



2010-2011 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

SANTA CLARA COUNTY REGISTRAR OF VOTERS ERRORS IN JUNE 2010 ELECTION BALLOT MAILING

SUMMARY

The Grand Jury received a citizen complaint that two ballots (husband and wife) for the June 2010 election were sent to voters who had moved out of the state and were no longer eligible to vote in Santa Clara County. The complaint included copies of the two ballots that had been mailed to the out-of-state address in error. A Grand Jury investigation revealed that a mailing error occurred in the June 2010 Primary Election for Santa Clara County (SCC). Further investigation determined that the bulk mailing vendor contracted by the SCC Registrar of Voters (ROV) forwarded 7,668 election ballots through the National Change of Address (NCOA) database without the permission of the ROV.

BACKGROUND

The ROV oversees all SCC elections. Of the approximately 825,000 registered voters in the county, approximately 550,000 are Vote By Mail (VBM) voters. The balance of voters vote at their precincts. As verified by the ROV, it is their responsibility to perform the following duties:

- Ensure election laws and campaign disclosure requirements are enforced
- Maintain a county database of all registered voters
- Certify the official lists of local candidates for elections
- Track and certify local ballot initiatives
- Compile election returns and certify election results
- Educate SCC citizens about their voting rights
- Promote voter registration and participation
- Accept, review, and process properly executed affidavits of registration received by mail and in person and place voters on the list effective upon the receipt of the affidavit
- Update changes of voter information and status such as process re-registration affidavits, voter-requested changes, out-of-county transfers, and felony, death, and mental incompetence lists

- Prepare and maintain the voter list and files by keeping a voter registration file containing all voter registration documents for active, inactive and canceled voters and by conducting systematic mailings to confirm address changes
- Provide accurate information on voters, including voter indexes, lists, or files upon request
- Prepare periodic reports of voter registrations
- Provide access to public records as prescribed by law
- Verify status of Vote by Mail (VBM) voters through signature verification
- Verify the voter registration status of signers of various petitions
- Maintain established County business hours, as well as the additional hours needed to complete all duties in a timely manner
- Prepare voter information pamphlets and ballots in four language combinations: English/Spanish, English/Chinese, English/Tagalog and English/Vietnamese
- Create pamphlets and ballots in each language combination for the following nine categories: Democratic, Republican, American Independent, Green, Libertarian, Peace and Freedom, Non-Partisan Democratic and Non-Partisan Republican.

METHODOLOGY

The Grand Jury toured the ROV main facility and subsequently interviewed several ROV employees to understand the process of address changes and to investigate how the error brought to the Grand Jury's attention had occurred. The Grand Jury interviewed the mailing distributor to understand its process and interaction with the ROV regarding address changes.

DISCUSSION

When the Grand Jury toured the facility, a member of the Grand Jury asked if it were possible for ballots to be mailed to out-of-county or to out-of-state residents in error. The response was the ROV had safeguards in place to ensure this could not happen but did not explain what those safeguards were.

The Grand Jury initiated an investigation to reconcile the facts of the complaint and the ROV statement that safeguards are in place. The Grand Jury requested the ROV to produce a list of all voters (and their addresses) that had been sent VBM ballots to addresses outside SCC for the June 8, 2010 Primary Election. The Grand Jury expected the complainants to be on the list because they did receive ballots. Because the complainants were not on the list, the Grand Jury concluded that the list provided was not an accurate list of actual mailings for the June 8 election.

With the permission of the complainants, an ROV official was shown the two ballots that had been sent to the out-of-state complainants in error. The ROV researched the ballots' history and responded that the names were from among 2,030 voters to whom ballots were mailed in error out of the county. The Grand Jury found this to be inconsistent with the assurance that safeguards were in place to prevent such an error. The ROV official further explained that the 2,030 ballots had been voided prior to the June election and the voters were made inactive, ensuring any ineligible votes would not count.

The Grand Jury was informed by the ROV that address changes are updated daily, weekly, and monthly, depending on when the information for change is received and from which source, such as from a voter by mail, phone or in person. The ROV also receives updates from the Post Office NCOA list. The general process the printer/mailer was to follow is illustrated in Figure 1. Note that address changes are to be identified by the Post Office and sent to the ROV for voter database update.

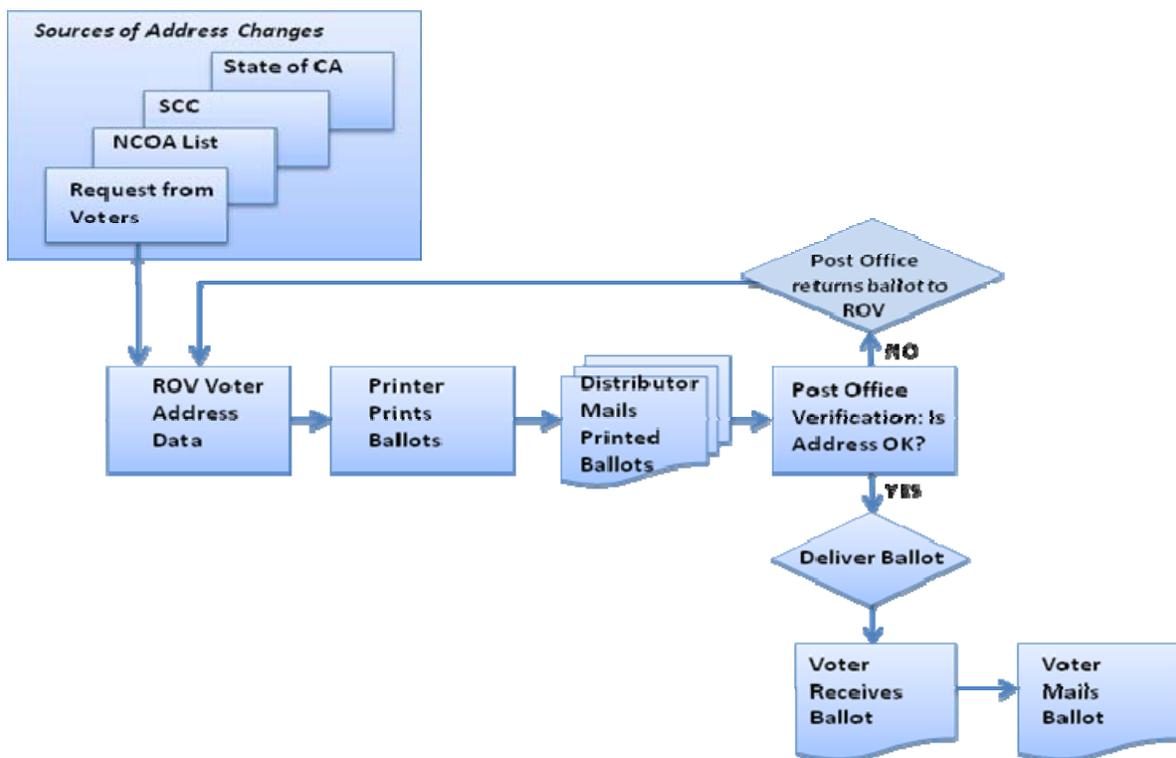


Figure 1: Representation of ROV Address Change Process. Voter address changes are to be processed only by the ROV, either through a direct request or a ballot returned from the Post Office.

The ROV contracts with a vendor who subcontracts with a mailing distributor/vendor to print and mail voter ballots. The Grand Jury interviewed the mailing distributor. The mailing distributor acknowledged it performed an unauthorized, “out of process” task by updating its mailing list from the U.S. Postal Service’s NCOA database. This is standard practice for most bulk mailing; however, the ROV stated the contractor has been instructed to update voter mailing lists only from information provided by the ROV. This instruction is important since a change of address may require a different ballot to be mailed or may require the addressee to be struck from the voter rolls.

The mailing distributor error resulted in the following:

- A total of 7,668 ballots were erroneously sent to voters whose addresses were updated using the NCOA database, not the ROV data.
- Of those 7,668 ballots, 2,030 were mailed to voters ineligible to vote in SCC; the rest were still eligible.
- Subsequent to the “out of process” update of the 7,668 addresses and mailings, the mail distributor realized its error. The ROV was contacted on May 17, 2010 and notified of the error.

Because the error effectively removed the Post Office’s role in providing the ROV with NCOA changes, the ROV’s standard process would not have caught these errors. Therefore, when the vendor notified the ROV of the error, the ROV manually checked each of the 7,668 voters and updated its records to reflect changes of address. Table 1 summarizes the three categories of ballots mailed erroneously and the resulting ROV actions.

Table 1: Summary of Erroneously Mailed Ballots and Corresponding ROV Action

Number of ballots	Error	Eligible to vote in SCC?	New Ballot Required from SCC ROV?	SCC ROV action
2,030	Distributor mailed ballots for a SCC voting area to voters who had moved out of the county/state	No	No	Voided ballots making these voters inactive
3,124	Distributor mailed ballot for prior voting area to voters who had moved within SCC, to a different voting area	Yes	Yes, with appropriate voting area ballot items	Voided ballots, corrected the SCC voter addresses, sent Official Ballot Replacement form with new ballot
2,514	Distributor mailed to voters who had moved within SCC, within same voting areas	Yes	No, original ballot voting area was correct	Corrected SCC voter addresses.

The Grand Jury asked the ROV about the June Primary Election ballot mailing error. The response was that its standard process provides the address list to the printer 88 days before an election. The printer prints the ballots and forwards them to the mail distributor to mail the ballots. Of these, the ROV expects about 2% to be returned as undeliverable. Triggered by any returned ballots, the ROV updates its records, voiding ineligible ballots and sending new ballots as warranted. The process ensures ballots are not delivered to ineligible voters.

Because the vendor’s error circumvented the ROV process, active ballots were sent to thousands of voters ineligible to vote, either because they moved out of the county or moved within the county to another precinct. Because these 3,124 voters were sent active ballots, the ROV was forced to take extraordinary measures—informing the voters who received the erroneous ballots that the initial ballots were voided and a providing them with a new ballot. The new ballot includes an Official Ballot Replacement form that carries the following statement:

I certify under penalty of perjury that the Vote by Mail ballot sent to me by the Registrar of Voters Office was not received, lost, spoiled and that I will not vote in the event it is received or found.

Name: _____

Address: _____

Signature: _____

Date: _____

The Grand Jury requested copies of the ballot-handling procedures the vendor is contracted to perform, and any other documents that detail the ballot-handling process. The materials provided by the ROV do not fully document the ballot-handling procedure. There is no mention of how the vendor is or is not to process change of addresses, nor did the Grand Jury find any instruction regarding the use of NCOA versus the ROV in updating addresses. Overall, the documentation is poor or nonexistent and leaves open the likelihood that errors will occur. Although the ROV sent the vendor a written request not to use the NCOA list to update addresses, there was no permanent formal change to the process reported by the ROV.

CONCLUSION

The Grand Jury concluded that the bulk mail distributor erred in updating the ROV mailing list through the NCOA list prior to printing and mailing the June 8, 2010 Primary Election ballots. This resulted in 7,668 ballots being mailed out in error. Informed of the mistake, the ROV updated its records and mailed correct ballots as warranted. However, the Grand Jury finds that the communication with affected voters was unclear, and may have resulted in inaction on the voters' part. In other words, because the ROV's replacement ballot communication did not clearly state that the ROV had voided the first cast ballot and that a new ballot was required in order for their vote to be counted, the voters may not have returned the new ballot. While the number of ballots erroneously handled is less than 1% of the total vote-by-mail ballots handled, in a close election, such as the Alum Rock Union Elementary School District Board of Trustees where one candidate won by just two votes, every vote matters.

While the ROV provides a valuable service for the county in handling the approximately 550,000 registered SCC voters' requests to vote by mail, the Grand Jury concludes that ROV procedures are not sufficient to prevent erroneous mailing list updates from occurring in the future and recommends action to prevent reoccurrence.

FINDINGS AND RECOMMENDATIONS

Finding 1

As a result of the mail distributor not following ROV procedure, 7,668 ballots were erroneously mailed to addresses not consistent with ROV records.

Recommendation 1A

The ROV should review its ballot-handling procedures to ensure the ballot-handling process is fully documented.

Recommendation 1B

The ROV should ensure the written procedure is attached to or referenced in contracts, communicated with mailing vendors, and re-communicated periodically, depending on change in procedure or change in vendor personnel.

Finding 2

Adequate measures do not exist to ensure that the mailing vendor updates addresses solely from ROV-received data.

Recommendation 2

The ROV should develop and include within its written procedures a process describing how address changes are to be updated. That process should include safeguards such as a written acknowledgment by the mail distributor that it has updated its mailing list only from the ROV list. The process should require the mail distributor to return a signed form attesting that it followed the written procedure.

Finding 3

Instructions to voters to recast ballots are unclear. The ROV failed to communicate clearly to voters who received improper ballots that their initial ballots were voided. As a result, some voters may not have voted using the correct ballots and remained unaware that their first ballot had been voided. Thus, for some, without their knowledge their votes may not have been counted.

Recommendation 3A

Written communication with voters whose ballots are voided should clearly state that fact.

Recommendation 3B

For those voters whose initial ballots are voided and who are still eligible to vote, correct ballots should be sent with a letter clearly stating that if they had previously voted on the incorrect ballot that they must vote again using the new ballot enclosed for their vote to be counted.

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 28th day of April, 2011.

Helene I. Popenhager
Foreperson

Gerard Roney
Foreperson pro tem

Kathryn Janoff
Secretary