



2005-2006 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

ABSENTEE BALLOT AND MAIL-IN VOTING PROCESSES

Summary

The 2005-2006 Santa Clara County (County) Civil Grand Jury (Grand Jury) reviewed the integrity of the absentee ballot policies and processes of the County Registrar of Voters (ROV). The Grand Jury also reviewed mail-in ballot procedures under Proposition 218 (approved in the General Election of November 1996).

The Grand Jury made four Findings and Recommendations summarized as follows:

1. No crosschecking is required to verify that individuals who register to vote are U.S. Citizens. The County Board of Supervisors (BOS) and the ROV should request that representatives in the California State Legislature and the U.S. Congress develop legislation that will require new voter applicants to provide proof of U.S. citizenship when registering to vote.
2. A registered voter can easily apply for Permanent Absentee Voter Status. A formalized procedure should be established by the ROV to allow registered voters to terminate their permanent absentee ballot voting status.
3. Different procedures exist for the administration of Proposition 218 benefit assessment elections. All such elections should be conducted by an outside vendor selected through a Request for Proposal (RFP) process, or by the ROV.
4. The ROV is not responsible for conducting Proposition 218 benefit assessment elections. The ROV may be requested to conduct an election by the sponsoring agency, but is not obligated to do so. They should nevertheless act as a “center of competency” to provide advice and counsel on best election practices.

Background

The Grand Jury inquired into the integrity of mail-in/absentee ballot procedures for general elections as well as those for benefit assessment elections.

ABSENTEE BALLOTS

California Election Code § 3000 et seq., which defines the criteria for absentee voting in California, states, “This Division shall be liberally construed in favor of the absent voter.” The ROV has followed this policy and has promoted the increased use of permanent absentee ballots, as well as one-time absentee ballots in general, through promotional activities such as brochures and posters. This has resulted in a dramatic increase in permanent absentee ballot enrollment, from 2,790 in June 1992 to a maximum of 176,933 in December 2004 (see Figure 1).

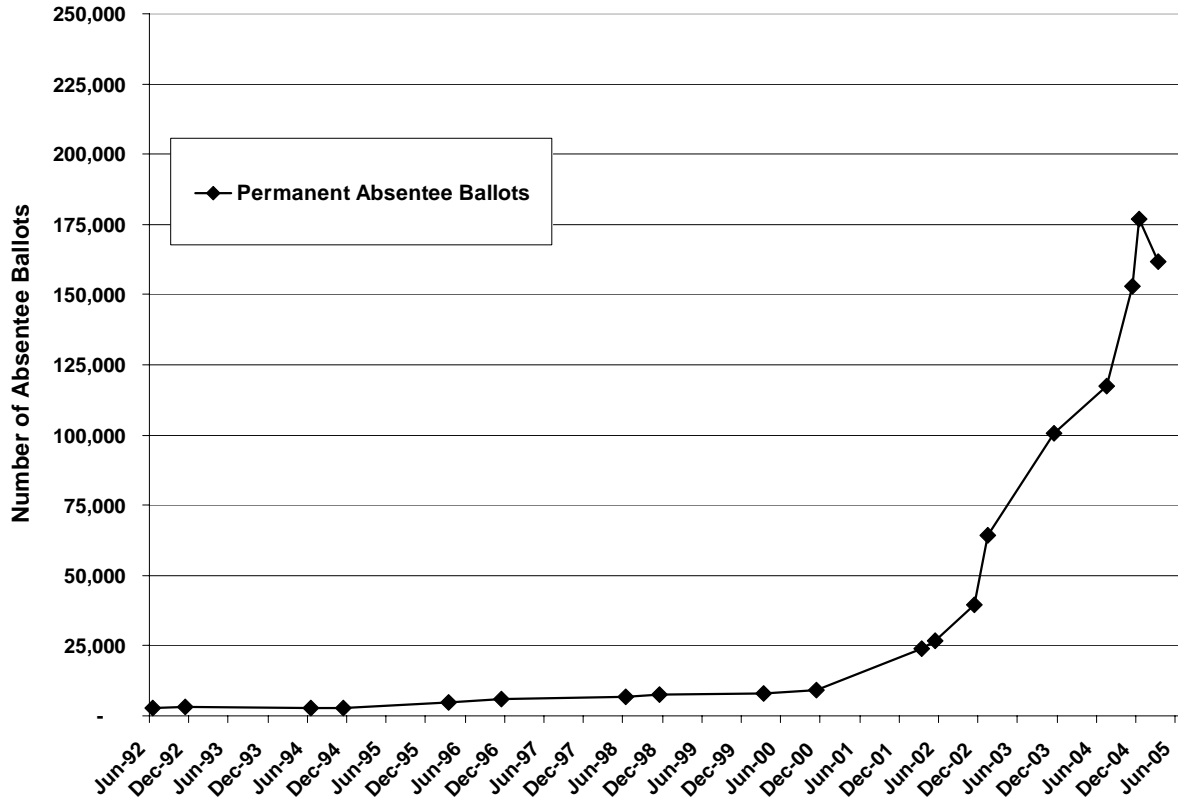


Figure 1: Permanent absentee ballots issued in Santa Clara County

One-time absentee ballots issued have increased from 63,773 in June 1992 to 232,321 in November 2004. The total number of absentee ballots voted has increased from 43,925 in June 1992 to 192,439 in November 2004 (see Figure 2).

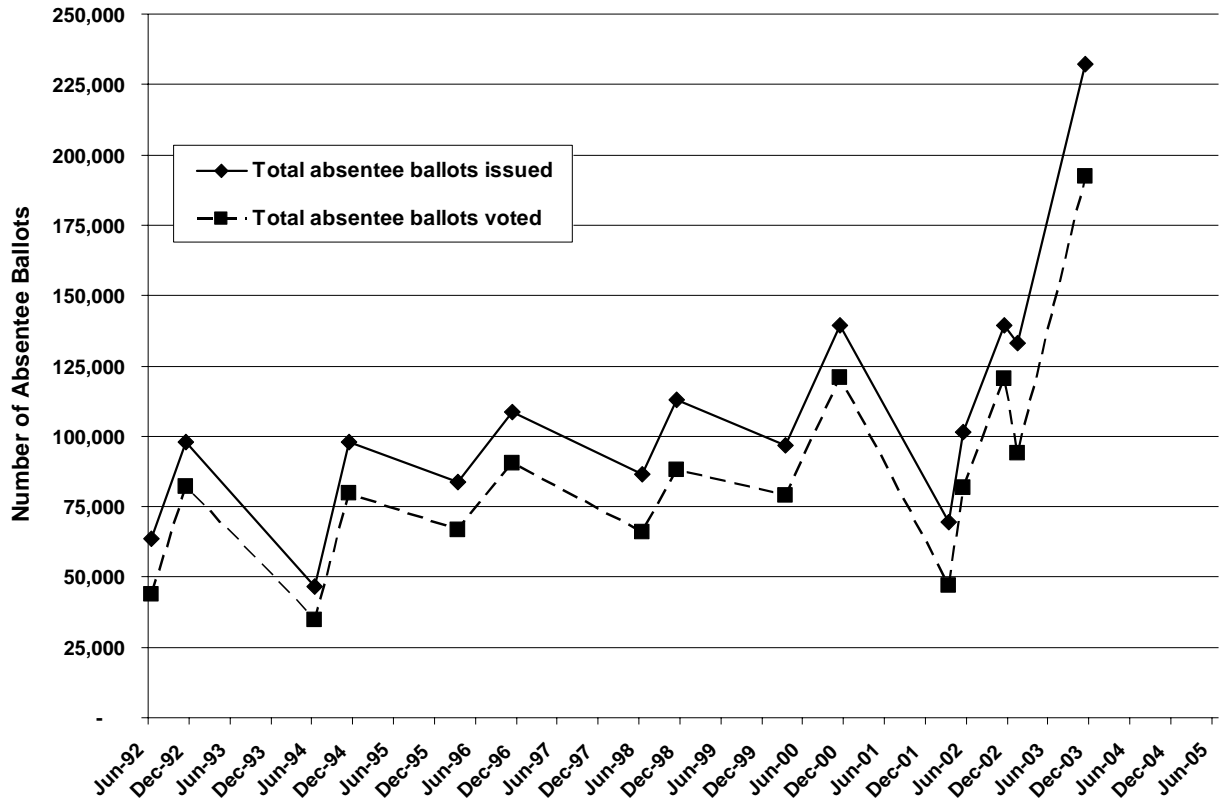


Figure 2: Total absentee ballots issued and voted in Santa Clara County

The growing use of absentee ballots has led to a reduced cost per vote. In the 2005 special statewide election, the direct cost for each absentee ballot cast was \$5.14 vs. \$7.64 for a ballot cast in person. In recent presidential elections, the use of absentee ballots has increased substantially. In November 1992, absentee ballots represented 13.5% of the total votes cast. In November 2004, absentee ballots represented 30.2% of the total votes cast.

The ROV stated there are advantages in promoting absentee voting. These include ease of use for voters, convenience of using the U.S. Postal Service (USPS), stronger security procedures, and routine validation of signatures. From an operational viewpoint, absentee voting allows for better planning, more efficient use of resources, reduction of polling place costs, and reduction of election officer selection and training costs. The ROV believes that as the number of absentee voters increases, the unit cost of processing absentee ballots will decrease further relative to in-person voting. The ROV sees the greatest benefit to absentee voting as being increased voter participation, and projects that absentee voting will represent 50% of all votes cast in the future.

BENEFIT ASSESSMENT ELECTIONS – PROPOSITION 218 MAIL-IN BALLOTS

Proposition 218 was submitted to the voters as part of the general election of November 1996, in accordance with the provisions of Article II, Section 8 of the California Constitution. The intent of Proposition 218 is to ensure that taxes and charges on property owners are subject to voter approval. It amends the Constitution by adding Articles XIII C and D, which apply to cities, special districts, school districts, community college districts, redevelopment agencies, and regional organizations.

Under this Proposition, local government agencies can use mail-in ballots to allow affected real property owners to vote on special parcel taxes, property-related assessments, fees, and charges. Some county and municipal agencies in Santa Clara County have begun to use this procedure to conduct special benefit votes. For example, this procedure was used in the June 2005 election on behalf of the Santa Clara County Vector Control District relating to an assessment for mosquito, vector and disease control. It was also used in the March 2005 City of Palo Alto storm drain assessment election.

Proposition 218 has four primary provisions:

- Limits authority of local governments to impose taxes and property-related assessments, fees and charges. Requires the majority of voters to approve increases in general taxes and reiterates that two-thirds of the voters must approve a special tax.
- Assessments, fees and charges must be submitted to property owners for approval or rejection, after notice and public hearing.
- Assessments are limited to the special benefit conferred.
- Fees and charges are limited to the cost of providing the service and may not be imposed for general governmental services available to the public.

Proposition 218 restricts local governments' abilities to impose assessments and property related fees. It also requires elections to approve many local government revenue-raising methods. Proposition 218 shifts most of the power over taxation from locally elected governing boards to residents and property owners.

Discussion

ABSENTEE BALLOT PROCESS

A meeting was conducted at the Registrar of Voters office on September 1, 2005. Attendees included the ROV, the Assistant ROV, and the Election Division Coordinator from the Absentee Division. The meeting covered the mail-in/absentee ballot voting process and included:

- Initial process to register to vote
- Request for mail-in/absentee ballot and/or permanent mail-in/absentee status
- Verification of signatures associated with receipt of absentee ballots
- Tabulation of absentee ballots

In the initial registration process, no verification is made of the citizenship status of a potential voter. This concern, which was noted in a 2001-2002 Grand Jury report on the ROV, remains an open issue.

The signature verification process was observed by the Grand Jury. The original signature associated with the voter registration is manually compared by a trained staff person with the signature on the returned absentee ballot to ensure the authenticity of the ballot. The procedure is easily executed as the original voter registration application previously had been scanned into the ROV computer system and indexed for ready access by bar code. This allows the ROV staff person to pull up an image of the original signature and compare it to the signature on the back of the absentee ballot envelope.

To assess the policies and practices associated with mail-in/absentee ballots, the Grand Jury conducted three visits to the ROV. These related to the September 13, 2005 City of San Jose District #7 special runoff election. During these visits, the following procedures were reviewed:

- Digital Recording Electronic (DRE) touch-screen voting machine preparation/testing
- Absentee ballot optical scan counting Logic and Accuracy Testing (LAT)
- Signature verification process for returned absentee ballots
- Election night ballot receipt and counting

The Grand Jury found that the ROV has a well-documented process to handle mail-in/absentee ballots from the initial request through and including the vote tabulation. A detailed, seven-page flowchart has been developed by the ROV in response to California Election Code § 3000 to document the absentee ballot process (see Appendix A).

A registered voter can apply for “Permanent Absentee Voter Status” by simply checking “Yes” when submitting the initial request for an absentee ballot. Voters will continue to receive absentee ballots for each election conducted within their precinct. If a voter fails to return an executed absentee ballot in two consecutive statewide general elections, the voter’s name will be deleted from the absentee voter list. Under current procedures, a voter in a permanent absentee ballot status can voluntarily terminate that status only by requesting a change in writing or by making a telephone call to the ROV. No specific form exists in the ROV Office or web site for this purpose.

In close and contentious elections, such as Florida in 2000 and Washington State in 2004, the voting process must stand up to close scrutiny in terms of voting eligibility, one person/one vote, and count accuracy. This level of integrity cannot be implemented after the fact – it is either there or it is not. The Grand Jury had initial concerns that the existing process of authenticating and verifying voter eligibility and removing ineligible voters may not withstand such scrutiny. After detailed discussions with the ROV, the Grand Jury finds that the ROV is actively addressing these concerns. For example, it appears that the ROV has ensured there is minimal opportunity for ineligible voters to cast ballots. This is implemented through a combination of internal policies, practices and procedures, which incorporate crosschecking multiple data bases such as those available from the USPS, Social Security and Vital Statistics.

The ROV updates its permanent absentee voter database in conjunction with the Voter Registration Division as changes in voter status are discovered. For example, when a voter registered in the County dies, a vital statistics report is sent to the ROV causing the record for that voter to be flagged.

The ROV makes data comparisons through a national change of address service. The ROV may also be informed as a result of returned mail. Prior to each election, the ROV sends a postcard to each permanent absentee voter informing them about the upcoming election and the intent to send them an absentee ballot. If a postcard is returned as undeliverable, or if the ROV receives an address change from the USPS, the ROV database will be updated and no absentee ballot will be sent. If the absentee ballot is mailed to an incorrect or invalid address, the ROV is notified by the USPS. The ROV will then cancel the absentee ballot status and not reinstitute it unless a new request comes from the voter.

Anyone who has a name change must re-register to vote. If the voter signs an absentee ballot differently from the signature on record in the ROV database, the ballot will not be counted, and the voter will be notified and asked to submit a new registration card.

MAIL-IN BENEFIT ASSESSMENT ELECTION PROCESS

The Grand Jury reviewed the process of the benefit assessment mail-in only vote directed at parcel owners. The Grand Jury found that the Santa Clara County Vector Control District conducted the pre-election, election, and post-election activities in accordance with requirements specified in California law. The relevant provisions include (a) Constitution Article 13C (Voter Approval for Local Tax Levies), (b) Constitution Article 13D (Assessment and Property-Related Fee Reform), and (c) Government Code § 53750-53754. The Grand Jury also found appropriate procedures associated with the issuance of the RFP to select an outside vendor to conduct the special benefit vote.

The inquiry included conversations with the County Director of Procurement and the Manager of the County Vector Control District. The Grand Jury found the following activities occurred in the RFP process to select a vendor to conduct the benefit assessment election held on June 21, 2005:

- The ROV was contacted about their ability to conduct the benefit assessment election for the Vector Control District. Proposition 218 permits only property owners to vote, using a method weighted in proportion to the “amount of the assessment each property owner would pay.” The ROV declined the invitation because, “our database is for ‘registered voters’ not property owners and our election system is certified to provide ‘direct votes’, not ‘weighted votes’.”
- The BOS met on March 1, 2005 and authorized the County Executive or designee to negotiate and execute the agreement for services with a vendor selected through an RFP process. The RFP was issued on March 8, 2005.
- The Vector Control District Manager, Department of Environmental Health (DEH) Administrative Services Manager and the DEH Senior Accountant constituted the RFP review panel. The following criteria were considered in selecting a vendor:
 - Quality of proposed service
 - Cost to the District
 - Capabilities and expertise of the vendor
 - Location of the vendor in relation to the work required
 - Capacity of the vendor to perform the service
 - Responsibility of the vendor
 - Past service record of the vendor
 - References from other agencies/companies served by the vendor
- Upon the selection of the most qualified vendor, a service agreement was drawn up, reviewed, and approved by the County Counsel, Director of Environmental Health, and the Director of Agriculture and Environmental Management.

Provisions were incorporated into the contract to ensure oversight and monitoring of the election process.

The Grand Jury also looked at the special benefit vote conducted by the City of Palo Alto in 2005 relating to storm drain assessments. This assessment was strongly favored by the city government. An assessment vote was conducted according to appropriate California Constitution Articles and State Election Codes. Due to budgetary constraints, the 2005 vote process was conducted entirely by city staff. The Grand Jury believes that any appearance of conflict of interest could have been avoided by having the vote conducted by an outside vendor selected through an RFP process, or conducted by the ROV.

Other examples of specific requirements for conducting special benefits elections under Proposition 218 can be found in the "Proposition 218 Information Guide" published in 2003 by the County Clerk Recorder, Election Division, County of San Luis Obispo.

Conclusions

Overall, the 2005-2006 Grand Jury was satisfied that the public is being well-served by the ROV. The ROV appears to be conscientiously performing its duties with integrity, efficiency, and accuracy.

The mail-in/absentee ballot process used in general elections appears to have best-practice controls in place that provide validity and integrity under the provisions of existing law. These include signature verification of all absentee ballots received.

The Grand Jury makes the following four findings and recommendations:

Finding 1

No crosschecking is required to verify that the individuals who register to vote are U.S. Citizens. The entire process is based on an honor system which presumes that an individual will not commit perjury when registering to vote.

Recommendation 1

The Board of Supervisors and the Registrar of Voters should request that members of the California State Legislature and U.S. Congress develop legislation which will require new voter applicants to provide proof of U.S. citizenship when registering to vote.

Finding 2

No clearly defined, readily available process exists for registered voters to request termination of their permanent absentee ballot status. The Assistant ROV indicated her office would pursue a more formal approach to allow voters to change absentee ballot status.

Recommendation 2

The Registrar of Voters should create an official mechanism to allow registered voters to terminate their permanent absentee voting status.

Finding 3

Different procedures exist for the administration of benefit assessment elections. Under Proposition 218, a sponsoring agency can enter into an agreement with an outside vendor to conduct such elections. Elections can also be conducted by the ROV, or entirely internally by the sponsoring agency. Even though within the law, the latter approach raises concerns about potential conflicts of interest.

Recommendation 3

All benefit assessment elections should be conducted by an outside vendor, selected through an RFP process, or by the Registrar of Voters. Whatever the method, elections should be conducted in an open, monitored manner.

Finding 4

The Registrar of Voters is not responsible for conducting Proposition 218 benefit assessment elections directed towards parcel owners. The ROV may be requested to conduct an election by the sponsoring agency, but is not obligated to do so.

Recommendation 4

The Registrar of Voters should act as a “center of competency” to provide advice and counsel on best election practices. This role should include coordinating the development of generic RFP guidelines. These should be made available on the ROV web site to all agencies within the County. The web site should also include a portal to previously executed RFPs and qualified vendors.

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 1st day of March 2006.

Thomas C. Rindfleisch
Foreperson

References

Documents

1. Flowchart describing the absentee vote process, Registrar of Voters, August 24, 2005.
2. RFP # VCD 0001, "Santa Clara County Vector Control District Proposition 218 Assessment Ballot Proceeding and Benefit Assessment Administration Services," Santa Clara County Vector Control District, March 8, 2005.
3. "Proposition 218 Information Guide," County of San Luis Obispo Registrar of Voters Office, 2003.

Interview

1. September 1, 2005. Registrar of Voters, Assistant Registrar of Voters and the Election Division Coordinator, Absentee Division.

Communications

1. November 7, 2005, e-mail from Santa Clara County Director of Procurement.
2. November 10, 2005, e-mail from Manager of Santa Clara County Vector Control District.
3. November 10, 2005, e-mail from City Clerk's Office, City of Palo Alto.
4. January 23, 2006, e-mail from Santa Clara County Counsel's Office.

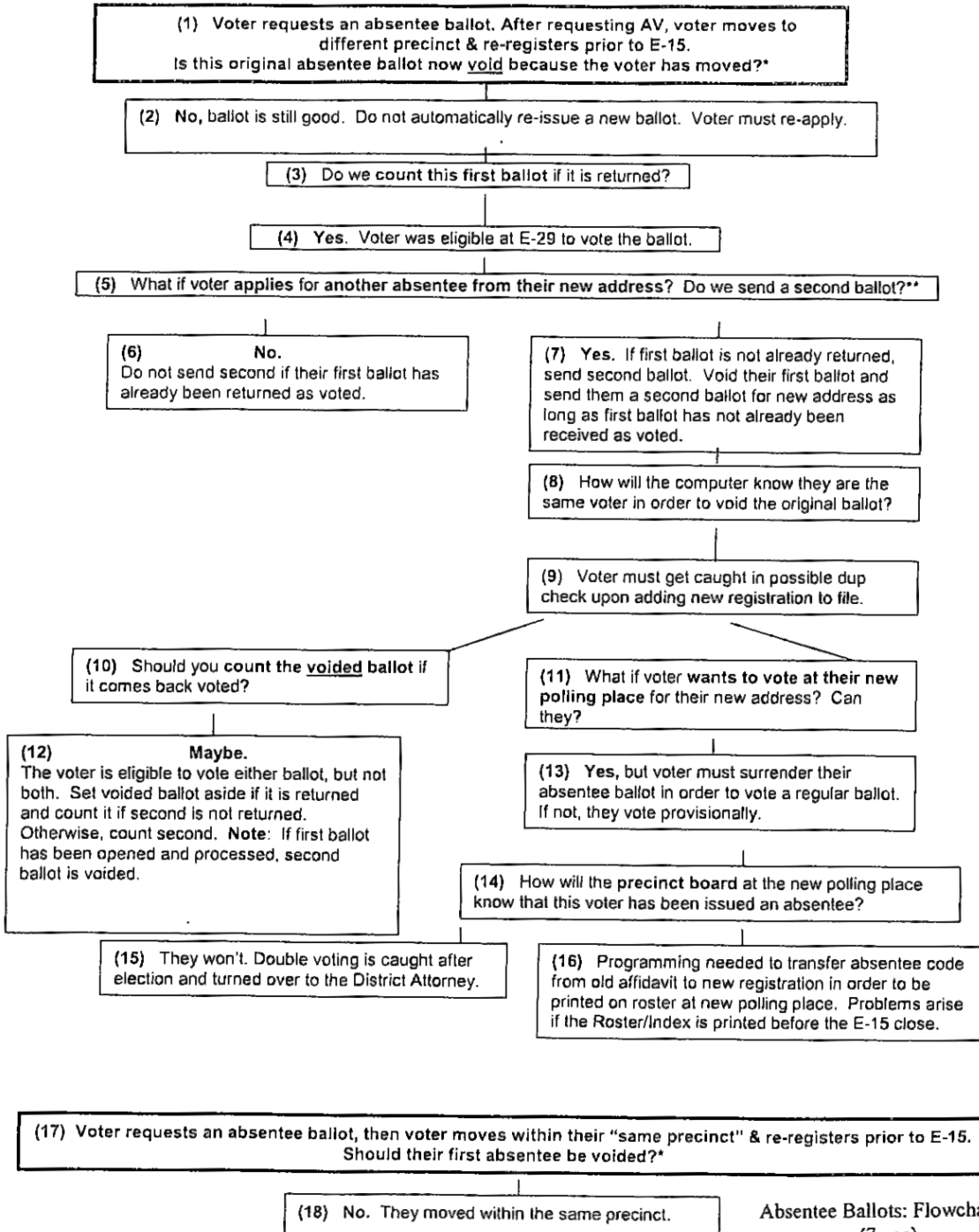
Meetings Attended

1. August 10, 2005. DRE Touch Screen Voting Machine Preparation/Testing associated with the Special Runoff Election to be conducted on September 13, 2005 in the City of San Jose, District 7.
2. September 6, 2005. Absentee Optical Scan Pre-LAT (Logic and Accuracy Testing) and returned absentee ballot signature verification process associated with Special Runoff Election on September 13, 2005.
3. September 13, 2005. Observed all aspects of election night receipt and ballot counting associated with Special Runoff Election on September 13, 2005.

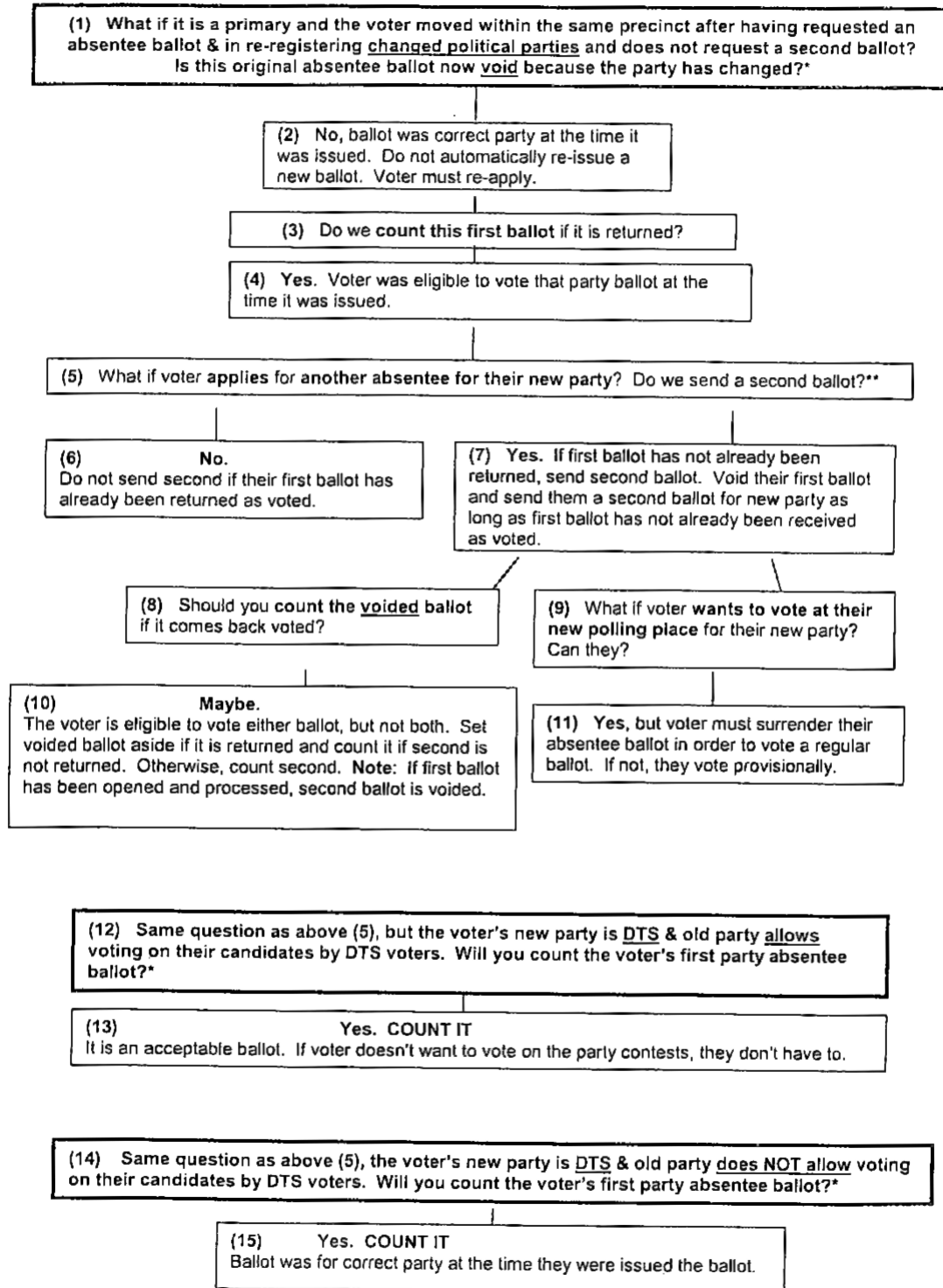
Appendix A

Mail-in/Absentee Ballot Voting Process

IT IS IMPORTANT TO READ THE NOTES ON PAGE 7 THAT ARE REFERENCED BY * OR ** IN THE FLOWCHARTS



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(1) *Permanent Absentee Voter Moves into a New Precinct*
A permanent absentee voter moves into and re-registers in a new precinct after a ballot has already been mailed to them.
Should the first ballot be voided and a second ballot automatically issued for new address?*

(2) **Yes.**
System should automatically void first ballot and issue a second at the new address.**

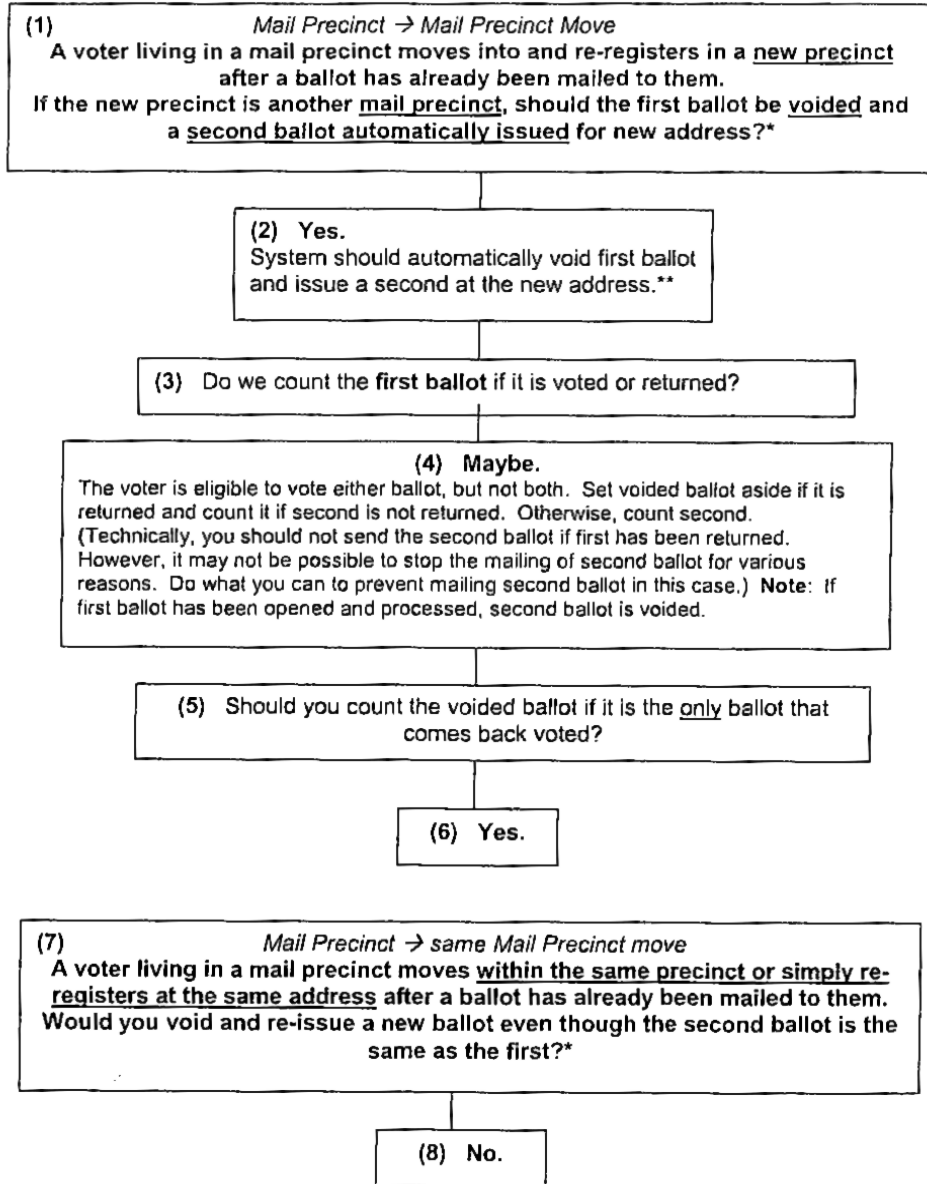
(3) Do we count the **first ballot** if it is voted or returned?

(4) **Maybe.**
The voter is eligible to vote either ballot, but not both. Set voided ballot aside if it is returned and count it if second is not returned. Otherwise, count second.
(Technically, you should not send the second ballot if first has been returned. However, it may not be possible to stop the mailing of second ballot for various reasons. Do what you can to prevent mailing second ballot in this case.) **Note:** If first ballot has been opened and processed, second ballot is voided.

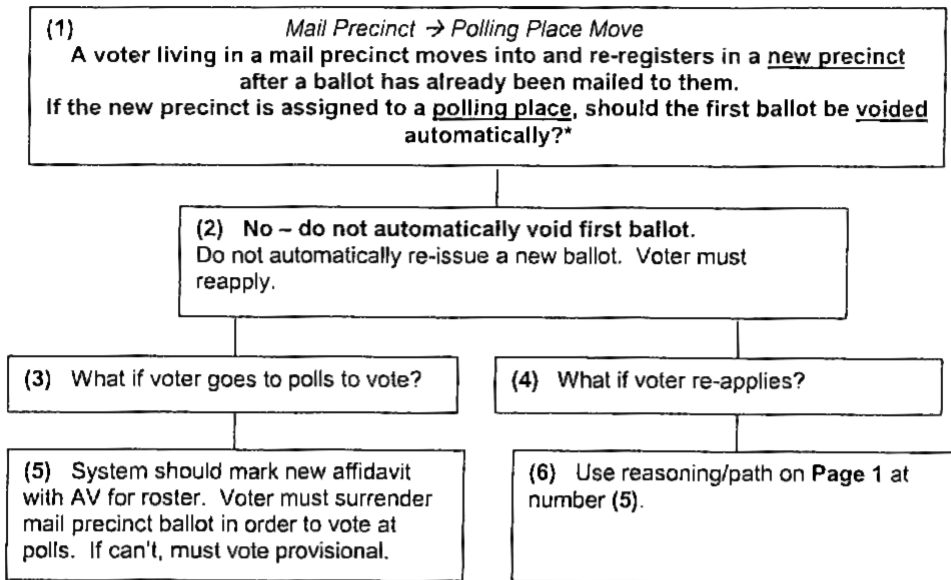
(5) Should you count the voided ballot if it is the only ballot that comes back voted?

(6) **Yes.**

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(1) *Polling Place → Mail Precinct Move*
A voter living in a precinct with a polling place moves into and re-registers in a mail precinct. They have previously requested an absentee from their old address, and a ballot has already been mailed to them. Since the voter has moved into a mail precinct, should the first ballot be voided and a second ballot automatically issued for new address?*

(2) **Yes.**
System should automatically void first ballot and issue a second at the new address.**

(3) Do we count the **first ballot** if it is voted or returned?

(4) **Maybe.**
The voter is eligible to vote either ballot, but not both. Set voided ballot aside if it is returned and count it if second is not returned. Otherwise, count second. (Technically, you should not send the second ballot if first has been returned. However, it may not be possible to stop the mailing of second ballot for various reasons. Do what you can to prevent mailing second ballot in this case.) **Note:** If first ballot has been opened and processed, second ballot is voided.

(5) Should you count the voided ballot if it is the only ballot that comes back voted?

(6) **Yes.**

FOOTNOTES

*This flowchart and the other flowcharts contained in this document were formulated in light of California Election Code Section 3000. That section declares that the Absentee Voting Division of the Election Code (Div. 3) shall be liberally construed in favor of the absent voter.

**After E-6, it is not advisable to send an absentee ballot - including a second ballot - since there may not be enough time to get the ballot to the intended recipient.