

Ventura County Registration and Voting

Summary

The Ventura County 2004-2005 Grand Jury conducted an inquiry to determine the extent that voter fraud and voting by ineligible persons is possible within Ventura County's elections. The Grand Jury also reviewed practices within the Ventura County Elections Division ("Elections Division") to determine compliance to election laws. The Grand Jury concluded that effective procedural controls are in place to minimize voting by ineligible persons, while at the same time encouraging and enabling eligible voters to exercise their right to vote. It also concluded that the Elections Division's recruitment, training and support services for the volunteer poll workers¹ are comprehensive and largely effective.

Background

Due to media coverage of the November 2, 2004 General Presidential Election (the 2004 General Election), the Grand Jury became interested in the procedures the Elections Division would use to verify the identity and citizenship eligibility of record numbers of newly-registering voters. The Grand Jury was also interested in the procedures used to verify the identities of persons appearing at the polling places to cast ballots.

Additionally, bilingual issues came to the forefront in Ventura County immediately prior to the 2004 General Election. The United States Department of Justice, Civil Rights Division (DOJ), had reported that Ventura County has approximately 10,000 voting-age citizens of a Spanish heritage, or Hispanic, who are "limited-English proficient." The DOJ claimed that Ventura County had failed to provide an adequate number of bilingual poll workers to assist Spanish-speaking voters and that the county had failed to translate written election materials and information into Spanish. In filing charges against the County of Ventura, the DOJ alleged that Ventura County was in violation of Section 203 of the Voting Rights Act of 1965.

To avoid "protracted and costly litigation," the United States and Ventura County agreed to a Consent Decree which would be in effect for three years starting September 2, 2004. This decree imposed specific mandates on all federal, state and local elections administered by the county. The Consent Decree, which covered 185 of Ventura County's 315 precincts, generally required that the county provide more bilingual workers at polling places and that the county must provide election signs, instructions, forms and ballots written in Spanish.

Finally, the Ventura County 2003-2004 Grand Jury (2003 Grand Jury) had responded to a citizen complaint of voter registration vulnerabilities by investigating and publishing a report titled "Voter Registration Safeguards." That report specifically addressed the

¹ The terms "poll workers" and "elections officers" are used interchangeably to refer to the volunteer Inspectors and Clerks who work at the polling sites on the day of the election.

Elections Division's process for purging duplicate and obsolete voter registration records. That Grand Jury concluded, "voter rolls are updated appropriately and in a timely manner." Further, the 2003 Grand Jury recommended that the Elections Division publish pamphlets and web information to inform the public on the voter registration and purging process. The County Clerk and Recorder responded to that report with concurrence on all findings and agreement to publish an informational pamphlet "when the budget is sufficient to allow it." According to the response, the web site would be updated "as soon as possible." The current Grand Jury undertook to follow up on the web site revision as well as look into the costs of the informational pamphlet to determine when the Elections Division might be able to accomplish those objectives.

In its investigation and reporting, the 2003 Grand Jury had determined that there were sufficient safeguards in the voter registration process to prevent a single person from voting multiple times. The current Grand Jury sought to determine if sufficient safeguards were in place during the process of voting to prevent ineligible persons from voting and to determine if procedures and training for election officers (poll workers) were appropriate to ensure compliance with both existing voting laws and the newly-imposed guidelines of the Consent Decree.

Methodology

The Grand Jury interviewed the Ventura County Clerk and Recorder, Assistant Registrar of Voters and County Counsel to learn about election laws and the voter registration process. In addition, the Grand Jury obtained the September 2, 2004 Consent Decree imposed by the United States District Court, Central District of California. The Consent Decree was reviewed to identify newly-imposed guidelines that might affect the local registration and voting process.

The California Elections Code was reviewed to verify basic registration and voting requirements. Members of the Grand Jury attended elections officer training classes which were conducted by the Elections Division prior to the 2004 General Election. These Grand Jury members collected and reviewed copies of the training materials provided to poll workers. Training class instructions were compared to the California Elections Code and the guidelines imposed by the Consent Decree.

The Grand Jury obtained and reviewed selected provisions of the Voting Rights Act of 1965, the National Voter Registration Act of 1993 (also known as the "Motor Voter Law") and the Help America Vote Act (HAVA) of 2002. Additionally, the Grand Jury reviewed the circumstances and provisions of the County Employee Voluntary Poll Worker Program authorized by the Board of Supervisors on September 14, 2004, and several Grand Jury members attended a meeting of the recently-formed Bilingual Voting Advisory Council.

From its research and the collected training materials, the Grand Jury prepared a checklist of observable poll requirements. On November 2, 2004, the day of the 2004 General Election, teams of grand jurors visited 54 polling sites selected from the 541 precincts throughout the county. The Grand Jury particularly looked for compliance to those items on its checklist. After the polls closed, grand jurors witnessed the arrival of

ballot boxes and the vote-counting process in the Ventura County Hall of Administration.

The Grand Jury followed up with post-election findings by obtaining a January 14, 2005 letter to the Ventura County Counsel from the Department of Justice referencing their independent findings on county efforts. The Grand Jury spoke with the Ventura County Clerk and Recorder along with the Assistant Registrar of Voters regarding follow-up actions to the recommendations of the DOJ. There was a follow-up inquiry by the Grand Jury to determine the status of provisional ballots cast on election day. Additionally, the Grand Jury contacted the Office of the California Secretary of State to determine if there were election-related complaints filed from Ventura County pertaining to the 2004 General Election. In a related effort to evaluate how the county fared in relation to other California counties, the Grand Jury researched “residual vote,” a recognized measure of voting effectiveness.

Finally, during an interview with the Ventura County Clerk and Recorder and the Assistant Registrar of Voters, the Grand Jury sought to determine a status of their response to the prior Grand Jury’s final report, “Voter Registration Safeguards,” by determining the cost impact of the recommended pamphlet as well as the publication projection. The Grand Jury also sought to determine the status of the Election Division’s update to their web site.

Findings

- F-01.** The state and federal laws pertaining to elections are intended to give every eligible citizen the right to vote as well as to enable and encourage those eligible citizens to register and vote. The California Secretary of State is responsible for certifying and declaring the result of elections that are held throughout the State of California.
- F-02.** For the County of Ventura, the Elections Division of the County Clerk and Recorder’s Office has the primary responsibility for implementing the election laws and for encouraging all eligible citizens to register and vote. The Elections Division has 11 full-time employees, but 3-4 months prior to an election they will hire extra help and temporary workers.
- F-03.** Basic requirements for eligibility to vote in a federal election are: (1) age of 18 years or older on election day, (2) United States citizenship and (3) must not be in prison or on parole with a felony conviction. Additional residence requirements are imposed with respect to state and local elections.
- F-04.** For voting purposes, citizenship is certified by a signed affidavit from the registrant. The Elections Division has no responsibility and no legal authority to require proof of citizenship or to challenge the citizenship certification when a person registers to vote. There is neither responsibility nor legal authority for any governmental agency to verify U.S. citizenship with respect to voter registration or voting.

- F-05.** The certification or proof of citizenship is characterized as a “rebuttable presumption.”² A voter may self-declare that he or she is not a citizen, but citizenship cannot be actively challenged with respect to registration and voting. For voting purposes only, citizenship is presumed based on the affidavit of the registrant unless evidence is introduced proving that the registrant is not a citizen.
- F-06.** If the Elections Division is notified by an authorized agency (such as Jury Services or the Department of Motor Vehicles) that a person has self-declared to not be a U.S. citizen,³ the Division will cancel that person’s voter registration and mail the person a letter stating that voter registration has been cancelled and informing them of the reason. The person is told they may correct any mistake and re-register.
- F-07.** Identification is only required at the time of registration. If identification is not provided at the time of registration, it must be shown the first time that person votes. Without this identification, the person may vote with a provisional ballot that is counted only after identification is verified.
- F-08.** With respect to voter verification, Elections Division efforts are primarily concentrated on making sure that a single registrant does not cast more than one ballot in any election. If an attempt to cast more than one ballot appears willful rather than a matter of mistake, the matter is forwarded to the Ventura County District Attorney for investigation and possible action.
- F-09.** According to the summary maintained by the California Secretary of State, as of October 18, 2004, Ventura County had 398,652 voters registered of its 506,350 eligible citizens, or 78.7%. Of the registered voters, approximately 79.3% or 316,132 voters cast ballots in the 2004 General Election.⁴
- F-10.** Of the 398,652 registered voters in Ventura County, approximately 10,000 checked the box on the registration form requesting elections materials in the Spanish language.
- F-11.** A Consent Decree was signed by a panel of three judges in September of 2004 in the case United States v. Ventura County, et al. This Consent Decree, which pertained to Spanish-language assistance for voters, imposed election-related mandates on the county. Those mandates included active recruitment of bilingual poll workers, publication and availability of Spanish-language election information and voting materials, and activities to inform and encourage eligible Spanish-speaking citizens to register and vote.
- F-12.** In compliance with the Consent Decree, Ventura County actively recruited Spanish-speaking poll workers throughout the county. With the stated purpose of meeting the bilingual recruitment goals, on September 14, 2004, the

² Rebuttable presumption is defined as, “a rule of law which permits a court to assume a fact is true until such time as there is a preponderance (greater weight) of evidence which disproves or outweighs (rebut) the presumption... A presumption is rebuttable in that it can be refuted by factual evidence.” (<http://dictionary.law.com>)

³ This self declaration rebuts the presumption.

⁴ http://www.ss.ca.gov/elections/ror/county_10_18_04.pdf, “Report of Registration as of October 18, 2002, Registration by County,” California Secretary of State.

Board of Supervisors approved a “County Employee Voluntary Poll Worker Program,” whereby county employees could volunteer to work at the polls while earning “Leave with Pay” from their county positions.

- F-13.** The county recruited 344 Spanish-speaking poll workers, of which 329 actually served during the 2004 General Election. This was more than the 299 workers originally projected. Spanish-speaking poll workers were scheduled to work in 195 precincts, of which 185 precincts were required by the terms of the Consent Decree. Due to six unanticipated absences in the required precincts, there were Spanish-speaking poll workers in 189 precincts.
- F-14.** For the 2004 General Election, the Elections Division scheduled 22 training classes for election officers, held at locations throughout the county. Election requirements emphasized in the training classes included the prominent display of bilingual election materials, consistently asking voters if they wished an English or Spanish ballot, and liberal use of provisional ballots when questions or discrepancies arose. Other instruction included the assembly and placement of voting booths, verification of eligibility by roster, use of provisional ballots, controls over ballot boxes, placement of signs, and accounting for election materials.
- F-15.** California Elections Code requires Inspectors to be trained before every election. Clerks are encouraged to take the class, but attendance is not required. The Elections Division highly recommends that everyone working during the election attend training.
- F-16.** The requirement that a voter should never be turned away from the polls was particularly emphasized during training sessions. Training emphasized that provisional ballots would be offered to voters with the intent that everyone is ensured the opportunity to vote.
- F-17.** During visits to 54 polling places during the 2004 General Election, the Grand Jury inspection teams noted various discrepancies between the training provided by the Elections Division and the manner in which poll workers performed their functions. The discrepancy most observed was failure to ask voters if they wished a ballot in English or Spanish. This discrepancy was noted as poll workers conversed with voters in English and presumptively handed the English ballot to the voters.
- F-18.** Other noted discrepancies between training and practice included (1) poll workers without name tags, (2) American flag not displayed, (3) no posted street index, (4) 100’ sign too close or missing entirely, (5) polling place signs not posted or clearly visible.
- F-19.** Poll workers at various locations remarked to the Grand Jury that the handicapped booth provided was too high for persons in wheel chairs. Many of the poll workers had removed the legs from the handicapped booth to place the booth on a table.
- F-20.** Poll workers at various locations remarked to the Grand Jury that the long working day, from 15 to 17 hours, was excessive for many retired persons. Several stated that shorter shifts could encourage more retired persons to volunteer.

- F-21.** On the day of the election, the Elections Division had mobile units throughout the county. These mobile units were stocked with additional election materials and supplies so that problems could be resolved as quickly as possible.
- F-22.** According to the January 2005 letter from the DOJ, one person was reportedly turned away from the polls during the 2004 General Election. Research by the Elections Division verified that a single person had been turned away, and follow-up personal contact determined that the individual was a not a citizen of the United States.
- F-23.** The DOJ letter to the County Counsel noted some remaining problems observed during the 2004 General Election. These problems included availability and distribution of ballots, posting of documentation, and asking all voters if they wished an English or Spanish ballot.
- F-24.** All reported problems related to ballots and supplies were either resolved on site by elections officials or by roving Elections Division support staff.
- F-25.** The DOJ letter to the County Counsel of Ventura cited “profound improvement” achieved by the County of Ventura in meeting the objectives of the Consent Decree.
- F-26.** The Elections Division reports that, in the 2004 General Election, 10,189 provisional ballots were cast. The Elections Division was able to verify 5,470 of those and the votes were fully counted. Of the remaining provisional ballots, 3,091 were disqualified because the person was not registered to vote in Ventura County at the time of the election; 7 were not counted because the signature on the ballot did not match the signature on file; 27 were not counted because the voter had submitted an absentee vote; and 1,428 were partially counted, but only for contests in which the person was eligible to vote.
- F-27.** “Residual vote” is a measure of effectiveness of the voting system. The residual vote percentage summarizes votes that do not count based on three general categories: (1) uncounted ballots that are eliminated or disqualified by election officials, (2) “undervote” in which no vote is registered, and (3) “overvote” in which the voter chooses more than one candidate in a particular race, effectively disqualifying the vote in that race.⁵
- F-28.** Elections officials work to reduce the residual vote that may be attributable to voting machine error or voter error. Because it can never be certain how many voters abstained from choosing a candidate in a particular race, it is generally accepted that residual vote can never be zero and it can not be used as an absolute measure of voting machine effectiveness and administrative controls.
- F-29.** The 0.8% residual vote reported by Ventura County Elections Division in the 2004 General Election is well below the national rate of 1.1% and the California statewide average of 1.5%.⁶

⁵ Stewart, Charles, III, “Residual Vote in the 2004 Election,” Caltech/MIT Voting Technology Project, VTP Working Paper, Version 2.3, February 2005.

⁶ Ibid, p. 18.

- F-30.** While the California Secretary of State’s office does receive numerous calls for information and clarification from across the state, most callers are referred to the county elections officials for action. There were no 2004 General Election complaints filed with the Secretary of State relating to Ventura County.
- F-31.** Prior to the Consent Decree, every voter would receive election materials and ballots in English unless they requested the materials or ballots in Spanish. After the Consent Decree, every voter will receive both English and Spanish materials. Although not a statutory requirement, the Consent Decree requires that, after the 2004 General Election, there must be a single ballot with two languages on it (bilingual ballot).
- F-32.** The current county punch-card voting system could not accommodate a single bilingual ballot for the 2004 General Election. However, new voting system acquisitions will be required to support the bilingual ballot.
- F-33.** The Election Division reports their publication costs for the 2004 General Election official ballots and sample ballots was \$707,102. Presenting the same materials as a single bilingual ballot would have increased the cost by 65% to \$1,169,852. Due to the increased size and weight of a bilingual ballot, cost to mail the 400,000 sample ballots in the 2004 election would have been 19 cents instead of the 14 cents it actually cost for the single-language version.
- F-34.** The Elections Division publishes a number of informational brochures and pamphlets each year to inform the voters of various procedures. The Elections Division gave a recent example of a \$1,500 cost to produce 3,000 brochures for election officials.
- F-35.** The Elections Division did concur with the findings of the 2003 Grand Jury’s final report titled, “Voter Registration Safeguards.” However, the Division cited budgetary considerations in implementing the Grand Jury’s recommendations to publish the voter registration and roll purging procedures.
- F-36.** Officials of the Elections Division expressed that the cost of publishing a pamphlet addressing voter registration safeguards is disproportionate to the number of times the roll purging process is questioned. They expressed that, if printed, the pamphlets would likely “gather dust.”

Conclusions

- C-01.** Election laws and regulations strike a balance between encouraging all eligible voters to register and vote versus discouraging ineligible voters from casting an illegal vote. With the primary objective of enabling voting, a small number of ineligible voters may go undetected. (F-01 thru F-08, F-14, F-16, F-22, F-26 thru F-29)
- C-02.** Implementation of the provisional voting system in the county effectively allows all questionable ballots an opportunity to be counted by providing follow-up, verification, and traceability. (F-16, F-26)
- C-03.** Training classes are very important, as elections are infrequent and many poll workers are first-time volunteers. The Elections Division does a good job in

- coordinating the various efforts to produce an effective outcome. (F-12 thru F-15, F-17, F-18, F-23)
- C-04.** In the 2004 General Election, the Elections Division was proactive as well as responsive to solving problems as they became aware of them. (F-14, F-16, F-21, F-24, F-25, F-26, F-29)
- C-05.** In spite of the emphasis in training classes and written instructions, it was difficult for the Elections Division to convince all poll workers to ask English-speaking voters if they preferred an English or Spanish ballot. A single bilingual ballot should overcome this problem in future elections. (F-11, F-14, F-15, F-17)
- C-06.** Elections Division's recruitment, training, and support to the volunteer elections officers in the 2004 General Election was comprehensive and largely effective. (F-14, F-15, F-21, F-22, F-24, F-25)
- C-07.** The county's efforts to recruit and train Spanish-speaking poll workers was largely successful. (F-11 thru F-15, F-25)
- C-08.** If the county encounters future shortages of poll workers, whether English-only-speaking or bilingual, a shorter working shift might encourage a larger number of volunteers. (F-20)
- C-09.** Many of the handicapped booths were not effective for wheelchair use because they were too high to allow comfortable access to the voting machines. It was not clear whether this was a design or assembly training problem. (F-19)
- C-10.** In light of budgetary restrictions and the rare inquiries on the subject, the cost of publishing a pamphlet on the voting register purging process is not presently justified. (F-34, F-35, F-36)
- C-11.** In the 2004 General Election, the Ventura County Elections Division was effective in using every means available to them within the law and the requirements of the Consent Decree to ensure that every legitimately cast vote was counted, that no person voted more than once, and that every person who voted was eligible by way of citizenship, age, and freedom from felony conviction. (F-01, F-08, F-09, F-13, F-15, F-16, F-21, F-24, F-25, F-26, F-29, F-30)

Recommendations

- R-01.** Research the handicapped booths that were used in the 2004 General Election to determine if they could be assembled with shorter legs that would be more compatible with the voting machines used in Ventura County.
- R-02.** Rather than publish a paper pamphlet as recommended by the Ventura County 2003-2004 Grand Jury's report, "Voting Registration Safeguards," the Elections Division should either publish the recommended information or place a link to the Grand Jury's report on their web site.

Responses

Responses Required From:

Ventura County Clerk and Recorder (R-01, R-02)

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