

1% Manual Tally Observer Report
Congressional District 11
January 10, 2007

The Eleventh U.S. Congressional District is comprised of portions of four California Counties: Alameda, Contra Costa, San Joaquin, and Santa Clara. Members of our 1% Manual Tally Observer group observed aspects of those tallies in each of the four counties. This report summarizes our observations and evaluations, as well as our recommendations for changes that we feel need to be made in the future.

In working closely with the Registrars of Voters and their staffs, we were impressed with the strong commitment and hard work that these people provide in conducting our elections and working within the changing regulations emanating from both the state and federal levels. We also became aware of the concern that many Registrar of Voters (hereinafter RoV) staff feel about the questioning and criticism of election practices in recent years.

We wish to emphasize that our concern is to assure transparency in the electoral process. We are aware that the RoV staffs have been required to use technology that is not of their choosing.

In the context of public concern about the reliability and security of electronic voting machines, the 1% manual tally required by the Elections Code has been put forward as the primary check of the accuracy of the electronic vote totals. Our goal in observing the 1% manual tallies has been not only to observe the details of the hand counts of the paper ballots and the voter verified paper audit trails but also to assess whether or not the laborious and painstaking work actually provides an adequate test of the accuracy of the final Statement of Vote.

This summary will enumerate specific practices that we judged to be excellent and worthy of emulation, as well as practices that seemed to us problematic and worthy of correction. Finally this report will address the question of whether the 1% manual tally as currently conducted provides a test of the accuracy of the Statement of Vote.

In the process of observing the 1% manual tallies, we became aware of and concerned about additional matters. Some of these will be noted briefly in an Addendum to this report.

Good Practices

1. Contra Costa County and Alameda County each use a publicly observed and transparent method of randomly selecting the precincts or other units (for example: numbered boxes of mixed-precinct absentee ballots) to be hand counted. Contra Costa uses three colored 10-sided dice; Alameda County uses numbered balls picked from a rotated drum which has been used in the past for jury selection. Both of these methods

seem to us admirably open and transparent. We commend these counties and suggest that they might consider publicizing the process as a community event to which the public is invite and which might become a participatory tradition.

2. Contra Costa County and Santa Clara County both made possible full public observation of the process of hand counting the paper ballots. Observers were able to stand close enough to actually see the ballots as they were being read and tallied. The staff were comfortable with the presence of observers. We commend these counties for this practice.

3. Santa Clara County has invested \$150,000 in a sorting machine that sorts absentee ballot envelopes by voting precinct as they are received at the RoV's office. We commend the county for taking initiative in this important step long before it was required by law (in 2008 all counties will be required to sort ballots by precinct).

The value of sorting ballots by precinct is two-fold: (1) Absentee ballots to be hand counted can be selected by precinct and the totals compared with electronic totals in the final Statement of Vote (this is not possible if a county hand counts boxes of mixed-precinct absentee ballots but does not report the final Statement of Vote by mixed-precinct boxes) and (2) Hand recounts may be done at a more affordable cost for candidates, as the hand counts often are prohibitively expensive partially due to the burden of sorting out he absentee ballots by precinct.

4. In Santa Clara and Contra Costa County the persons doing the hand counts of the voter verified paper audit trails were not told the electronic totals in advance. Good practice requires that the people doing the hand counts be "blinded" to the electronic machine totals in order to prevent bias.

5. Alameda County and Contra Costa County provide the Statement of Vote online. We recommend that all counties provide the Statement of Vote online. We recommend that a comma delimited format of the Statement of Vote data as well as the results of the 1% manual tallies and the interim Statement of Vote be available online.

6. Alameda, Contra Costa, and Santa Clara Counties make efforts to rehabilitate and count any paper ballots that are rejected by optical scanners, to reflect the apparent intention of the voter. If ballots are rejected by scanners because of extraneous markings, the ballot is rehabilitated to reflect the obvious intent of the voter rather than to have the ballot thrown out on trivial technical grounds. We applaud this practice.

Not So Good Practices

1. Both Santa Clara County and San Joaquin County used computer software to generate their random numbers for the samples. Although we do not claim that the samples they selected were not random, we believe that the use of computer software is not transparent and is unacceptable when simple, direct, and time efficient methods such as 10-sided dice and balls from a tumbler are available.

2. All four counties selected the 1% sample prior to completing the initial Statement of Vote. This is a serious flaw.

If the 1% hand count is to be a plausible check of the final Statement of Vote, the sampling must not be done until the initial Statement of Vote is fully completed and locked down. To do otherwise leaves open the possibility of malfeasance to be done without possibility of detection in any groups of votes now known to be outside the light of scrutiny by the hand count.

It seems to us plausible that the RoV staff are unconcerned about these possibilities because they know they do not intend to commit malfeasance. Nonetheless, such a process leaves the process vulnerable to both outsider and insider attack. The process of handling votes should protect against all vulnerabilities.

If, because of time constraints, it is deemed necessary to proceed with selection of units for hand count prior to completion of the interim statement of vote, all ballots not yet counted should be enumerated and set aside for separate analysis and separate in the final Statement of Vote. If those votes are provisional ballots, a separate report of those provisional ballots should be a part of the final Statement of Vote.

3. We are not aware of any system in any of the four counties for follow-up more widely of problems encountered in the 1% manual tally. Any errors are dealt with ad hoc and corrected, but there seems to be no attempt to see if the problems might be more widespread.

For example, in a number of instances discrepancies of one or two votes were noted in the optiscan votes. These apparently were resolved by correcting the specific problems in the particular paper ballots. In no instance did the anomalies lead to a wider examination of the problem. If it occurred in the very small sample, it might be expected to occur in more samples. This possibility was not addressed. We did not observe discussion of systemic implications of discrepancies.

Errors were noted in the hand count in San Joaquin County. These errors were not addressed by the RoV in any reports we have seen. Given that San Joaquin County uses only DREs (Direct Recording Electronics), the voter verified paper audit trail should precisely correspond to the electronic vote, but it did not, at least initially. We are unaware of any explanation of this anomaly. Unlike the optiscan equipment, which has physical variations that result in errors, the DREs should give absolutely accurate results, and any anomalies should lead to questions about the reliability of all the machines. We did not see a discussion or explanation of the anomalies.

4. In Alameda County, in San Joaquin County, and in Santa Clara County's counting of the DRE voter verified paper audit tapes, observers were kept too far away to allow meaningful observation. Observers should be able to see clearly the numbers, names, etc. This is a serious flaw and needs to be corrected in the next election.

5. In Santa Clara County the machine totals were known in advance by persons

conducting the counts of absentee/paper ballots. This practice compromises the reliability of the process and should not be continued.

6. In Contra Costa and Santa Clara Counties (and maybe elsewhere?) the paper ballots were too large to go through scanners easily without producing time-consuming repetitions, rehabilitations, etc. The scanners do not appear to be appropriately designed to process the size of ballot that is used, especially when that ballot has been folded.

7. Alameda County's website gave incorrect information regarding registration and receipt of absentee ballots. If website features are not functioning properly, they should be shut down immediately. This kind of misinformation can lead registered voters to stay away from the polls, believing incorrectly that they are not registered to vote.

Effectiveness of the 1% Manual Tally as a Check on the Statement of Vote

The 1% manual tally does not give an adequate test of the accuracy of the Statement of Vote in any of the four counties.

There is no way to check the groups of votes hand counted in the 1% manual tally as a sample of the groups of votes reported in the Statement of Vote. Although it has been asserted that the 1% manual tally gives a test of the electronic vote, this is not so, at least in the four counties we observed.

In some instances the absentee votes were grouped into boxes without regard to voting precinct. Hand counts of the boxes do not correspond to categories of votes reported in the Statement of Vote. Therefore the boxes of mixed-precinct absentee ballots cannot be seen as a sample of the total which can be checked against a corresponding segment of the results reported in the Statement of Vote.

The 1% sample is not drawn in a way to assure that fraud might be caught. When the sample is drawn before the interim Statement of Vote is completed and locked down, the door is left open for fraud to be focussed in the remaining precincts, without possibility of detection by the 1% manual tally.

When anomalies are found in the 1% sample, those few precincts often are corrected. However we were not able to obtain full reports on the 1% manual tallies. None of the four counties has a clear process for dealing systemically with anomalies/discrepancies that are identified in the 1% manual tally.

Conclusion: The 1% manual tally fails to test and/or prove the accuracy of the electronic results.

Addendum

In the process of observing the 1% manual tallies, some staff have indicated concern about the haste used to discard the punch card technology. Punch card voting systems

involved a paper ballot that could be recounted, were relatively inexpensive, and, if the chads were cleaned out of the machines regularly, worked better than the much higher priced and less transparent electronic technology. Given that some counties are providing a mix of technologies to provide independent access for disabled voters and also hand marked paper ballots for voters who prefer that option, it would seem appropriate to revisit the use of punch card technology.

We recommend that voters be urged by public information campaigns to fill out their sample ballots in full prior to coming to the polls, in order to shorten voting time and to shorten waiting time.

We recommend that election day be made a national holiday in order to allow all voters to spend adequate time at the polling place.

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A note of caution in reading the 1% Manual Tally Observer report:

The California 1% manual tally is NOT an audit of the election result. The observer group whose report is pasted above became clearly aware that the 1% manual tally did not constitute an adequate audit of the election (see our comments in the section entitled Effectiveness of the 1% Manual Tally as a Check on the Statement of Vote). Our observations about the California 1% manual tally should not be misconstrued as comments about the efficacy of audits, as the 1% manual tally does not constitute an audit of the election.

Audits can and should be conducted of all elections. They must be carefully planned and adequately staffed with trained personnel. They can be done in a short period of time if properly planned, staffed, and administered. They will/must be different in many ways from the very minimal 1% manual tallies that we observed.

Judy Bertelsen
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