



COUNTY OF LOS ANGELES

REGISTRAR-RECORDER/COUNTY CLERK

12400 IMPERIAL HWY. – P.O. BOX 1024, NORWALK, CALIFORNIA 90651-1024/(562) 462-2716

CONNOR B. McCORMACK
REGISTRAR-RECORDER/COUNTY CLERK

August 5, 2002

TO: EACH SUPERVISOR

FROM: Conny B. McCormack, Registrar-Recorder/County Clerk

RR/CC RESPONSE TO GRAND JURY REPORT

Enclosed is a copy of our department's response to that portion of the 2001-2002 Grand Jury report addressing the Registrar-Recorder/County Clerk. This has also been submitted to the CAO for inclusion in his comprehensive report that is scheduled to be distributed to your Board at the end of August. However, since several of your offices questioned me regarding these issues, I thought you might like to have our response at this time.

If you have any questions, please call me.

Attachment

RESPONSE TO GRAND JURY FINAL REPORT

COUNTY OF LOS ANGELES – REGISTRAR-RECORDER/COUNTY CLERK DEPT.

SUBJECT: 2001-2002 GRAND JURY RECOMMENDATIONS – GOVERNMENT OPERATIONS COMMITTEE, ELECTRONIC VOTING MACHINES

RECOMMENDATION # 12:

The Government Operations Committee recommends that the Board of Supervisors should urge the Los Angeles County Registrar of Voters to evaluate more extensively the electronic voting machine, during voting, especially as to its acceptability by the voting public, the ease with which it is moved and handled, its vulnerability to functional disruption accidentally or through intentional sabotage, and the accuracy with which it seems to operate.

RESPONSE:

Background: Three members of the Government Operations Committee of the Grand Jury visited the Registrar-Recorder/County Clerk headquarters in Norwalk on the afternoon of August 28, 2001. At that time they asked questions about the current punch card voting system as well as our experience to date with use of an electronic touch screen voting system. We discussed the operation of both types of systems.

With regard to electronic voting, we described the County's experience using touch screen voting during the pilot project in conjunction with "early voting" held at nine locations in the two weeks prior to the November 2000 General Election in which 21,963 voters countywide cast their ballots electronically for that election. We also discussed the County's first use of touch screen voting at the precinct level on election day which occurred on April 17, 2001 for the Arcadia Unified School District Election in which 3,137 voters cast their ballots electronically. A number of relevant documents were provided to the Grand Jurors including the extensive report to the Board of Supervisors assessing the County's successful first use of touch screen voting equipment. Discussion with the Grand Jurors included an explanation that electronic touch screen voting is new technology, and, with the exception of Riverside County, was not in use for countywide voting in other California counties.

This response addresses the four major points of this recommendation: 1) future plans for using electronic voting equipment, 2) its acceptability by the voting public, 3) ease with which it is moved and handled, and 4) system security and accuracy of operation.

- 1) Future Plans for Using Electronic Voting: On April 16, 2002 the Board of Supervisors approved a contract with Diebold Election Systems to purchase sufficient touch screen voting hardware and software to begin a phased-in process of using electronic voting equipment. The equipment purchased under this new contract will enable establishing 21 touch screen voting sites throughout the County during the “early voting” period in conjunction with the November 2002 General Election. Any registered voter in the County who wishes to cast a ballot on the new system may do so during this two-week period prior to election day. In partnership with Board of Supervisors’ staff, the 21 locations were finalized at the end of July 2002. Site preparation, hiring and training of temporary staff for each location and the voter outreach/education component will be accomplished in advance of the October 22, 2002 kick-off date of voting on the new touch screen system. While it is not possible to predict the number of voters who may choose to vote in advance of election day on the new touch screen system rather than go to the polls on election day or vote by mail, we anticipate significantly more of the County’s voters will vote via touch screen system than the 21,963 who did so for the November 2000 election pilot project.

In 2002, two additional California counties, Alameda and Plumas, purchased touch screen voting equipment for countywide use in every precinct for the November 5, 2002 General Election. We will be closely watching the experience of these California counties in fully converting to electronic voting. Additionally, the five largest counties in the State of Florida are finalizing their conversions from punch card systems to various vendors’ electronic touch screen voting systems. Their first use will be for the Florida statewide Primary Election on September 10, 2002. To gain firsthand knowledge of system conversion issues and public acceptance, several of our staff will observe the September 10th election in the three largest Florida counties, Miami-Dade, Broward, and West Palm Beach. Members of the Board of Supervisors have expressed support for the need to learn from the experience of other election jurisdictions in using this nascent technology prior to the County embarking upon full system conversion.

Electronic voting technology is changing quite rapidly, with several additional vendors’ systems recently receiving Secretary of State certification for use in California. It is hoped that more vendor competition will reduce the high price of this voting technology. The estimated price for the County to fully convert to a touch screen voting system is approximately \$100 million, creating a barrier to acquisition. Proposition 41, a \$200 million statewide bond issue to upgrade voting systems in California, passed at the March 5, 2002 Primary Election. Proposition 41 established a 5-member Voting Modernization Board (VMB) to make decisions regarding bond funding allocation. In mid-July 2002, the VMB adopted a funding formula that estimates Los Angeles County will be eligible to apply for up to \$49.6 million of bond funding.

However, by law receiving bond funds is contingent upon a minimum of 25% County matching funds. At current estimated prices, Proposition 41 bond money would only cover 50% of the cost of converting countywide to a new electronic voting system.

- 2) Voter Acceptability: Based on surveys completed by 9,296 of the County's 21,963 voters who voted on touch screen equipment during the November 2000 election pilot program, 99% rated the equipment favorably in comparison to their previous experience with punch card voting. Voters' responses was equally positive during the April 17, 2001 Arcadia Unified School District Election, the County's first use of touch screen voting at every precinct on election day. Of the 3,137 voters who cast ballots electronically that day at 16 precincts, 98% of the 757 Arcadia voters completed favorable surveys regarding their experience using the new equipment. Similar favorable ratings were reported on surveys completed by Riverside County voters. However, a group of Riverside County citizens who oppose that County's use of a paperless, touch screen voting system filed suit in federal court several months ago and is pending. More reports regarding voter opinions of this new technology will be forthcoming following the September 2002 statewide Primary Election in Florida and the experiences of California voters in Alameda and Plumas counties who will cast ballots on touch screen systems at every precinct on November 5, 2002.
- 3) Ease of Moving/Handling: The Grand Jury report points out a concern, shared by the Registrar-Recorder/County Clerk, that the current first generation models of touch screen voting systems are large and heavy. The equipment purchased in Riverside County in 1999, as well as that purchased by the largest counties in Florida in 2001, weighs in excess of 45 lbs. per unit (including the case with retractable legs). While precinct poll workers have been able to set up this equipment in the jurisdictions where it has been purchased, clearly lighter weight equipment would be preferable for ease in handling. Also, the cost of voting equipment delivery to and from the voting precincts is significantly higher for touch screen units in comparison to lightweight punch card voting devices. Several newer models of touch screen systems have recently been unveiled that are somewhat lighter, weighing between 20-35 pounds including the case. Continual weight reduction is desirable prior to the County purchasing a new voting system for countywide delivery and pick-up to 5,000 voting precincts.
- 4) System Security/Accuracy of Operation: State law requires the Secretary of State to certify all voting systems prior to use. California is recognized nationally for the extensive nature of system testing throughout the certification process. Additionally, California is one of 37 states that require all new voting systems to pass federal level system testing prior to any company submitting a voting system to the state for certification.

The Grand Jury report questions whether sufficient consideration has been given by designers of electronic voting equipment to system integrity and security issues. A brief description of the state certification process was provided by the Secretary of State for the Registrar's response to this report and is attached.

The Grand Jury report expresses concern that voting results appear vulnerable and could be corrupted through electronic processes involved in voting, disruption from power outages and/or electromagnetic sabotage or during transmission of voting data on election night. Both federal and state system testing in advance of certification involve testing for electrical power outages, power surges and electromagnetic force fields. Redundancy is built into electronic voting devices as they store the image of each ballot cast on two different mediums within each device (hard drive and disk).

The Grand Jury report also mentioned the possibility of the equipment being tampered during storage prior to deployment. State law requires all voting devices to pass a logic and accuracy (L&A) test prior to deployment of equipment. The L&A test is conducted on each machine following the loading of software to accumulate vote totals for that election's specific candidates and ballot contests. The L&A test records test votes for each candidate/contest which are then reported from each device and verified to a control report to confirm that each device accurately recorded the correct number of votes per contest. Following the L&A test confirmation of system tabulation accuracy, the test vote totals are zeroed out on each device in preparation for actual voting. Immediately prior to casting of "live" ballots, the precinct Inspector at each voting location is required to perform a process to verify and document zero vote totals are in each machine prior to commencement of voting.

The Grand Jury report also states that absentee ballots voted electronically (i.e. via personal computers and/or the Internet) would be even more difficult to protect. California law does not allow electronic absentee voting. A Secretary of State task force formed to study Internet voting issued a report in 2000 strongly advising against Internet voting at this time due to system security issues.

RECOMMENDATION #13:

The Government Operations Committee recommends that the Board of Supervisors should urge the United States Congressmen representing districts in the County of Los Angeles to urge the Federal Government to rescind the mandate preventing the use of punch card voting techniques until such time as a suitably construed and adequately protected electronic voting machine has been satisfactorily tested.

RESPONSE:

In January 2001, Common Cause, et. al. filed suit against Secretary of State Bill Jones in federal district court in Los Angeles seeking de-certification of punch card voting systems (the Secretary of State was the sole defendant - no Counties were named in the suit). The Secretary of State has the authority to certify, and de-certify, the use of voting systems in California. In September 2001, Secretary of State Bill Jones decertified the use of pre-scored punch card voting systems (including the Votomatic punch card system used in Los Angeles County for the past 33 years). Subsequently, the parties to this lawsuit entered into a stipulated agreement that, based on the Secretary of State's decertification of pre-scored punch card voting systems as obsolete, the only issue of contention was the timing of the required voting system conversion of the nine Counties using decertified systems.

The Secretary of State argued that decertification should become effective in July 2005 in order to permit the nine affected counties (encompassing 8.5 million or 55% of the state's registered voters) sufficient time to convert successfully to more modern voting systems, such as touch screen systems. The plaintiffs argued for an earlier decertification date prior to the statewide March 2004 Primary Election, stating that the stipulated agreement did not require the affected counties to convert to electronic touch screen systems by March 2004 but rather to convert to any other certified voting system that did not include pre-scored punch cards. In February 2002, without conducting a trial, Federal Judge Stephen Wilson ruled in favor of the plaintiffs thereby requiring the nine affected counties, including Los Angeles, to convert to an alternative voting system within a two-year period. The Secretary of State chose not to appeal the judge's ruling. Because Los Angeles County was not a party to the suit, the County had no standing to appeal this federal judicial ruling.

The Registrar agrees with the sentiment expressed in this Grand Jury recommendation; however, the U.S. Congress has no authority to rescind the decertification of punch card voting systems in California or the timing of the required replacement of the County's Votomatic system. As described above, the California Secretary of State decertified the punch card voting system and the U.S. Federal Court accelerated the timing of the Secretary's decertification order.

RECOMMENFDATION #14:

The Government Operations Committee recommends that the Board of Supervisors should request from the Federal Government sufficient financing to cover the additional cost that the County of Los Angeles will incur if forced to adopt a new voting machine system before protection for the system has been provided, especially if the new machine involved must be adopted before the machine itself has been completely tested and proven.

RESPONSE:

This recommendation requests the Board of Supervisors seek financing for costs of voting system conversion. The Federal Government has never provided any funding whatsoever for election systems or to compensate for multimillion dollar expenses associated with compliance with federal mandates regarding voter registration processes, translating/printing ballots in numerous foreign languages, etc. The Board of Supervisors is on record in support of federal funding assistance for acquisition of new voting technology.

RECOMMENDATION # 15:

The Government Operations Committee recommends that the Board of Supervisors should direct the County Registrar of Voters not to enlarge the area of voting districts without improving accommodations at and transportation to the new polling places.

RESPONSE:

The stated finding of the Grand Jury report that the Registrar was considering “fewer but more centrally positioned voting centers in common gathering places such as shopping malls” is misconstrued. The size of voting precincts is limited by state law to a maximum of 1,250 registered voters per precinct. Among the documents provided to the Grand Jury members was a copy of the management audit of the Registrar-Recorder/County Clerk Department conducted by the outside firm Strategica released in November 2000. That audit, expressing concern about the high cost of electronic voting equipment, recommended that the Registrar consider the concept of regional voting centers as a possible future scenario if state law were altered to allow such major consolidation of voting precincts. The Registrar’s response to that audit did not endorse regional voting centers for election day voting.

Nine regional voting centers were used in the successful touch screen voting system pilot project during the “early voting” period in the two weeks prior to the November 2000 Election. The Board of Supervisors has expressed support for a phased-in process of electronic voting. As part of that process, the Board approved a contract in April 2002 for purchase of sufficient electronic voting hardware and software to expand touch screen voting to 21 locations during the “early voting” period in advance of the November 2002 General Election. As mentioned above, preparations are on-going at this time for voters to cast ballots at these 21 sites from October 22 to November 1, 2002.

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BILL JONES
Secretary of State
State of California

ELECTIONS
1500 - 11th Street, Room 590
Sacramento, CA 95814
P.O. Box 944260
Sacramento, CA 94244-2600
(916) 657-2166
Voter Registration Hotline
1-800-345-VOTE
For Hearing and Speech Impaired
Only 1-800-833-8683
(916) 653-3214 FAX
Internet: www.ss.ca.gov

July 30, 2002

Conny McCormack
Registrar-Recorder/County Clerk
County of Los Angeles
12400 Imperial Highway
Norwalk, California 90650

Dear Ms. McCormack:

Thank you for your inquiry regarding the process for certifying voting equipment and systems in California. All voting systems used in [California must be certified by the Secretary of State](#). The following is a summary of many of the principal steps in the certification process.

This certification process includes evaluation against federal voting systems standards and testing by an Independent Testing Authority certified by the National Association of State Election Directors. This federal testing is both for hardware (ability to withstand extremes of temperature, verification of being tamper-proof by magnets or other devices, drop testing, etc.) as well as for software integrity and functionality.

Successful testing at the federal level is a precondition for application to the state. The state will not process an application without proof that the system has passed all hardware and software testing, and the software for the system has been placed in escrow.

State testing involves several stages, including: (1) Secretary of State staff extensively test the system; (2) A nationally recognized voting system expert performs rigorous performance testing; (3) An Advisory Committee of election officials and others responsible for conducting elections reviews the proposed system; (4) One or more public hearings is held before the Voting Systems Panel.

Systems are tested to ensure that they are accurate, reliable, secure against fraud or manipulation, accessible to persons with disabilities, minimize the opportunity for voter error, produce auditable records for recount and contest purposes, meet all requirements of state and federal law and regulation, and are otherwise suitable for the purpose of voting or counting of votes.

All systems are required to be adopted in conjunction with detailed procedures for election set up, logic and accuracy testing, system maintenance, system security,

“Ensuring the integrity of California’s election process.”

pollworker and election official procedures, vote counting processes for determining voter intent, recount procedures, and other aspects of the details of election administration.

Any change or modification to a certified system is required to be certified through essentially the same process as described above.

In many cases, prior to certification, the Voting System Panel requires a "test" election, and monitors voter reaction and comments.

Any system certified for use in California is also required to undergo an acceptance test procedure with the client county.

The Secretary of State, pursuant to statute, periodically reviews voting systems and may decertify a system that is defective, obsolete, or otherwise unacceptable.

I hope this information is responsive to your request. Please contact me directly if you need further information.

Sincerely,

JOHN MOTT-SMITH
Chief, Elections Division

Corr/mccormack-2-072