

CITIZENS' OVERSIGHT PROJECTS (COPS)

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POSITION PAPER

On the Potrero Community Planning Group Recall Election
Raymond Lutz, Oct. 18, 2007

There has been some discussion regarding various complaints about the conduct of the Recall Election of the Potrero Community Planning Group members who had supported the Blackwater West project. The intention of this paper is to clarify the position of COPS with respect to these questions. In summary, COPS supports the use of vote by mail (VBM) but points out that a dropoff site should be provided.

Vote by Mail is preferred

Fundamentally, VBM has many positive attributes that we have been advocating for some time. Attributes include:

- No waiting for hours in line
- No polling place intimidation
- No confusion about where to go to vote
- No need to make arrangements for childcare or time off from work
- No malfunctioning voting equipment
- No need to hire and train poll workers
- Increased election process integrity through signature verification
- Lower election administration costs
- Increased voter turnout, particularly in special elections, although there is still debate about this point with regard to general elections.
- Elimination of precinct bias, such as voting in church sanctuaries
- Preferred by voters in areas where it is tried.

Voters should photocopy their ballot

To maintain a paper trail, it is recommended that voters photocopy their ballot.

Dropoff sites should be available

In most VBM elections, dropoff sites are provided. In elections when precincts are also available for voting, the absentee ballots can be dropped off at any precinct. In VBM-only

elections, dropoff sites are usually provided that do not require the use of the postal service. In Oregon, for instance, city, state and county offices, including libraries, make designated drop boxes available to voters until 8.p.m. on Election Day.

This is important on two fronts. First, the voter may not trust the mail. In the case of the Potrero election related to the approval of the Blackwater West site, it is easy to imagine various scenarios for election fraud if the mail is accessible by Blackwater supporters in the NSA, or other agency that may have the ability to review the mail, and perhaps tamper with a ballot. Indeed, it is not recommended that anyone send cash through the mail simply because it is well known to be untrustworthy.

And second, it allows for voting on the last few days, when it would be impossible for the ballots to be handled by the postal service and delivered to the Registrar of Voters office. The deadline for receiving the vote is when it is delivered to the Registrar of Voters office, not when it is postmarked.

Studies show that most absentee voters either vote as soon as they receive their ballot, or on the last weekend before the election. Those late voters will not be able to mail their ballot and be sure that it will be received in time.

The list of who has voted is available to whomever wants to pay for the privilege to view it, and certainly the major parties have access to it. For years, they have monitored this list and made phone calls to prompt voters who have not yet voted. On the last day, they need to be able to conveniently vote. Without a dropoff site, the voter must travel to the Registrar of Voters' office to deliver their ballot in person. (It is allowed for one person to carry in a number of ballots on the last day if the ballot is signed over to that person.)

The San Diego County Registrar of Voters is not intending to provide a dropoff site per a telephone call on October 18, 2007. However, providing a locked box that would be transported to the RoV's office is a simple matter that could be provided by the Registrar at almost no cost, and would make voting on the last day possible.

If the Registrar persists in this position, COPs may provide a drop-off service to a lock-box that will be delivered to the Registrar's office.

Hand-counting

The recent ruling by the Secretary of State, Debra Bowen, has decertified the Diebold voting machines, "Direct Recording Equipment – DRE". The status of the use of scanners to count VBM ballots is unclear, but is not a concern in this election because the ballots are going to be hand counted at the Registrar of Voters' office. Other groups have been advocating hand-counting at each precinct. In this case, as there is only one precinct, the act of hand-counting at the Registrar of Voters' office is equivalent to counting at the precinct.

In general, however, COPs supports the use of precinct hand-counting as one more check on the system, to be coupled with scanner counts, preferably using multiple off-the-shelf scanners that do not know the meaning of the markings on the ballot, just that they are there and where they are. The final translation of the bubble-locations to the vote of each ballot must be performed by a multiple-person group who will all agree on the translation. Off-the-shelf scanners are difficult to hack and the meaning of the bubbles is unknown to those scanners.

APPENDIX:

The 1996 report by the Arizona Vote-By-Mail Study Committee states:

"In many jurisdictions in other states which held vote-by-mail elections, voter turnout increased; e. g., in Colorado, turnout doubled or tripled in local elections; Thurston County, WA experienced a 152% increase over similar jurisdictions with polling place voting."

It also states:

"Voter turnout changes in absentee/early voting should not be used as an indicator of results to be experienced from conducting elections by mail, because absentee/early voting does not appear to improve turnout. It is simply a more convenient form of voting for those who would vote anyway."

In regard to voter turnout in the decade from 1983 to 1993, the July 1997 report by the Washington State Association of Auditors states that:

"Over the next decade, several dozen vote-by mail elections were conducted. They consistently experienced a remarkable tripling of voter turnout, reduced costs, and citizens who 'loved it' compared to traditional pollsite elections."

The records from the trial period of VBM for all elections in 1994 and 1995, in which a large number of counties opted to use VBM, show comparable results. The auditors' report also states "...the record of significantly increased participation, voter enthusiasm, and lowered costs continued.⁴

Since Washington State gave counties the option to either hold elections by mail or at polling sites, it was easy to compare the voter turnout for the stadium election. The statistics show that 59% of the eligible mail voters participated while only 34% of eligible poll site voters participated. The latter figure includes the most populated county, King, where the stadium is to be built.⁴

Not all VBM elections have had increased voter turnout. The two most populous counties in Nevada, Clark and Washoe, held their Republican Presidential Preference Primaries using VBM and actually had a small decrease in the number of voters.^{2, 9}

The Registrars of Clark and Washoe Counties, Nevada found that the VBM elections of the Republican Preferential Primaries had many flaws. In Clark County it seems that many voters did not understand the mechanics, of VBM. As an example, many ballots could not be counted because the voters did not sign the outer envelope. A privacy sleeve was provided for the ballot but many voters did not use it. Also, ballots were returned after the deadline. Many people overvoted -- that is, they voted for more than one candidate when only one could be chosen. Some were left blank. Of course, that may have been intentional. There were 162,201 registered Republicans in the county and 75,767 (46.7%) voted. Altogether, 3,779 returned ballots were not counted. There were 75,572 ballots counted, but 19,825 were returned by the Post Office as undeliverable. Voters did not return approximately 55,000 ballots.^{8, 9}

Las Vegas is situated in Clark County and Reno in Washoe County. Both counties have extremely large numbers of short-time residents, which can be a problem when it comes to VBM.

In the 1997 Washington State report on the stadium election, as was stated earlier, not all counties chose to use VBM. It is interesting to note that even in poll site counties, 41%

voted by mail using absentee ballots. In one rural county the figure was 62%.

The report goes on to say:

"What is more important, in the opinion of many County Auditors and knowledgeable observers, is that use of the vote-by-mail process in the primary and general elections evidences a significant gain in informed voting. Voters reported and observers noted that mail voting provided citizens the time and opportunity to become much better informed about issues and candidacies before casting a ballot. Overall, it appears that mail voting fits more into the life style of late twentieth century Washingtonians than poll site voting."

As stated earlier, the Washington State legislature did not agree. After the two year-trial period, the auditors' report says

"A small, but vociferous opposition surfaced and expressed concerns about potential for fraud, about the possibility of undue influence by individuals or organizations over voting, about the competence of the U.S. Post Office to deal with ballots, and about the loss of the ceremonial aspects of voting. Some negativity was simply resistance to change, but many thoughtful citizens shared the Spokesman-Review's concern about "social disconnectedness." As a result, the 1997 Legislature did not consider expanding vote-by-mail."⁴

There has been debate about whether the government should furnish a stamped envelope for the return ballot. This would greatly increase the cost of VBM. Some think that causing the voter to pay postage might be a form of poll tax, which would be unconstitutional. However, if dropoff sites are provided, as they are in most VBM elections, then voters do not have to mail in their ballots. Some citizens prefer to use the dropoff site because they do not trust the mail.

Southwell ends her report by saying:

"Vote-by-mail is an electoral method that has attracted a great deal of national attention. Aside from the obvious effect on voter turnout and cost reduction, this survey suggests that the consequences of vote-by-mail are far less dramatic and earthshattering than has been suggested previously."¹⁰

The previously cited Magleby study², which was done in 1984, stated:

"Based upon these aggregate comparisons in Berkeley, San Diego, and Vancouver, it is apparent that voting districts with low rates of participation in polling place elections are also low in participation in mail ballot elections. Similarly, parts of the city where citizens vote in large numbers in traditional elections are the parts of the city with the highest rates of response in mail ballot elections."

Ballot Secrecy and Voter Intimidation

When voting by mail or voting absentee, there is no problem in guaranteeing the secrecy of the ballot after it arrives at the counting center or elections office. The voter puts the ballot in a "secrecy" envelope that contains no identification of the voter. Then the secrecy envelope is put into an outer envelope which the voter must sign. That signature is then compared to the signature that appears on the voter registration form. After verification, the privacy envelope containing the ballot is removed from the outer envelope, and then opened in a separate process. Once the privacy envelope is separated from the outer envelope, there is no way to reestablish which ballot goes with which

name.

In a study presented in 1984, David B. Magleby states

"It is not surprising, given the unusual nature of mail ballot elections, that they would be challenged constitutionally. The central legal issue is whether mail ballots are secret ballots, which most states constitutionally prescribe. In August 1983 the California Supreme Court upheld the constitutionality of mail ballot elections. Justice Broussard said:

"The fundamental importance of the right to vote persuades us that reasonable efforts by the Legislature to facilitate and increase its exercise must be upheld."

The court also said:

"Mail ballot elections serve two purposes as compared to voting-booth elections. First, voting by mail is often more convenient than voting at the polling place and mail voting increases voter participation. Second, mail balloting can provide significant economies in the administration of elections permitting agencies to call special elections with relatively little cost to ascertain voter sentiment on pending issues. (Peterson v. San Diego, 1983, p. 533).

The use of absentee ballots is subject to the same lack of secrecy as mail ballots. Another case cited in the above study states:

"In a 1981 city council race in Sanger (Fresno County) three Hispanic candidates defeated three incumbents partly because of an unusually high absentee vote. One of the incumbents, Anne Beatie, challenged the election, claiming that campaign workers had watched voters mark ballots, and that this violated the secrecy requirement. In *Beatie v. Davila* the California Supreme Court disagreed:

'If a voter wishes to disclose his marked ballot to someone else, be it a family member, friend or a candidate's representative, he should be permitted to do so. To hold otherwise would cast a pall on absentee voting... We suspect that many absentee voters disclose their marked ballots to other persons before placing them in the identification envelope for return to the elections official or polling place. Such a voluntary disclosure cannot be deemed to violate the constitutional mandate. (*Beatie v. Davila*, 1982, p. 431).'

Oregon Representative Lynn Snodgrass who is the House majority leader and chair of the House Committee on Rules and Elections has this to say about ballot secrecy:16

"...while proponents will tell you that little or no fraud exists because of little or no reports of fraud, I submit to you that, in fact, it does exist and that the reporting process is not being used.

"What family member would turn in another for tampering in any way with the voting decision? What mother would turn in a daughter for punching a hole marked "yes" when mom wanted to vote "no"? What dad will turn in his wife for not allowing him to privately vote?"

"I find it rather absurd that in a society that is finally becoming more sensitive to domestic violence, we would so quickly brush aside the issue of "domestic coercion" simply because it is not being reported.

Vote Fraud

The inability to purge registration rolls and to affirm voters' addresses worries many election officials and ordinary citizens.

In Clark County, Nevada, VBM Republican Primary, nearly 10% of the ballots were undeliverable. As to whether there was any indication of fraudulent voting, the Clark County Voter Registrar had this to say:⁸

"There were no indications of fraudulent voting. However, ballots were delivered all over the County to former residents who did not fill out a change of address with the post office when they vacated their address of record: new residents automatically received the old residents' ballots. In addition, most of the people voting early and in the office on election day did so because they never received their ballots in the mail. Many of these voters' addresses were correct: the post office simply failed to properly deliver the ballot. To whom were these ballots delivered? In numerous instances, some members of a household received their ballots while other members did not."

A detailed article from the February 8, 1998, Miami Herald newspaper²⁴ tells how the vote fraud there was carried out. Some of the examples are:

Campaign workers asked voters to sign the ballots and then hand them over. The campaign workers then voted them. Since Florida also requires the signature of a witness, the campaign workers signed many ballots as witness. Some had the same name at the same address voting more than once. This was illustrated by photos of three signatures supposedly made by someone named Maria Gomez, all at the same address. These signatures were obviously different.

Voter registration cards were taken from people living in one district and switched to make it appear they lived in another. Some absentee ballots were sent to homes where the "requesters" no longer lived. The ballots were then picked up by a third party, voted, fraudulently signed and sent back to the election center and counted.

There were other methods employed in the fraud. It was apparent that the fraud was so wide spread that it must have been organized at some level. Some of the campaign workers who were involved in the fraud were hired as city workers after the election.

In the article "Votes For Sale" in the Reader's Digest, the authors tell about cases of voting fraud in many states. Some of the fraud can occur at the polls where people have been paid to vote a certain way. For this type of fraud to work, poll workers and other officials have to be involved, which means the whole political process is corrupt.

Most of the cases of fraud occur in absentee balloting. The inability of jurisdictions to keep accurate voter rolls and check signatures is the worst problem. People have gone to the polls to vote and been told that they had already voted absentee. There have been incidents where someone visited nursing homes to "assist" incapacitated patients, even those with severe Alzheimer's disease, to vote absentee.

The ease of VBM, plus the ability to study the ballot at leisure, is also a plus. A voter has several days in which to mull it over and either send it in or drop it off. It doesn't have to be done all at once, or while standing in a polling booth while others wait their turn. If something unforeseen occurs on election day, a person may not be able to get to the polls.

A recent study reported in the West Hawaii Today newspaper has some alarming news. It says:

"Among Americans who were registered, but did not vote, more than one in five told us they didn't go to the polls because they couldn't take time off from work or were too busy,' said Lynne Gasper, co-author, with Loretta Bass of the report, Voting and Registration in the Election of November 1996. That, she said, was triple the proportion of nonvoters who gave that reason in 1980.

"Time constraints are now the single biggest reason Americans who are registered give for not voting,' Bass said. Many people these days are finding their employers are putting so many demands on them, they can't take time off to vote:"

The success, or lack thereof, for VBM is not uniform in the many states and jurisdictions where it is used. In going over the material provided by states, studies, reports, etc., it is clear that there are many ways of conducting these elections.

Some local election officials go to great lengths to track down potential voters when address cards or ballots are not deliverable. A publication called All Mail Ballot Elections³¹ outlines how different states and counties handle their elections. It goes into great detail about every aspect of VBM. One can see that successful mail elections really depend on how well organized and how thorough a job elections officials do in a given jurisdiction.

The problems, such as unreported address changes, that trouble some election officials do not seem to bother others. The above cited publication says:

"Nonforwardable ballots that are returned to the election office as undeliverable alert officials to check the registrations of those persons. Several local officials reported that mailing ballots to all registered voters within a jurisdiction enabled them to clean their registration rolls of significant numbers of ineligible voters."

For more information, see:

<http://www.lwv-hawaii.com/votebymail.htm>

<http://www.votebymailproject.org/Southwell.pdf>

<http://weber.ucsd.edu/~tkousser/Will%20Vote-by-Mail%20Elections%20Increase%20Turnout.pdf> – Makes the case that VBM does not improve turnout by studying some precincts that used VBM and compared with similar precincts that used conventional precincts and optional VBM. They found that:

- Voting by mail does not increase turnout in presidential and gubernatorial general elections. In fact, turnout was 2.6 to 2.9 percentage points lower in mail ballot precincts, according to our analysis of two general elections held in representative samples of 18 and 9 counties.
- Voters who cast their ballots by mail in general elections are more likely to skip downballot races, another finding that runs counter to the expectations of vote-by-mail advocates.
- However, voting by mail appeared to bring an average 7.6 percentage point turnout increase in local special elections, which have much lower participation rates overall. This finding is based on recent elections held in three counties.
- Running elections by mail offers other potential costs and benefits apart from its

effects on political participation, according to our interviews with California registrars and review of vote-by-mail elections across the country. These other impacts include potential cost savings, opportunities and barriers to fraud, and access for disabled voters.

- Completion of down-ballot races was indeterminate in this study.

<http://www.shapethefuture.org/press/2005/051005.asp>

The State of Oregon, by an initiative of the people, converted to all mail elections in November of 1998. It had been used frequently in local elections throughout the state prior to 1998. It is wildly popular among the voters as well as election officials. “We love it,” said Anne Martens, spokeswoman for Oregon Secretary of State Bill Bradbury. “People tell us they really like the convenience.”

Recently the San Jose Mercury News ran an opinion piece that said in part, “More elections should be held by mail. The experiences of Oregon...and Monterey County (they began voting in 2002) have shown that voting by mail sharply increases voter participation...and removes barriers keeping voters from the polls. It also is less expensive...”

Slocum said the cost savings in the seven pilot counties could be as high as \$10-13 million. After polling each of the election officials there was a consensus, there are no implementation costs.

AB 867 describes the manner in which vote-by-mail elections are to be conducted:

http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0851-0900/ab_867_bill_20050504_amended_asm.html

(b) The voter may return the marked ballot using any of the following methods:

- (1) By mail, with the postage paid, provided that the ballot is received by the elections official no later than the close of the polls on the date of the election.
- (2) By depositing the ballot at the office of the elections official.
- (3) By depositing the ballot at any other place designated by the elections official for the return of ballots.

http://projectvote.org/fileadmin/ProjectVote/Policy_Briefs/PB13-Vote_by_Mail.pdf

Recommendations

Jurisdictions that have adopted VBM and absentee balloting by mail have employed various methods to ensure that each ballot gets to the right voter, that they are cast by that voter and that they are returned and accurately counted. For example, one extremely important element of protecting against voter fraud in mail-in elections is comparing signatures on the ballot with the voters’ signatures on file. Other recommended steps to improve absentee ballot and VBM include:

1. Include a space for the voter’s signature; and compare the voter’s signature with the signature on file;

2. Use distinguishable absentee or mail ballots, by using a different through color or through other means;
3. Permit election officials to began tabulating votes as soon as ballots are received to avoid delay in the election canvass;
4. Ensure that mail ballots can not be forwarded;
5. Regulate “electioneering” in the presence of people who have mail ballots on their person;
6. Establish close working relationships with the United States Postal Service and university or school administrations to coordinate efforts and efficiently provide for accurate and timely delivery of mail;
7. Regulate who may take custody of a completed mail ballot;
8. Impose significant sanctions for misappropriation of a ballot, falsifying a signature or a voter’s choice on a ballot, or failing to deliver a ballot lawfully entrusted to an agent’
9. Regulate delivery of mail-in or absentee ballots by partisan organizations. While it is important not to restrict family members and agents from returning a limited number of ballots, control of large numbers of completed ballots by third parties can lead to vote buying and misappropriation of ballots in local elections;
10. Require a minimum of two reconciliation audits;
11. Provide public access to lists of voters who have returned their ballots to facilitate Get-Out-the-Vote efforts.

Voting by Mail Could Improve American Democracy

June 22, 2005

By Rep. Susan Davis, Special to Roll Call

Americans have days full of many commitments — jobs, time with their families and errands among them. When you throw one more item into the mix, such as voting, it can be a challenge to squeeze in everything.

While I personally love the ritual of going to the polls to vote, I know that getting to the polls on Election Day is difficult for many people. And for some, it is impossible.

A simple, common sense solution that is reasonably inexpensive is voting by mail, also know as absentee voting.

I have introduced the Universal Vote by Mail Act (H.R. 1835) to require states to provide an excuse-free vote-by-mail option to all eligible voters in federal elections.

Voting by mail will allow Americans to participate in federal elections on their own time. Citizens can vote from the convenience of their own homes. They will have more time to mull over their choices and make informed decisions. And they will be able to do so on their own terms, potentially avoiding long lines at the polls.

Currently, 24 states restrict an eligible voter’s ability to vote by mail. These states restrict vote-by-mail privileges to certain categories of people, including the elderly, individuals

with disabilities or illness, service members and students. Another 25 states give eligible voters the option of voting by mail for any reason. And Oregon conducts its elections entirely by mail.

The fact that some states allow more voters to vote by mail than others creates an uneven playing field. Why should voters in one state have greater opportunity to vote than voters in another state in the same election?

California, my home state, instituted universal voting by mail in 1978. Since then, there has been a 30 percent increase in voters casting their ballot by mail. States across the country that provided a vote-by-mail option during the 2004 election saw a 6.7 percent increase in voter turnout. In fact, more than one-quarter of the voters in my San Diego district opted to vote by mail.

A recently conducted state poll showed that nearly 30 percent of voters said they would vote more often if given the option to vote by mail.

Critics of voting by mail claim that it causes a rise in voter fraud. Yet studies show that there are more incidents of alleged fraud at polling places than in voting by mail.

There are also extremely low incidences of fraud with voting by mail when compared to other methods of voting. The state of Oregon, which runs its elections entirely by mail, has prosecuted only four cases of fraud in the last six elections.

Some argue that voting by mail ensures greater integrity because addresses cannot be forged, and signatures on mail-in ballots can easily be compared to those on registration cards.

Studies have also indicated that adding the option to vote by mail does not create a partisan advantage for one political party over the other. Republicans and Democrats both benefit from similar increases in voter turnout when voters are given the choice to mail in their ballots.

The Universal Vote by Mail Act would not dictate how states would run their vote-by-mail system. For example, it would leave intact filing deadlines set by each state. Further, the bill would still give voters the choice of the time-honored practice of going to the polls on Election Day. All it does is lift restrictions on who is eligible to vote by mail.

As the former president of the League of Women Voters of San Diego, I care deeply about the integrity of our electoral system. Already, 25 states have proved that this option works and it is safe. It is time to give voters in the remaining states this convenient, secure and affordable alternative.

Democracy works best when all citizens have an equal opportunity to have their voices heard. Right now, an uneven playing field exists between states that already offer the option of mail-in ballots and states that do not.

Rep. Susan Davis is a Democrat from California.