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PROJECTS (COPS)

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October 3, 2008

Deborah Seiler  
San Diego County Registrar of Voters  
P.O. Box 85656  
San Diego, CA. 92186-5656  
(858) 565-5800

REF: C00014

Dear Ms. Seiler:

As you know, we have been attempting to perform our civic duties as citizens in our democracy by helping to monitor our elections process. We have been very appreciative of your kind assistance and cooperation. To that end, we have the following request.

According to California Elections Code, Section 19370, there is a requirement that precincts that use machines will post a statement of result record for all to see:

19370. As soon as the polls are closed, the precinct board, in the presence of the watchers and all others lawfully present, shall immediately lock the voting machine against voting and open the counting compartments, giving full view of all counter numbers. A board member shall in the order of the offices as their titles are arranged on the machine, read and distinctly announce the name or designating number and letter on each counter for each candidate's name and the result as shown by the counter numbers. He or she shall also in the same manner announce the vote on each measure.

If the machine is provided with a recording device, in lieu of opening the counter compartment the precinct board shall proceed to operate the mechanism to produce the statement of return of votes cast record in a minimum of three copies, remove the irregular ballot, if any, record on the statement of return of votes cast record. The irregular ballot shall be attached to the statement of result record of votes cast for the machine and become a part thereof. One copy of the statement of return of votes cast for each machine shall be posted upon the outside wall of the precinct for all to see. The statement of return of votes cast for each machine for the precinct shall constitute the precinct statement of result of votes cast.

In the primary election of Feb. 5, 2008, I learned that Diebold precinct scanners are now operated within the central Registrar of Voters facility, instead of operating in the precinct as they have in the past. However, except for that fact, the operation of these machines is virtually identical to what would be expected in the precinct. Prior to scanning the ballots, each scanner is reset and a zero report is produced. Then, after the precinct is completed, a final report is produced. These reports are printed using the printer integrated into the scanner and are produced onto a single tape, and that two-part statement is then enclosed with the ballots.

To comply with the law, we believe it will be appropriate for you to arrange for such reports to be available to the public, and we recommend the following procedure:

1. After the scan for a given precinct is complete, an additional “statement of return of votes” should be created from each scanner for each precinct. In practice, it would mean that a second “final report” tape is produced for each precinct. Also, according to the letter of the law, two such additional reports would be created, however, we only require one for the purposes of this request.
2. The operator should perform occasional comparisons of the reports to confirm that they are identical.
3. The practice of enclosing the zero tape and initial final report tape with the ballots of that precinct can continue as it has in the past. We must note that the ballots that were actually included in the report should be segregated from any later vote-by-mail ballots that may be consolidated with the precinct ballots. This will allow later manual checks that the ballots in those boxes equal the count as shown on the tapes, as suggested in #6.
4. The second “final report” tape for that precinct should be marked to denote which precinct it applies to and placed in an envelope (such as the manila type) so it can be accessed by the public.
5. For scanning operations that are not precinct-specific, such as mixed vote-by-mail ballots, the additional “statement of return of votes” should be created for each box of such mixed ballots.
6. During the 1% manual tally procedure, the “statement of return of votes” included in the box of ballots for that precinct should be compared with the manual count. As we expect that some of the ballots will be consolidated with those ballots after the initial tape was completed, the additional ballots should be segregated, as mentioned, so the subtotal can be compared with the scanner tape.
7. As soon as each report is produced and enclosed in its envelope, it should be moved to an area accessible to the public for inspection. As a matter of diligence, it is suggested that the third report, mentioned earlier, should be enclosed in an envelope and kept in a secure area in the rare event that the public envelope would be damaged or lost.

Our goal is to improve the procedure such that it is in compliance with the law, as mentioned, so as to allow the public to inspect the individual precinct tapes and prepare an independent election report as a check on the results from the canvass.

We anticipate that you and your department will attend to this request with the same positive spirit that you have in the past, as we are convinced that the law states that such reports will be available. We would appreciate a prompt reply to this request to confirm your cooperation. The best way to respond is by email, perhaps with letter and conventional mail.

We trust that you will receive these requests with the community spirit that they are intended.

Sincerely,

Raymond Lutz  
Coordinator, Citizens’ Oversight Projects (COPs)