

ELECTIONS REDUX

SUMMARY

The Mendocino County voters can be relieved to know that every possible attempt is made to count their votes. Many manual procedures are in place because some voters fail to follow ballot instructions.

The Registrar of Voters is determined to ensure accuracy and accountability for election results. Due to changes in voting procedure, 80% of voters are now obliged to vote by mail. As a result, the actual final tally is delayed for up to 30 days after an election. Both the public and elected officials find the delay unacceptable.

Reporting intermediate vote counts could cost \$5,000 each and any improvement in the speed of the final count will require new expenditures for equipment and additional temporary hires to count mail-in ballots before Election Day. For example, 21,700 mail-in ballots were available for counting prior to November 6, 2016 Election Day. While the Registrar had 10 days prior to Election Day to count them, approximately only 6,000 were counted by Election night.

It is clear to the Grand Jury that election counting procedures need to change. This will either be forced on the County by public opinion or the implementation of State law.

GLOSSARY

Manual Count: "One percent manual tally" is the public process of manually tallying votes in 1% of the precincts, selected at random by the elections official, and in one precinct for each race not included in the randomly selected precincts. This procedure is conducted during the official canvass to verify the accuracy of the automated count. (Elections Code §336.5)

Official Canvass: The "official canvass" is the public procedure of processing and tallying all ballots received in an election, including, but not limited to, provisional ballots and vote by mail ballots not included in the semifinal official canvass. The official canvass also includes the process of reconciling ballots, attempting to prohibit duplicate voting by vote by mail and provisional voters, and performance of the manual tally of 1% of all precincts. (Elections Code §335.5)

Provisional Ballots: Ballots that are voted at the polls when a voter's registration is in question, or when records indicate the voter was already sent an absentee ballot. Provisional ballots are sealed in special envelopes at the polls and must be individually researched and verified at the Registrar's Office before ballots are counted, or they are rejected in accordance with election laws. (Elections Code §14310)

Spoiled Ballots: Signature approved ballots with a visually noted problem(s) that will not allow it to pass through a counting machine. These require manual re-creation by two election staff.

BACKGROUND

The 2016-17 Mendocino County Grand Jury received a number of complaints about the election observation process during the June 7, 2016 Primary Election and about the continual lack of timeliness for the reporting of election results. Pursuant to Elections Code §15104(b) the Grand Jury reviewed the election process in Mendocino County during the November 6, 2016 General Election.

The Grand Jury has reviewed and reported on the County election process in the past and has an ongoing responsibility. Past investigations are from 2004-05, "Report on the County Clerk and Assessor's Office," and 2007-08, "Your Vote Does Count, A Look at Mendocino County Voting." Grand Jury reports are available online at <http://www.co.mendocino.ca.us/grandjury>.

APPROACH

During the investigation, the Grand Jury reviewed general election law and, specifically, the *General Rules and Election Observation Rights & Responsibilities* and other pertinent election documents. The Grand Jury also reviewed newspaper coverage past and current of both the Primary and General Elections, and the September 13, 2016 Board of Supervisors meeting during which the Supervisors interviewed the County Registrar of Voters. The Grand Jury interviewed the complainant, the Registrar of Voters, and members of the Board of Supervisors.

The Grand Jury observed the election process on numerous occasions at various locations, and interviewed staff in the Elections office. During the observation of ballot counting, the Grand Jury questioned a voter's eligibility on a ballot.

DISCUSSION

Reporting Election Results

Following the 2000 Presidential Election, Congress passed and President Bush signed into law the *Help America Vote Act of 2002* (HAVA), which mandated that states and localities update their voting procedures and equipment. This included requiring that all polling places be accessible to and have specialized equipment for the disabled to vote independently and privately. To decrease the cost of implementing HAVA, California Elections Code §3005 permitted precincts with fewer than 250 registered voters to become mail-in ballot only.

Effective January 1, 2006, the former Registrar of Voters implemented changes to many of this County's voting procedures in line with the updated California election law. Precincts with more than one special district were reorganized, increasing the overall number of precincts from 274 to 388. Precincts with fewer than 250 registered voters became mail-in ballot only, eliminating at that time 28 polling places.¹ Mail-in ballots were preferred for decreased cost, and difficulty in finding polling place workers and locations accessible to disabled voters. Also, expected was an increase in voter participation. For the November 2006 election, approximately 70% of the County's registered voters voted by mail.²

Currently there are 250 precincts, 69 of which can vote at 24 polling places located throughout the County. Each polling place can accommodate more than one precinct, with each precinct having its own polling place workers and ballot.

For the November 6, 2016 General Election³, 41,566, or 81%, of the 51,035 registered County voters were issued vote-by-mail ballots. 31,729, or 82%, of the 38,730 ballots cast were mail-in ballots. Of these, 21,700 vote-by-mail ballots were received before Election Day, and 10,029 vote-by-mail ballots were received on Election Day. The majority of those, 80%, were dropped off at the Registrar of Voters office or at the polls on Election Day. There were approximately 900 provisional ballots that had to be reviewed and counted manually.

¹ "Elections Office Clarifying Changes," Mintz, Katie, Ukiah Daily Journal, August 4, 2006

² "70% in County Vote by Mail," Mintz, Katie, Ukiah Daily Journal, November 2, 2006

³ http://www.co.mendocino.ca.us/acr/pdf/GEMS_ELECTION_SUM_FINAL_OFFICIAL_updated.pdf

A result of moving from polling place to mail-in balloting is that the reporting of election results is delayed. Ballots completed on voting machines at polling places must be counted by the end of Election Day, making those results available for posting by the end of that day or the next. The counting procedures for mailed provisional ballots, mail-in ballots, and mail-in ballots dropped off at polling places, postpone the availability of results for up to 30 days. This is the time limit imposed by State law for the submission of certified results.⁴

Our County Registrar of Voters policy is to release the vote count that is completed by the end of Election Day and the Certified Election results when the canvass is complete. There are no counts released between these two dates. This November 2016 election, 31% of all votes cast were tallied and reported by the end of Election Day. In 2006, the former Registrar announced election results on election night; in 2016, final certified results were posted late in the evening December 1, 2016 on the County website, 24 days after the election.⁵

The method of tabulating votes requires the use of antiquated memory cards. Each election result currently requires the use of 36-50 cards. The Grand Jury was informed that these cards cost \$100 each. That means that each update count would cost up to \$5,000. According to the Registrar of Voters there are currently no State approved replacement tabulating machines.

The counting procedure we observed, excluding provisional ballots, consisted of the following steps:

- opening the ballot envelopes
- tearing off the privacy flap
- scanning individual ballot barcode by hand wand
- visual verification of voter signature individually by staff comparison on computer screen
- sorting of ballots by precinct
- ballots stored and secured
- separated spoiled ballots
- ballot re-creation
- ballots by precinct scanned for count

⁴ California Code of Regulations Elections Code §20706

⁵ This still beat the 30 day State deadline

Senate Bill 450: California Voter's Choice Act

The State further addressed the requirements of HAVA in 2016 with the passage of Senate Bill 450 (SB 450). This bill will essentially convert all ballots to mail-in ballots.

The Legislature is allowing each county to opt in or out of the provisions of the bill.

SB 450 provides for the elimination of precinct polling places as we currently know them. Instead, the County would have six voting centers. Two of these centers would be open for 10 days prior to the election and on Election Day. The other four centers would open 3 days prior to the election and on Election Day.

Each voting center would be required to have computers that generate a ballot for each precinct in the county, regardless of which special district, school district or supervisorial district in which the voter resides. The County would have to purchase these machines and the needed software. The County would also need to hire and train staff to use and operate these specialized machines.

Three voting machines in each polling place would also be required for handicapped and disabled voters. The County currently has enough of these machines to comply with the provisions of SB 450.

SB 450 did not change the language in Elections Code §3017(c) that the County Election official:

“On or before March 1, 2008, the elections official shall establish procedures to track and confirm the receipt of voted vote by mail ballots and to make this information available by means of online access using the county’s elections division Internet Web site. If the county does not have an elections division Internet Web site, the elections official shall establish a toll-free telephone number that may be used to confirm the date a voted vote by mail ballot was received.”

This provision was tested by the Grand Jury and it is followed in Mendocino County.

Election Count Observation

The Registrar of Voters responded to the observation difficulties experienced by public observers during the June 2016 Primary. Changes were made to the physical environment at the Administration Building. A Dutch door was installed to permit viewing of the election staff in the Registrar’s office. Two remote large screen televisions were set up in the main corridor showing the verification of

ballots. This enabled observers to see the ballot counting process, including the sorting by precinct, the verification of signatures, and the creating of new ballots to replace provisional ballots.

The Grand Jury observed that it was difficult to view the verification of signatures, the creation of replacement ballots, and to hear the discussion between election officials. The handling of provisional ballots, in this County, is the sole discretion of the Registrar of Voters.

FINDINGS

- F1. The Registrar of Voters does an excellent job in the accuracy of reporting certified results.
- F2. Lack of timely results frustrates candidates and voters.
- F3. Twenty seven percent, or 10,029 mail-in ballots, were dropped off at a polling place on Election Day indicating that some voters may prefer to vote at polling places.
- F4. The Office of the Registrar of Voters follows its established procedures rigidly.
- F5. The Registrar of Voters voiced a willingness to change but has not implemented any substantive changes.
- F6. To achieve more timely results, members of the Board of Supervisors stated a willingness to dedicate resources to improvement, including increasing the budget for hiring more election workers and reserving more physical space for ballot counting.
- F7. The procedures for processing election results are labor intensive and lack adequate modern data processing.
- F8. Adopting the provisions of SB 450 will be expensive for low population counties like Mendocino County.

F9. Observation has been improved, but observers could not hear the proceedings or view the signature comparisons.

RECOMMENDATIONS

The Grand Jury recommends that:

- R1. The BOS and the Registrar of Voters review SB 450 and either adopt the provisions of SB 450 or change the current ballot counting procedures for more timely results. (F1, F2, F4-F8)
- R2. Regardless of the adoption of the provisions of SB 450, the Registrar of Voters requests updated more efficient equipment and software. (F2-F8)
- R3. The Registrar of Voters hires and trains more workers to provide more timely results. (F1, F2, F5-F7)
- R4. The Registrar of Voters updates election results weekly before the issuance of the State required certified results. (F2, F4, F5, F6)
- R5. The Registrar of Voters provides training and outreach education instructing voters how to correctly cast a vote with the aim to reduce the number of spoiled and provisional ballots. (F6, F8, F9)
- R6. The Registrar of Voters install microphones so that observers can hear the counting proceedings between staff and implement a procedure to allow observers to view signature comparisons. (F9)

RESPONSES

Pursuant to Penal Code §933.05, responses are *required* from the following individual(s):

- Mendocino County Clerk/Registrar of Voters: All Findings and All Recommendations

Pursuant to Penal Code §933.05, responses are *required* from the following governing body:

- Mendocino County Board of Supervisors: (F2, F6) (R1-3, R5)

APPENDICES

Appendix 2-1: County of Mendocino Office of the Assessor-Clerk Recorder Memorandum dated February 7, 2017

Appendix 2-2: SB 450 Legislative Analyst comments

Appendix 2-3: Memorandum to All Candidates, Incomplete Ballot Counting on Election Night

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

Appendix 2-1

County of Mendocino Office of the Assessor-Clerk Recorder

Memorandum dated February 7, 2017

*County of Mendocino
Office of the Assessor-Clerk Recorder*

MEMORANDUM

DATE: February 7, 2017
TO: Finley Williams, Grand Jury
FROM: Susan M. Ranochak, Assessor Clerk-Recorder



1. 21,700 Vote-By-Mail ballots.
2. There are no tabulation scanners at the polling places. All paper ballots are tabulated at a central location located at the Registrar of Voters office in Ukiah. There were two votes recorded on the DRE handicap accessible machines. There were twenty-four machines deployed throughout the county.
3. There were a total of 10,029 vote by mail ballots received on Election Day. 2,015 through the mail, 1,198 dropped off at our office and 6,816 dropped off at the polls.
4. 796 Vote-By-Mail ballots postmark +3
5. 1,136 Provisional ballots

What ballots are counted by Election Day? The ballots that are counted by the end of Election Day are all paper ballots voted at the polls along with vote by mail ballots that have been opened and have completed the remake process.

What would your office need to have all the mail-ins received before Election Day counted by Election Day? We would need additional staff, space and funding.

What is that percent of the total turnout? "I'm assuming your referring to your sixth question, What ballots are counted by election day?", $12,032/38730 = 31\%$.

Appendix 2-2

SB 450 Legislative Analyst comments

Senate Bill No. 450
CHAPTER 832

An act to amend Sections 3017 and 15320 of, to add Sections 4005, 4006, and 4007 to, and to add and repeal Section 4008 of, the Elections Code, relating to elections.

[Approved by Governor September 29, 2016. Filed with Secretary of State September 29, 2016.]

legislative counsel's digest

SB 450, Allen. Elections: vote by mail voting and mail ballot elections.

Existing law requires all vote by mail ballots to be voted on or before the day of the election and requires the vote by mail voter to return the ballot by mail or in person, as specified, to the elections official who issued the ballot.

This bill would require an elections official who receives a vote by mail ballot that he or she did not issue to forward that ballot to the elections official who issued the ballot no later than 8 days after receipt. By requiring an elections official to forward a ballot to the elections official who issued the ballot, the bill would impose a state-mandated local program.

Existing law authorizes cities with a population of fewer than 100,000 persons, school districts, and special districts to conduct an all-mailed ballot special election to fill a vacancy on the legislative or governing body of those entities under specified conditions.

This bill, the California Voter's Choice Act, would, on or after January 1, 2018, authorize specified counties, and on or after January 1, 2020, authorize any county except the County of Los Angeles, to conduct any election as an all-mailed ballot election if certain conditions are satisfied, including conditions related to ballot dropoff locations, vote centers, and plans for the administration of all-mailed ballot elections. The bill would require the Secretary of State, within 6 months of each all-mailed ballot election conducted by a county pursuant to these provisions, to report certain information to the Legislature regarding that election. The bill would require the county that conducted the all-mailed ballot election to submit to the Secretary of State the information needed for the Secretary of State to prepare the report.

This bill would, on or after January 1, 2020, authorize the County of Los Angeles to conduct any election as a vote center election if certain conditions are satisfied, including conditions related to ballot dropoff locations and vote centers. The bill would, on or after January 1, 2020, authorize the County of Los Angeles to conduct a special election as an all-mailed ballot election pursuant to specified provisions that apply to every county that chooses to conduct a special election as an all-mailed ballot election.

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This bill would also require the Secretary of State to establish a taskforce that includes certain individuals to review all-mailed ballot elections conducted pursuant to these provisions and to provide comments and recommendations to the Legislature within 6 months of each all-mailed ballot election or vote center election.

This bill would incorporate additional changes to Section 3017 of the Elections Code proposed by AB 1921 that would become operative only if AB 1921 and this bill are both chaptered and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Appendix 2-3

Memorandum to All Candidates, Incomplete Ballot Counting on Election Night

MEMORANDUM
COUNTY OF MENDOCINO
ELECTIONS

TO: *All Candidates*

FROM: *Susan M. Ranochak, Registrar of Voters*

SUBJECT: **INCOMPLETE BALLOT COUNTING ON ELECTION NIGHT**

Candidates are frequently surprised on the day after an election when they learn that there are ballots countywide remaining to be counted. These uncounted ballots may leave some close races undecided for days or even weeks. This memo is provided as a courtesy to explain the logistics of election night ballot counting, and follow-up ballot tabulation, which occurs in the days/weeks following the election. The law allows 28 days after the election to complete the ballot tally and the official audit of the election, known as the Canvass. When the Canvass is completed, the official results are certified.

There are two categories of ballots that cannot be processed on Election Night:

- Absentee ballots turned in at polling locations
- Provisional ballots voted at the polls

Absentee ballots turned in at polling locations. Many absentee voters wait until the last minute to make their voting choices and then drop off their absentee ballots at a polling place on election day. We receive these ballots very late on election night. All absentee ballots must be pre-processed before they are counted – this includes verifying every absentee voter's signature prior to opening the absentee ballot envelopes to remove the ballots in preparation for counting.

Provisional ballots voted at the polls. Provisional ballots are voted at the polls when a voter's registration is in question, or when our records indicate the voter was already sent an absentee ballot. Provisional ballots are sealed in special envelopes at the polls and must be individually researched and verified at the Registrar's Office before ballots are counted or rejected in accordance with election laws.

Ballots containing write-in votes. Must be individually reviewed to determine whether or not the write-in vote is for a qualified write-in candidate and whether or not the voter over-voted (i.e. voted for a candidate on the ballot and also voted for a write-in candidate for the same office.). When an over-vote occurs, neither vote can be counted for that one office, although the rest of the ballot selections will be counted. Vote tallies for write-in candidates are also certified at the conclusion of the official canvass.

There will be no updates to our Final Unofficial results posted on election night until the Final Official results are released at the time of certification. Based on past trends, the number of ballots remaining to be counted after election night is anticipated at 1,000 – 2,500 countywide. Our staff will be working as quickly as possible to prepare all outstanding ballots for tabulation.

California law permits 28 days to complete the final, official canvass and certify the results of the election. This provision of the law recognizes the complexity of completing the ballot count and conducting a thorough audit of the election results to ensure accuracy. Part of the canvass process is a legally required manual recount of the votes cast for all candidates and measures on the ballot in 1% of the total voting precincts. This manual process verifies the accuracy of the computer count. As always, candidates and members of the general public are invited to observe ballot counting and the manual tally of ballots from the randomly selected 1% of the voting precincts.

We realize it is difficult for candidates/campaigns involved in close races to wait days and sometimes weeks to know whether or not they won or lost the election. However, we hope that the reasons for the delays in the final ballot tally have been explained fully in this memo. If you have additional questions, please call me at 463-4376.