



Secretary of State
DEBRA BOWEN
State of California

February 14, 2008

Mr. Dean Logan
Acting Registrar-Recorder/County Clerk
12400 Imperial Highway
Norwalk, CA 90650

via facsimile: (562) 929-4790

Dear Mr. Logan:

I read with interest your February 11, 2008, report to the Los Angeles County Board of Supervisors regarding the ballots cast by Decline-To-State (DTS) voters in the February 5, 2008, Presidential Primary Election ("Report"). I appreciate your prompt effort to begin an assessment of the extent of the problem, and I am asking you to expand your review to include additional documents that could aid in determining for which presidential candidates at least some of these DTS voters intended to vote.

Specifically, I believe an analysis of each precinct's Roster of Voters will reveal whether additional steps can be taken to accurately capture the intent of those DTS voters who made a selection in the presidential candidate portion of the ballot but did not fill in a bubble indicating the party primary in which they wished to participate. If the intent of any of these voters can be ascertained, Los Angeles County would be in the position to count votes for president that, to date, have gone uncounted.

As the Report states, Elections Code section 15154(c) does not permit the acceptance of a ballot in which the choice of the voter is impossible to determine. The subsection reads:

If a voter indicates, either by a combination of both marking and writing in, a choice of more names than there are candidates to be elected or nominated for any office, *or if for any reason the choice of the voter is impossible to determine*, the vote for that office shall not be counted, but the remainder of the ballot, if properly marked, shall be counted. (*emphasis added*)

Given the fact that the InkaVote ballots do not include the names of candidates, a visual inspection of ballots will be inconclusive for any DTS voter who did not fill in a bubble indicating a party preference. The lack of such obvious information, however, does not automatically mean it is "impossible to determine" the voter's intent. Before that conclusion can be drawn, the actual ballots cast by DTS voters must be compared to the Roster of Voters from each of Los Angeles County's more than 4,700 precincts.

The "Voter Processing Reminders" provided to Los Angeles County's poll workers include the following instructions:



- "Ask all Nonpartisan voters, 'Do you wish to vote for candidates in either the American Independent or Democratic Party?'
- If they do, change the voter's party designation on the Roster.
- Regardless of their response, Nonpartisan voters always receive Nonpartisan ballots.
- When issuing NP [a nonpartisan] ballot, remind voter ... 'If you are voting for candidates in the American Independent or Democratic parties use the appropriate booth and remember that you must select the party in the first box.'"

Assuming poll workers followed these directions, the Roster of Voters in each precinct will reflect whether a DTS voter intended to vote for a presidential candidate in the Democratic Party or the American Independent Party, or was intending to vote only on the nonpartisan ballot measures. Once the number of voters in each of these categories is tallied, that information can be reconciled with the ballots cast by DTS voters in each precinct. The County will then be able to make a more informed decision as to whether it is impossible to determine the intention of any DTS voter who marked a selection for a presidential candidate but did not fill in the bubble indicating whether that vote should be counted for a Democratic Party or an American Independent Party presidential candidate.

I am requesting the County assemble the following information for all precincts as rapidly as possible:

- The party preference, if any, stated by DTS voters on a precinct-by-precinct basis, as recorded on the Roster of Voters in each precinct.
- The number of ballots, on a precinct-by-precinct basis, on which DTS voters:
 - filled in the bubble in the manner dictated by Los Angeles County's instructions to indicate they were voting for a Democratic Party or an American Independent Party presidential candidate, and correctly filled in the bubble for a candidate.
 - only filled in the bubble corresponding to a presidential candidate.
 - only filled in bubbles that corresponded to statewide propositions or local measures on the ballot.

For the purpose of this analysis, the County does not need to inspect votes cast on the non-partisan measures contained on the ballots.

When this analysis is complete, the County will be in a better position to determine whether it is truly impossible to determine the intent of a voter who filled in a bubble corresponding to the presidential candidate of their choice, but did not fill in the bubble indicating whether their vote had been cast for the Democratic Party or the American Independent Party presidential candidate.

The potential utility of this approach is best illustrated by the following example: If there were five DTS ballots voted in a particular precinct and a review of the Roster of Voters

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for that precinct indicated that all five of those DTS voters told the poll worker that they wished to vote for a candidate in the Democratic Party, then presumably all five of those ballots can be counted for the Democratic Party candidate that corresponds to the bubble filled in by each of the voters, regardless of whether a party selection bubble was marked.

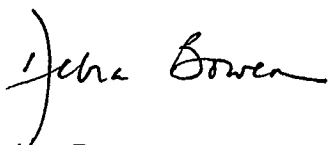
Once the County has compiled this information, it may discover other techniques it could employ to determine a DTS voter's intent and feel confident that any decision to tally a vote for president from these ballots would accurately reflect the voter's intent.

Turning to what must be done in future elections, I know you have stated publicly on several occasions that the cross-over voting format used in the February 5, 2008, Presidential Primary Election will no longer be used in Los Angeles County. I appreciate your commitment to making this change. I am happy to work with you and your office to develop alternative options.

I know we both share the goal of accurately counting each and every vote in every case in which the voter's intent can be clearly determined. I also know that because of the ballot design used in Los Angeles County, laws governing ballot secrecy and privacy, and other related issues, it may not be possible to clearly determine how some voters intended to vote in the February 5, 2008, Presidential Primary Election. Looking to the Roster of Voters, which is designed to record in which political party primary (if any) a DTS voter intended to cast a ballot, will not only help Los Angeles County make some determinations with a higher degree of certainty, but it will also reassure the public that every effort is being made to count every vote where the voter's intent can be determined.

Thank you for your attention to this matter. As always, if I or my staff can be of any assistance as you undertake these efforts, please don't hesitate to contact me at (916) 653-7244.

Sincerely,



Debra Bowen
Secretary of State

cc: Members of the Los Angeles County Board of Supervisors

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