

San Joaquin County Grand Jury



San Joaquin County Registrar of Voters “Make Every Vote Count” 2015-2016 Case No. 1503

Summary

Three hundred and forty-five days after the San Joaquin County (SJC) 2014 Gubernatorial Primary Election held June 3, 2014, a newspaper column appeared in The Record. The column stated whistle blowers reported more than 800 Vote by Mail (VBM) ballots were not counted. On June 1, 2015, the SJC Information Systems Director and the Registrar of Voters requested the California Secretary of State conduct an investigation into the 800-plus uncounted ballots. The Secretary of State’s recommendation was to forward the complaint to the SJC Civil Grand Jury. The state agency only investigates possible criminal violations.

The Grand Jury has made several recommendations that it hopes will lead to a better overall system for receiving and tracking VBM ballots.

Among the Grand Jury’s major findings:

- There is no documentation to verify when and by whom VBM ballots are picked up by ROV staff from the Postal Service.
- The public was not informed for 328 days after election certification about the unusually high number of late ballots from the 2014 Gubernatorial Primary Election, June 3, 2014.

Among the Grand Jury’s major recommendations:

- By September 1, 2016, ROV develop written policies and procedures for daily tracking of the VBM ballots picked up at the post office. Tracking should include who picked up the ballots, when they were picked up, how many were received and when they arrived at the ROV office.
- By September 1, 2016, ROV develop and implement a written policy to publicize election discrepancies before election certification.

Glossary

BOS	Board of Supervisors
Canvass Procedures	The final step of the election process
CEC	California Elections Code
Certification	A process of complying with all provisions of the California Code of Regulations for the Statewide Direct Primary Election
PO	Post Office
ROV	Registrar of Voters
SJC	San Joaquin County
USPS	United States Postal Service
VBM	Vote by mail

Background

The Fifteenth Amendment to the U.S. Constitution guarantees the right to vote. In the State of California a valid registered voter has the right to cast a ballot. A valid registered voter is:

- A United States citizen
- A resident of California
- 18 years of age or older on Election Day
- Not currently imprisoned or on parole for the conviction of a felony
- Not found by a court to be mentally incompetent

The County's Registrar of Voters (ROV) is entrusted with the responsibility to make sure all elections are held with the highest of integrity and that all eligible votes cast are counted and certified in accordance with the California Elections Code (CEC).

The mission statement of the SJC ROV states:

“VISION -- Voting Insures Strength In Our Nation through Precision, with Virtue and Pride. We are the silent support of this system.”

At the time of the 2014 Gubernatorial Election, CEC section 3020 stated:

“All vote by mail ballots cast under this division shall be received by the elections official from whom they were obtained or by the precinct board no later than the close of the polls on election day.”

In SJC there were 293,837 registered voters and 22 percent of the votes cast in the 2014 Gubernatorial Primary Election were VBM. The Grand Jury learned the ROV has no documentation for the security and chain of custody for the VBM ballots when picked up at the post office on the days surrounding an election in San Joaquin County. On Election Day, SJC ballots have to be collected from Delta Station PO before the close of business at 5 p.m. Ballots are picked up by designated ROV employees from the West Sacramento Processing Center prior to the close of the polls at 8 p.m.



Tarps cover ballots and election equipment stored in a hangar at the Stockton Municipal Airport.

The County ROV is responsible for canvassing the vote within the time period prescribed by law (usually 28 days) and maintaining the security and integrity of the ballots and voting materials until they are sealed. Ballots are kept for six months for local elections and 22 months for state and federal elections. According to the San Joaquin County Canvass Procedure Version 1.3, the purpose of the canvass is to:

- Complete the count
- Reconcile the returns
- Identify and correct errors
- Resolve exceptions
- Have confidence in the accuracy and completeness of the results.

After the election, the ballots from the 2014 Gubernatorial Primary Election were stored in the ROV warehouse located near the Stockton Municipal Airport with security cameras strategically placed throughout. Because of a proposed increase in rent, San Joaquin County did not renew the warehouse lease in June 2015. This resulted in the ballots being moved to a less secure and leaky Stockton Airport hangar that ROV shares with other tenants and lacks video surveillance within the building.

Issues/Reason for Investigation

On May 14, 2015, The Record, the County’s largest newspaper, reported information from a “whistle blower” that 800-plus ballots from the 2014 Gubernatorial Primary Election were not counted. The

column was published 345 days after the June 3, 2014 election, and was the first public information about the uncounted ballots.

On June 1, 2015, about two weeks after The Record column appeared, the SJC Information Systems Director and the Registrar of Voters requested an investigation from the California Secretary of State’s Office. On July 3, 2015 the recommendation from the Secretary of State’s Office was to direct the inquiry to the SJC Grand Jury. In addition three other complaints were received regarding the uncounted ballots. Knowing the importance of the voting process and the questions raised by the newspaper column, the Grand Jury decided to investigate the complaints.

TIMELINE		
SJC Gubernatorial Primary	Tuesday, June 3, 2014	Election Day
Certification of 6/3/2014 Election	Friday, June 20, 2014	17 days after election
Stockton Record column	Thursday, May 14, 2015	345 days after election
Statement of Election Day events by ROV staff	Monday, May 18, 2015	349 days after election
Stockton Record editorial	Tuesday, May 19, 2015	350 days after election
Letter to Secretary of State by ROV	Monday, June 1, 2015	363 days after election
Response from Secretary of State	Friday, July 3, 2015	395 days after election
Request for Grand Jury Investigation	Thursday, July 16, 2015	408 days after election

Method of Investigation

Materials Reviewed

- Materials provided by ROV
- California Elections Code sections 3020, 3011 and 4103
- SJC ROV Canvass Procedures Version 1.3
- June 3, 2014 SJC Gubernatorial Primary Election Certification
- The California Government Code section 12172.5
- Senate Bill 29
- Information Systems Organizational Chart
- The complaints
- Surveillance videos of ROV warehouse
- Ballots

- U.C. Davis Vote by Mail Brief #2, dated September 2014

Interviews Conducted

- Registrar of Voters staff
- Delta Station USPS staff
- Information Systems staff

Sites Visited

- ROV basement storage
- USPS East Stockton and Delta stations

Discussions, Findings, and Recommendations

1.0 Counting of Ballots

At the time of the June 3, 2014 election, CEC section 3020 stated:

“All vote by mail ballots cast under this division shall be received by the elections official from whom they were obtained or by the precinct board no later than the close of the polls on election day.”

On May 28, 2014, in preparation for Election Day, the ROV sent a letter to the USPS Processing Center in West Sacramento outlining the arrangements for pick-up of VBM ballots on Tuesday, June 3, 2014. The West Sacramento Distribution Center was to retain all VBM ballots received on Election Day at the distribution center and turn over to two designated employees from the SJC ROV office between 7:30 and 8 p.m.

The West Sacramento Post Office is the processing center for San Joaquin County and surrounding areas. The regular mail delivery schedule from the processing center to the Delta Station Post Office is two or three times a day, at 6 and 7 a.m. and at 10:30 a.m. (if additional mail is received). The normal procedure for mail pickup by ROV is once per day, usually in the morning at Delta Station, about one-tenth of a mile from the ROV office. The week prior to an election, and on Election Day, ROV picks up mail twice a day, in the morning and at about 2:30 p.m. Delta Station PO closes at 5 p.m. weekdays. On Election Day, if ballots are received after the afternoon pickup, Delta Station PO normally would make a courtesy call to ROV. The Grand Jury could not confirm that an afternoon pick up was made on Election Day by ROV at Delta Station PO. Additionally, the Grand Jury could not confirm if a courtesy phone call was made that day by Delta Station PO personnel.

A lack of documentation has resulted in the Grand Jury being unable to confirm who went to the Delta Station PO and at what time on Election Day 2014. The only fact the Grand Jury could verify was a letter sent to the West Sacramento Mail Processing Center (MPC) informing them of the two designated ROV employees who would be picking up ballots at the MPC on Election Day.

The Grand Jury could not confirm which ROV employees went to the Delta Station PO on Wednesday morning June 4 (the day after Election Day), for the regular mail pickup. Delta Station PO employees handed ROV staff two USPS trays of VBM ballots. Each USPS tray can hold about 400 ballots.

ROV employees were surprised there were so few ballots received from Delta Station late Election Day. ROV employees were shocked by the large number of ballots picked up at Delta Station the next morning. Employees returned from Delta Station the morning of June 4, 2014 and immediately contacted the Registrar of Voters. The Registrar that morning contacted the San Joaquin County Counsel's Office regarding the two trays of late VBM ballots. The County Counsel instructed the Registrar to isolate, label and store the ballots under video surveillance until a determination whether the ballots could be counted. County Counsel later confirmed the ballots could not be counted as provided by CEC section 3020.

The issue of late ballots received by other State of California ROVs is one that caught the attention of California lawmakers. A significant number of VBM ballots in every election go uncounted. The two main reasons: the VBM ballot are late or have signature issues. According to the California Civic Engagement Project released September 2014, ballots are not counted because they are received late. The UC Davis Center for Regional Change additionally reported in the 2012 General Election nearly half (47.8 percent) of all VBM ballots rejected were received late.

On Jan. 1, 2015, Senate Bill 29 (CEC section 4103) became effective. It allows VBM ballots postmarked by Election Day to be counted, if received in ROV offices within three days of an election. The intent of the law is to reduce the large number of VBM ballots that go uncounted because they are received late.

California Election Code section 4103 states:

“(a) Notwithstanding Section 3020, ballots cast under this chapter shall be returned to the elections official from whom they were obtained no later than 8 p.m. on election day.

“(b) Notwithstanding subdivision (a), any vote by mail ballot cast under this chapter shall be timely cast if it is received by the voter's elections official via the United States Postal Service or a bona fide private mail delivery company no later than three days after election day and either of the following is satisfied:

“(1) The ballot is postmarked on or before election day or is time stamped or date stamped by a bona fide private mail delivery company on or before election day.

“(2) If the ballot has no postmark, a postmark with no date, or an illegible postmark, the vote by mail ballot identification envelope is date stamped by the elections official upon receipt of the vote by mail ballot from the United States Postal Service or a bona fide private mail delivery company, and is signed and dated pursuant to Section 3011 on or before election day.”

The absence of written or video documentation on Election Day, June 3, 2014, and the day after, created an issue of credibility and caused the following chain of events:

- The ROV did not notify the public of the unusually high number of late VBM ballots that compounded the issues raised in The Record's column and editorial.
- The ROV waited 328 days after the election was certified to publicly acknowledge there were about 800 ballots received the morning after the election.

Primary Election June 3, 2014 -VBM Ballots too late to count

DATE	POSTAGE	POSTAGE DUE	TOTAL
6/4/2014	675	124	799
6/5/2014	32	137	169
6/6/2014	38	3	41
6/9/2014	35	6	41
6/10/2014	11	2	13
6/11/2014	1	0	1
6/12/2014	7	2	9
6/13/2014	1	2	3
6/16/2016	4	6	10
6/17/2014	0	2	2
6/18/2014	2	0	2
6/19/2014	2	0	2
TOTAL	808	284	1092

Source: Registrar of Voters (Document not dated, no author)

Findings

F1.1 There is no documentation to verify when and by whom VBM ballots are picked up by ROV staff from the Postal Service.

F1.2 The public was not informed for 328 days after election certification about the unusually high number of late ballots from the 2014 Gubernatorial Primary Election, June 3, 2014.

Recommendations

R1.1 By September 1, 2016, ROV develop written policies and procedures for daily tracking of the VBM ballots picked up at the post office. Tracking should include who picked up the ballots, when they were picked up, how many were received and when they arrived at the ROV office.

R1.2 By September 1, 2016, ROV develop and implement a written policy to publicize election discrepancies before election certification.

2.0 Security of Ballots

According to the San Joaquin County ROV Canvass Procedures, Version 1.3:

“The County is responsible for canvassing the vote within a specified time period (usually 28 days) as prescribed by law and maintaining the security and integrity of the ballots and voting materials until they are sealed and kept for either six (6) or 22 months.”

On June 20, 2014, the Gubernatorial Primary Election was certified by the Registrar of Voters (Appendix A). Approximately two weeks later the ballots were placed in boxes for storage at the ROV warehouse near the Stockton Municipal Airport.

In January 2016, the Grand Jury made a site visit to the ROV basement to view how the ballots were prepared for storage. The ballot boxes were labeled as to content, placed on a pallet, and stretch wrapped. The process for stretch wrapping includes applying tamper evident seals throughout the stretch wrapping process that establishes security for the contents.

Grand jurors were told the ballots in question were separated and isolated from all of the other ballots, were labeled and kept under video surveillance. Grand jurors viewed videos of the site where the uncounted ballots were being stored in a warehouse near the Stockton Municipal Airport with 24-hour surveillance. The video cameras were motion activated strengthening the security of the ballots. Grand Jury members were able to view video from the warehouse showing how the cameras worked. These videos are overwritten every three to four months. As a result jurors were unable to view video before, during and after the June 3, 2014 election.



County election equipment and ballots protected by tarps in a hangar at the Stockton Municipal Airport.

Subsequently, San Joaquin County did not renew the warehouse lease in June of 2015. This resulted in ballots being moved to a leaky Stockton Municipal Airport hangar that ROV shared with other tenants. The hangar lacked video surveillance. ROV provided no policy requiring written documentation of

tracking activity or persons entering and exiting the building. ROV has no written inventory control policy indicating materials and equipment that enter and leave any facility where ballots are stored.

Findings

F2.1 The ballots were moved from a secured 24-hour surveillance facility to a less secure location.

F2.2 The warehouse video was not viewable because the system overwrites itself every three to four months.

F2.3 There is no documentation of material and equipment movement between ROV and the storage facilities.

Recommendations

R2.1 By September 1, 2016, ROV store all ballots and equipment in a secured location with 24-hour surveillance

R2.2 By September 1, 2016, ROV develop and implement a policy to keep and store all surveillance data per canvass procedures for the storage of all ballots.

R2.3 By September 1, 2016, ROV develop and implement a chain of custody for all materials brought into and removed from the storage facilities.

Conclusion

The issue of the 800 uncounted VBM ballots was brought to light publicly in The Record newspaper column on May 14, 2015, 345 days after the election.

The Grand Jury attempted to answer three important questions: (1) What caused the late delivery of approximately 800 VBM ballots from the June 3, 2014, Gubernatorial Election? (2) Why were these same ballots not counted? (3) Did ROV do everything it could to make sure every vote counted?

Due to lack of ROV documentation the Grand Jury could not confirm which ROV employees picked up the VBM ballots at Delta Station PO during the 2014 primary election. The ROV blamed the USPS for the late delivery of the ballots in question. The USPS does not guarantee the time it takes for mail to be delivered. Again, a complete lack of documentation prevented the Grand Jury from vetting this claim.

The change in the State Election Code effective January 1, 2015 addresses some of the ballot delivery problems, however it does not address ROV's issues involving procedural documentation and ballot tracking. Equally disturbing, ROV personnel failed to notify the public of the 800 ballots that were received late and not counted.

The Grand Jury requested to view the late ballots in question. Jurors were assured the ballots had been isolated. However, when jurors viewed the ballots they learned that all uncounted ballots had been

comingled. The Grand Jury could not confirm they actually viewed the 800-plus uncounted VBM ballots the ROV received on June 4, 2014.

The arrival of 800 ballots the morning after the election created considerable angst among election officials. It was highly unusual for hundreds of ballots to suddenly appear a day late. Nevertheless, election officials, while not legally required to report late VBM ballots, felt no ethical obligation to announce to the public what had happened.

It has been an enlightening journey for the Grand Jury. After numerous interviews and pouring over pages of documents, the Grand Jury cannot point to a specific breakdown in the election process that caused this to occur. However, the Jury has offered several recommendations that it hopes will lead to a better overall system for receiving, tracking and maintaining the security of VBM ballots. The citizens of San Joaquin County deserve a system that ensures and gives them faith again that **EVERY VOTE DOES COUNT.**

Disclaimers

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code section 911. 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code sections 924.2 and 929).

Response Requirements

California Penal Code sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report.

The San Joaquin County Board of Supervisors shall respond to all Findings and Recommendations in this report.

Mail or hand deliver a hard copy of the response to:

Honorable José L. Alva, Presiding Judge
San Joaquin County Superior Court
P. O. Box 201022
Stockton, CA 95201

Also, please email the response to Ms. Trisa Martinez, Staff Secretary to the Grand Jury at grandjury@sjcourts.org

Appendices

A. Certification of the 2014 Gubernatorial Election

CERTIFICATION

STATEMENT OF VOTES CAST

STATEWIDE DIRECT PRIMARY ELECTION

HELD ON TUESDAY, JUNE 3, 2014

SAN JOAQUIN COUNTY, CALIFORNIA

I, Austin G. Erdman, Registrar of Voters for the County of San Joaquin, do hereby certify the following to be a true and correct Statement of Votes Cast for the Statewide Direct Primary Election held on Tuesday, June 3, 2014, for the Federal, State, and local contests set forth, as determined by the official canvass of said election.

WITNESS my hand and official seal this 20th day of June, 2014.



Austin G. Erdman, Registrar of voters
County of San Joaquin
State of California

**CERTIFICATION OF REGISTRAR OF VOTERS
OF THE RESULTS OF THE CANVASS
OF THE JUNE 3, 2014
STATEWIDE DIRECT PRIMARY ELECTION**

STATE OF CALIFORNIA }
COUNTY OF SAN JOAQUIN } ss.

I, Austin G. Erdman, Registrar of Voters of said county, do hereby certify that, in pursuance to the provisions of Elections Code Section 15300, et seq., I did canvass the results of the votes cast in the Statewide Direct Primary Election held in said County on June 3, 2014, for the Federal, State, and local contests, and that the Statement of Votes Cast to which this certificate is attached, is full, true and correct.

I hereby set my hand and official seal this 20th day of June 2014, at the County of San Joaquin.



A handwritten signature in blue ink, reading "Austin G. Erdman", is written over a horizontal line.

Austin G. Erdman, Registrar of Voters
County of San Joaquin
State of California