

2012 MONTEREY COUNTY CIVIL GRAND JURY

INTERIM FINAL REPORT NO. 1

**ELECTION INTEGRITY UPHOLD BY MONTEREY COUNTY
ELECTIONS DEPARTMENT**

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SUMMARY

The 2012 Monterey County Civil Grand Jury investigated the operations of the Monterey County Elections Department (MCED) with the specific purpose of looking into both voter registration fraud and election fraud. The allegation that an ineligible individual could easily obtain and cast a vote is factually inaccurate. Also, the present procedures of voter registration, validation of a voter's identity, and vote tabulation all appear adequate to protect election integrity in Monterey County.

The intention is to make every vote count. Even though there are elaborate procedures to safeguard against fraud, the procedures are costly and time consuming. A better designed, more user-friendly ballot and a more reliable tabulating machine are in order.

Voters who fail to provide MCED with their current status may disenfranchise themselves from voting, and their failure to follow voting instructions may invalidate their ballots. We recommend a vigorous voter education campaign before each election to deal with those problems.

Local municipalities have the choice of using the MCED or private contractors to conduct their elections. Carmel-by-the-Sea is the only city in Monterey County that uses a private contractor to conduct its local elections. While private contractors may appear to be less expensive than using the MCED, we recommend the city thoroughly review their decision in the future.

We concur with the 2007 Civil Grand Jury's recommendation that MCED needs a larger facility.

BACKGROUND

As many as 35 states have passed, or are considering passing restrictive legislation requiring voter Photo ID and/or proof of citizenship amid claims of rampant voter fraud. In California, AB663 was introduced by Assemblyman Mike Morrell, requiring a voter to present proof of identification with a photo ID before being permitted to sign the roster of voters and receive a ballot. The bill has not been put to a vote before the State Assembly as of this writing. The 2007 Civil Grand Jury Report suggested that the Monterey County Elections Department (MCED) had a rather lax voter registration procedure and an inadequate eligibility check.

The 2012 Civil Grand Jury received reports that an absentee ballot had been sent to a deceased voter for the November 2010 election, and that two ballots for the June 2012 primary election were sent to the same person who had changed her marital status and name.

For these reasons, this grand jury investigated how the voter registry is maintained and updated, and whether it was easy for an ineligible individual to obtain a ballot and vote.

The 2012 Grand Jury also reviewed the potential problem of election fraud, which results from tampering with the electronic voting machines, the destruction of voted ballots, and/or egregious errors in the tabulation of votes. This grand jury looked into the handling of absentee ballots during an election, the ballot tabulation process in the MCED, and election integrity of a private contractor conducted municipal election.

INVESTIGATION METHODOLOGY

We toured the facility of the MCED in late May 2012, just two weeks before the primary election on June 5th where some absentee ballots had been received.

We interviewed the registrar of voters and other officials who led us through the procedures of processing mail ballots and preparing the ballots for the precincts.

We also interviewed officials active in the election integrity committee of the League of Women Voters of Monterey Peninsula (LWVMP), because they had observed a private contractor-conducted stand-alone local election in Carmel-by-the-Sea.

The Grand Jury conducted research in the city of Carmel-by-the-Sea and the US Department of Naturalization.

In addition, we reviewed public documents and published articles in newspapers pertaining to MCED, and consulted publications by the Brennan Center for Justice at the New York University School of Law, widely regarded as the nation's premier authority on voting and elections. A bibliography is provided in the Appendixes.

FACTS RELEVANT TO THE INVESTIGATION

A. Voter registration and validation of identity

The full-time staff of the MCED has grown from 7 to 12 since the last time it was investigated by the Civil Grand Jury in 2007. The office has become more professionally run. For example, there was no handbook on elections before 2007, but a comprehensive, 53-page handbook titled "Overview of Elections and How to Observe in Monterey County" has been compiled and updated in May of this year. It is available online at the Elections web site (www.montereycountyelections.us) under the "Upcoming Elections" drop-down menu under "Guidelines for Observers". (See Appendix A)

Among subjects explained in the handbook, and to the Jury orally, are voter registration procedures, registration rules for new citizens and new residents, the federal Help America Vote Act (HAVA), validation of a voter's identity, and maintenance of the Voter File. (See pp. 20-24 of Appendix A)

To register to vote for the first time, a person must be: (a) a U.S. citizen; (b) a resident of California; (c) not in prison or county jail (serving a state prison sentence or serving a term of more than one year in jail for a defined "low level" felony), or on parole, post release community supervision, or post-sentencing probation for a felony conviction; (d) at least 18 years old on the date of the election; and (e) has not been determined mentally incompetent by a court. The first-time voter applicant who registered by mail is required by the federal Help America Vote Act (HAVA) and California Election Law to provide an I.D. number either from the California Driver's License, or California Identification Card, or the last four digits of the person's Social Security number.

The registrant is also required to sign the voter registration application form testifying that he or she meets California's eligibility conditions under penalty of perjury, punishable by fines and imprisonment or (if not a U.S. citizen) deportation from or refused entry to the United States.

When casting a Vote by Mail ballot, first-time voters must provide a copy of their identification when they return their voted ballots.

Before a first-time voter is deemed eligible to cast a ballot, election officials have to validate the voter registration database by identifying a voter's full name, date of birth, residence address, mailing address if different from residence address, and either a complete California Driver's License or State Identification, or if none, the last four digits of the voter's Social Security number. There is a place on the Voter Registration Card for the person to indicate whether, when and where the person has registered to vote before, so that the election officials can send a cancellation notification to the previous county and/or state of residence.

When processing a voter's registration card, MCED will research the current file of voters for a duplicate record of registration. If an existing record is found, the information from the new registration card is applied to the existing record. If no existing record is found, a new record is created for the new registrant. The Department then sends the local voter records to CalVoter, a database maintained by the California Secretary of State. At the state level, voter registration records are compared to the California Department of Motor Vehicles database and the Social Security Administration records to validate the voter's identification. The State then returns a report to the MCED indicating whether or not the voter's identity has been validated. If so, the voter's record will be updated and then becomes a registered voter in Monterey County and is eligible to receive a Voter Notification Card and voting materials.

New citizens and new residents must meet the same provisions as other eligible voters and must register to vote no later than 15 days before an election. New citizens must be able to provide their original Certificate of Naturalization at registration. After the 15-day close of voter registration, new residents may register and vote at the county election official's office no later than 7 days prior to the election, and are eligible to vote for the President and Vice President only. New citizens may register and vote at the county election official's office no later than the

close of the polls on Election Day. They will need to show their original Certificate of Naturalization and will receive a full ballot.

If a voter appears in person at a polling station on election day, the voter must give his/her name and address; the precinct officer will check it against the roster of voters in that precinct, repeat the name and address of the voter, and require the voter to write down the name and address which is matched against the roster ledger before he or she is given a ballot. If the name and address are not found in the roster, the voter may be given a provisional ballot, which will not be counted until the details of the voter are validated by the election department. A precinct officer is empowered to challenge, on various grounds, the eligibility of the voter.

According to the California Secretary of State's Election Fraud Investigation Unit, proven cases of impersonation and non-citizens casting ballots are in fact rare. In the years between 1994 and 2010, there have been only 23 convictions for double voting, 6 convictions for fraudulent voting, and 4 convictions for non-citizen voting. One such conviction was in Monterey County. Whether such frauds were committed in absentee ballots or when the person attempted to vote in person, their minuscule numbers had no obvious effect on election outcomes, and indicate that the current procedures described above are more than adequate to safeguard against voter fraud.

B. Maintenance of the Voter File

The MCED complies with State Election Law by following a "pre-election residency confirmation procedure" 90 days prior to a primary or general election. This past March, approximately 150,000 post cards were sent to voters with a forwarding notice, as a method of validating the address for each voter before mailing official election materials. MCED then sent to the approximately 15,000 voters who provided the United States Postal Service (USPS) with forwarding addresses a second notice in an effort to confirm the accuracy of the information received by the USPS. Of the 15,000 (or 10% of eligible voters) who provided the US Postal Service with a forwarding address, about 1,000 voters had moved out of state. However, 10,000 other voters (about 6.6% of eligible voters) did not notify the USPS of their change of address. Those voters remain on the county's voter roll, but are placed in the "inactive" file of MCED and will not receive voting materials. If they appear to vote on Election Day, they will be given a provisional ballot, and a voter registration form. The provisional ballot will be counted only if the information the voter provided in the registration form is validated.

MCED regularly updates the county's voter records by using the data of (i) the Secretary of State, whose office prepares a file of potential duplicate records in the CalVoter system by checking a voter's name, driver's license and date of birth; (ii) another county or jurisdiction in which the voter who has moved from Monterey County is now registered; and (iii) the USPS which will not forward election mail except for the pre-election residency confirmation card.

It is possible for a voter to receive two ballots if the voter who has a name change re-registers to vote (or the information of name change was automatically sent to MCED by DMV) after

MCED had already sent out the first ballot. In which case, the Department will suspend or cancel the first ballot. Other checks are in place that prevents the acceptance of more than one voted ballot from the same person. A name change can also be identified by the CalVoter system when the voter's date of birth, address and driver's license are checked for duplicates by the office of the Secretary of State.

MCED relies on County Health Department's monthly report of deaths in the county, on records provided by the Secretary of State of deceased voters found in the State Department of Health Services' database, and by scanning of obituaries in local newspapers, to remove voters who are deceased from the register. MCED also offers a form that the surviving family of a deceased voter can fill out to remove the deceased from the voter file. Although an absentee ballot could be sent out to a deceased voter, if death occurred just before a report was filed by the county health officer. The multiple check points make it highly unlikely that the ballot can be misused.

The Superior Court of the Monterey County is required by State Election Law to supply MCED on the first of April and September a list of names of people who are in prison or on parole for the conviction of a felony. MCED will cancel that person's eligibility to vote.

If a voter has not participated in multiple consecutive elections for four years, MCED may purge the voter from the voter register after sending an Alternate Residency Confirmation (ARC) postcard, similar to the process described in B1.

C. Processing Ballots to Assure "One Person, One Vote"

Because over 60% of voters in Monterey County cast their ballots by mail, it is imperative that absentee ballots are delivered and handled in a timely manner. For the June primary election this year, 101,000 absentee ballots were sent out in late April. Roughly 2,500 absentee ballots were undeliverable despite the pre-election residency confirmation procedure described in B. Cost to the MCED apart, such voter apathy, which manifests itself also in low voter turnout, (the rate was 29% in the November 2011 local elections, and 33.17% in this year's June primary election) is a failure of citizenship.

After several hundred absentee ballots disappeared temporarily in the 2010 election, they were subsequently found in the San Jose Post Office. Identifying those "lost" ballots is a testimony to the set of procedures used by the MCED. The MCED procedures "knew" there were missing ballots and the MCED team located the missing ballots and made sure the votes were properly counted in the election. As a result of this occurrence, the MCED has devised a "trap ballot" program with the USPS, whereby no mail-in ballots would leave any post office within the boundary of Monterey County on Monday and Tuesday during the week of election. They would be collected by staff from MCED and returned to the office.

Proper procedures, such as the requirement of the presence of two people in the rooms where ballots are stored, the shredding of unused official ballots at the end of Election Day, have been

put in place to assure the security of both unused official ballots and mail-in ballots. The same security procedures are in place for the manual duplication of damaged ballots so that they can be counted.

Upon receipt of an absentee ballot or provisional ballot, the elections officials compare the signature and address on the envelope with those on the voter registration card, and if in doubt, with signatures from previous ballots cast by the same voter that are all stored on the computer system. If the signature and address match those on record, the ballot is accepted for processing. If the signatures do not match, or the envelope is unsigned, the envelope will not be opened and the ballot will not be counted. The reason for rejecting the ballot will be written on the face of the identification envelope, and the cause is also recorded in the voter management system. No ballot will be removed from the identification envelope until the time for processing has arrived.

Voters who failed to sign their name and address on the identification envelope will be contacted by phone or mail and asked to come into the office to complete the voting process. Envelopes that are damaged or not able to be scanned will be manually entered into the database in the presence of two elections officials. In short, every effort is made by MCED to make sure that every vote is counted.

To ensure that every device, such as the three central optical scanners used to tabulate ballots, accurately records each vote, the "Pre-Election Logic and Accuracy Testing" is performed.

California Election Law also requires an official canvass of the vote, which is an internal audit of the election to ensure the accuracy and validity of the results. This entails publicly conducting a manual tally of absentee ballots, provisional ballots, and precinct ballots cast in 1% of the precincts. Monterey County has 188 precincts. The random selection of 1% of the voting precincts would mean that at least 2 precincts will be chosen. The manual tally will also be conducted in one precinct for each race not included in the randomly selected precincts. The additional precincts are also selected randomly.

In the June primary election, 7,138 ballots (that is 13.7% of the total 52,087 votes cast) were damaged or unreadable by the central optical scanners (Optech 400-C scanners). The primary reason was the voter's failure to follow instruction to connect the vote target with a single thin line between the head and tail of the arrow. MCED manually duplicated those damaged ballots to capture the intent of the voters so that they would be counted. Ballot supplication is administered by a team of at least two people, it is time-consuming, and can be observed by any member of the public.

Although the 2007 CGJ was satisfied with the security of the electronic voting equipment and recommended the reinstatement of the Sequoia ACV Edge voting touch screen Direct Recording Electronic machines (DREs), the machines were decertified by the Secretary of State Debra Bowen in August 2007, unless they were modified to meet a list of conditions for increased security. MCED has restored the paper ballots for most voters because of public distrust of

electronic voting machines. A certified electronic voting machine is installed in each polling station to assist the physically disabled voters. Hundreds of DREs (for which the county paid about \$4 million to purchase with subsidies from the federal government under HAVA in 2003) now sit idly in the MCED office, even though they can meet the conditions of the Secretary of State to be deployed for elections.

D. Is Election Integrity Compromised by Private Contractors?

Carmel-by-the-Sea is the only city in the county that chose not to enact an ordinance to move their election date from April to consolidate their election with a statewide election such as a June primary or a November general election. As a result, Carmel-by-the-Sea holds its stand-alone municipal elections in April of even-numbered years.

The costs of running a stand-alone election are higher than if the April election was consolidated with other countywide elections in June or November. The final cost for services rendered by MCED to Carmel-by-the-Sea for the April 2008 election was \$19,768. It represented a 131.6% increase over the previous election in 2006 that cost Carmel-by-the-Sea only \$8496.90. There was disagreement between the parties over the billing in 2008 because of errors in mailing services and in the Spanish translation of voting instructions on the ballots. The dispute was settled and Carmel-by-the-Sea paid MCED \$17,291, after deducting the costs of errors.

In the fall of 2009, MCED submitted a quote of between \$50,679 to \$56,620 (or \$20 per registered voters) to conduct the Carmel-by-the-Sea election in April 2010. Carmel-by-the-Sea also solicited competitive bids from private contractors. With the help of the City Clerks Association of California database, the city awarded the contract to Martin & Chapman whose bid was \$23,000 including postage.

According to the League of Women Voters of Monterey Peninsula (LWVMP) whose officials observed the April 2010 election, Martin & Chapman performed well in the conduct of Carmel-by-the-Sea's April 2010 municipal election. However, LWVMP identified certain weaknesses: (a) the training, although sufficient attention was paid to ballot security, and (c) poll closing procedures were confusing. The LWVMP did not observe the April 2012 election in Carmel-by-the-Sea conducted by the same private contractor at a cost of \$25,700.

Although Martin & Chapman appears to be much less expensive than MCED to conduct an election in Carmel-by-the-Sea, a comparison of the true costs between the two is difficult. MCED's estimate reflects the full expense incurred by MCED for hourly wages, overtime and double-time for county staffers and temporary workers, as well as transportation, supplies, postage, and the rental of voting equipment. Under the California Election Code, the city clerk of Carmel-by-the-Sea is empowered to act as the city's "election official" and to conduct and canvass the city's election. The city clerk still needs to use MCED's voter register data and their computer to verify voter signatures. Carmel-by-the-Sea did not calculate the actual costs of paid staff time for the City Clerk and other city staff in preparing and canvassing the election.

E. Office Space and Equipment of MCED

MCED's biggest challenge is lack of space for storage and for vote counting during election time. It has a 5-year lease, due to expire on December 31, 2015, on its present office on Salinas, which is approximately 12, 011 square feet. The department also leases three different storage areas at the cost of \$1,625 per month. To access materials from off-site locations involves extra labor and travel time, at an annual average cost of approximately \$1,100 a year (it varies depending on the number of elections being conducted during the year). MCED needs about 25,000 square feet to operate efficiently.

The MCED has several hundred decertified Sequoia electronic voting machines at its facility. The MCED received the money (approximately \$4 million) to purchase these machines shortly after the enactment of the Federal Help America Vote Act (HAVA) was passed in 2002. While a few of these machines are able to be used to support voters with disabilities, the California Secretary of State decertified these units in 2007, unless they could be modified to be tamper-proof. No action has been successfully taken to "fix" these machines, so over \$4 million dollars of equipment remains idle in the MCED office. This equipment also consumes a significant amount of floor space.

FINDINGS

F1. The allegation that voter fraud is "rampant" is unfounded. California already has a law in place that requires voters to produce ID when they register to vote. The present procedures of setting up multiple check points in voter registration and validation of a voter's identity that is conducted by MCED appears more than adequate to safeguard voter fraud.

F2. MCED has made strong efforts to carry out the "one man, one vote" mandate by regularly updating its database, reaching out to every eligible voter and trying to make every vote count. But despite its effort, almost 6.6% of eligible voters failed to provide updated personal information (such as change of address, change of name) to the MCED or to the Department of Motor Vehicles and may therefore disenfranchise themselves.

F3. MCED relies primarily on county health officer's monthly report of death in the county, and on obituaries published in local newspaper to update its voter register. The Secretary of State also depends on the State Department of Health Services database to provide the counties with records of deceased voters.

F4. 13.7% of the ballots cast by voters in the most recent election were damaged and unreadable by the optical vote tabulating scanner, primarily because voters failed to follow voting instructions. MCED had to duplicate over 7,000 ballots in order to capture the voter's intent. The process is both costly and time consuming.

F5. In 2002, the county spent almost \$4 million of tax-payers money purchasing touch-screen voting machines, software and auxiliary equipment such as printers. The voting machines were decertified by the Secretary of State in August 2007, but can be certified if they are modified to meet specific conditions. Most of them are sitting idle in the office of MCED, only some are used by the disabled during election day.

F6. Although a private contractor appears to cost less than MCED's bid for running Carmel-by-the-Sea's stand-alone municipal elections in April 2010 and 2012, city officials did not take into account the actual costs of paid staff time for their own city clerk and staff.

F7. The office of MCED in Salinas on Highway 68 E is inadequate for its operation. Possibly usable equipment lies idle. The department has to budget an extra \$20,600 annually for leasing three storage facilities and the expense of staff time traveling to them to retrieve materials.

RECOMMENDATIONS

R1. We recommend that all county supervisors and every elected official in the county visit MCED to become thoroughly acquainted with the complex procedures in voter registration, validation of identity and vote tabulation that assures election integrity. The MCED reports to the Monterey County Board of Supervisors and it is understood that only one of the five sitting members has officially visited the MCED office.

R2. We recommend a robust voter education campaign that not only urges voters to register and vote, but urges voters to update their personal information with MCED if they change address or names, or if a family member has become deceased. Clearer instruction should be given on how to vote by mail or use the ballot. Lastly, voters should also be urged to read the voting materials mailed to them, so they become better informed voters on the issues.

R3. We recommend that MCED and the Secretary of State utilize the Social Security Administration's master death index to regularly update the voter registration database.

R4. Because of the high rate (13.7%) of damaged ballots due to voters' failure to follow balloting instructions, we urge the consideration of a better designed and more user-friendly ballot for future elections. One alternative may be the redeployment of touch-screen voting machines once public confidence in tamperproof electronic devices is fully restored. A different way of tabulating votes should also be considered, because the three central optical high-speed scanners had problems "reading" a high percentage of ballots in the last election.

R5. The city of Carmel-by-the-Sea should consider all costs and the level of service provided by the competing choices when making the decision on who to use to conduct their elections in the future.

R6. We recommend that the Board of Supervisors support a proposal by the MCED for a different facility with at least 25,000 square feet space mentioned earlier in order to provide adequate space during the election period and to provide on-site storage of all MCED property and records.

R7. The MCED should work with the Secretary of State to resolve the issue of the idle Sequoia Voting Machines.

RESPONSE REQUIRED

Monterey County Board of Supervisors

Findings: F1., F2., F3., F4., F5., F7.

Recommendations: R1., R2., R3., R4., R6., R7.

Mayor of Carmel-by-the-Sea:

Finding: F6.

Recommendation: R5.

APPENDIXES

Appendix A: Overview of Elections and How to Observe in Monterey County
(<http://www.montereycountyelections.us/pdf/2012%20Guide%20to%20Process%20and%20Observing%20Elections.pdf>)

Appendix B: Bibliography

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