status:** Pending Committee Action

Enacted: _____ **Effective:** _____

Version: 1 **In Control:** Rules Committee

File Name: Municipal Elections Code - Open Source Voting **Date Introduced:** 12/14/2021

Requester: _____ **Cost:** _____ **Final Action:** _____

Comment: _____ **Title:** Ordinance amending the Municipal Elections Code to require the Director of Elections to submit information documenting the City's intended open source voting pilot program to the California Secretary of State, on behalf of the Board of Supervisors, and, upon approval of the Secretary of State, to implement such a system for use at the November 8, 2022, election.

Sponsor: Walton

History of Legislative File 211303

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	12/14/2021	ASSIGNED	Rules Committee		
	12/16/21 - President Walton waived the 30-day rule pursuant to Board Rule No. 3.22.					

Member, Board of Supervisors
District 3



City and County of San Francisco

AARON PESKIN

DATE: January 6, 2022
TO: Angela Calvillo
Clerk of the Board of Supervisors
FROM: Supervisor Aaron Peskin, Chair, Rules Committee
RE: Rules Committee
COMMITTEE REPORT

Pursuant to Board Rule 4.20, as Chair of the Rules Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on Tuesday, January 11, 2022, as a Committee Report:

211100 [Administrative Code - Commissioners - Health Service System Eligibility]

Ordinance amending the Administrative Code to provide members of the Public Works Commission, Sanitation and Streets Commission, and Sheriff's Department Oversight Board with health insurance coverage through the San Francisco Health Service System.

211303 [Municipal Elections Code - Open Source Voting]

Ordinance amending the Municipal Elections Code to require the Director of Elections to submit information documenting the City's intended open source voting pilot program to the California Secretary of State, on behalf of the Board of Supervisors, and, upon approval of the Secretary of State, to implement such a system for use at the November 8, 2022, election.

This matter will be heard in the Rules Committee at a Regular Meeting on Monday, January 10, 2022, at 10:00 a.m.

/s/ Aaron Peskin

From: [Jim Soper2](#)
To: [Board of Supervisors, \(BOS\)](#); [Young, Victor \(BOS\)](#)
Subject: RE: Open source ordinance, file #: 211303
Date: Thursday, January 6, 2022 12:22:39 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

I am co-chair of the National Voting Rights Task Force. We are a Bay Area group that has been working for fair and accurate elections since 2004.

We are writing in support of the proposed open source ordinance, file #: 211303, as described here:

"Ordinance amending the Municipal Elections Code to require the Director of Elections to submit information documenting the City's intended open source voting pilot program to the California Secretary of State, on behalf of the Board of Supervisors, and, upon approval of the Secretary of State, to implement such a system for use at the November 8, 2022, election."

(<https://sfgov.legistar.com/LegislationDetail.aspx?ID=5363338&GUID=17F649C5-8994-4B55-BC46-BEF731449C51>)

It is very important that the public be able to inspect the software that is used to elect our governments. No less important, we should also have access to the log files, databases, and other data associated with the voting system. With San Francisco's current vendor, the for-profit company Dominion, the software and inner workings of the system is secret and considered private property.

We urge the Board to pass this legislation.

Thank you,

Jim Soper

Co-Chair,
National Voting Rights Task Force
www.nvrta.org

From: [Brandon Philips](#)
To: [Board of Supervisors, \(BOS\)](#); [Young, Victor \(BOS\)](#)
Subject: Comment in Support of the Open Source Voting Pilot Legislation, File No. 211303
Date: Friday, December 31, 2021 9:21:00 PM

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Dear San Francisco Board of Supervisors-

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Thank You,

Brandon



Chris Jerdonek <chris.jerdonek@gmail.com>

Support for File #211303 (Municipal Elections Code - Open Source Voting)

Barbara Simons <barbara.b.simons@gmail.com>
To: board.of.supervisors@sfgov.org
Cc: Chris Jerdonek <chris.jerdonek@gmail.com>

Thu, Jan 6, 2022 at 4:27 PM

Dear Board of Supervisors,

I am submitting this email in strong support of the proposed legislation (File #211303) to implement an open source voting pilot in San Francisco during the November 2022 election.

As of now, the voting systems used in San Francisco are proprietary. That means that it is not possible for independent experts to examine the software that runs the machines and report on deficiencies or errors that are uncovered without getting permission of the vendor, something that rarely is granted. Yet, these voting systems are used to tabulate our votes and determine who the various winners are. Given how contentious our elections have become together with the motivation of some bad players to manipulate our elections, San Francisco should lead the way with the most secure, open, and transparent voting system possible.

We know that it's almost impossible to write a large software program that has no errors or bugs. For that reason alone, we need to deploy voting technology that can be inspected and checked by independent experts. That's why San Francisco needs open source voting technology.

Regards,

Barbara Simons

[301 Mission St., Unit 45D](#)

[San Francisco, CA 94105](#)

P.S. Since I have been working on issues relating to voting technology for years, I've included a short bio as an fyi.

 **Election Bio.pdf**
87K

Barbara Simons has been on the Board of Advisors of the U.S. Election Assistance Commission since she was appointed in 2008 by Sen. Reid and reappointed by Sen. Schumer. She published *Broken Ballots: Will Your Vote Count?*, a book on voting technology co-authored with Douglas Jones. She also co-authored the report that led to the cancellation of Department of Defense's Internet voting project (SERVE) in 2004 because of security concerns. Simons is a former President of the Association for Computing Machinery (ACM), the oldest and largest international educational and scientific society for computing professionals. She is the only woman to have received the Distinguished Engineering Alumni Award from the College of Engineering of U.C. Berkeley, where she earned her Ph.D. in computer science. A fellow of ACM and of the American Association for the Advancement of Science, she also received the 2020 ACM Policy Award, the Computing Research Association Distinguished Service Award, the ACM Outstanding Contribution Award, the Electronic Frontier Foundation Pioneer Award, and the Norbert Wiener Award from Computer Professionals for Social Responsibility. She is Board Chair of Verified Voting and is retired from IBM Research.

From: [Charlotte Hill](#)
To: [Board of Supervisors, \(BOS\)](#); [Young, Victor \(BOS\)](#)
Subject: Support for File No. 211303 (open-source voting pilot legislation)
Date: Wednesday, January 5, 2022 9:18:41 PM

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Dear San Francisco Board of Supervisors,

I served on the San Francisco Elections Commission for two years from May 2018 to March 2020, including as Vice President in 2019. I also completed a PhD recently at UC Berkeley's Goldman School of Public Policy. My focus was on reforms that can improve democracy in the United States.

I understand that the San Francisco-based nonprofit VotingWorks recently offered to help San Francisco conduct a small pilot of its open-source paper-ballot voting system during the November 2022 election. Based on my experiences on the Elections Commission, my knowledge of VotingWorks, and my perspective on voting reform, I want to encourage you to accept this offer by passing the recently introduced open-source voting pilot legislation (File No. 211303).

I have been following VotingWorks since the fall of 2018. With its focus on open-source paper-ballot voting, I can attest that VotingWorks is a good organization and effective in its mission. I even started donating to the organization as a result. VotingWorks' progress in completing the development of an open-source paper-ballot voting system is a remarkable achievement—one that benefits everyone, because open source is available to everyone. No other organization in the United States, nonprofit or for-profit, has come close to developing a complete open-source voting system.

Developing an open-source voting system was one of the City's goals while I served on the Elections Commission. During that time, I saw many challenges faced by both advocates and the City and County itself. The consulting firm the City hired to assess the project estimated it would cost between \$12 million and \$28 million for design and development alone. In the spring of 2018, the Elections Commission asked the City to budget an initial \$4 million to start the project. Later that year, the Board of Supervisors and Mayor were able to set aside just under \$1.3 million. However, this seed money was largely taken away when the pandemic hit, leaving no remaining resources and no path to progress.

Fortunately, VotingWorks' own progress in the meantime means that San Francisco no longer has to spend millions of dollars and years of time developing its own system. VotingWorks' offer to conduct a pilot creates an opportunity for San Francisco to try an open-source system in a limited setting—at no cost to the City—all while receiving oversight from the California Secretary of State under the California Elections Code. In February 2018, the City's RFP for a new voting system had only one bidder: the City's current vendor, Dominion. If VotingWorks' system is successful in a pilot, it means that San Francisco's next voting system RFP would very likely have an open-source option. This extra option would help lower costs for the City's next voting system contract and thus free up taxpayer dollars for other City initiatives.

Moving forward with a pilot during the November 2022 election can do much to realize one of the City's goals of increased election transparency through open-source voting, and it can do so at little or no cost to the City. In doing so, San Francisco can be a participant in bringing about open-source voting and be a leader for all counties in California in the process.

Sincerely,

Charlotte Hill

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