

County of Alameda Elections Commission Agenda

Meeting Date: Thursday, November 21, 2024

Time: 4:00 PM

Location: Via Zoom/In person
Alameda County Training & Education Center
125 – 12th Street, 4th Floor
Suite 400 Hayward/Union City Rooms
Oakland, CA 94612

Zoom Link for Meeting: <https://us02web.zoom.us/j/89343963322>

The video recording of the meeting is normally posted 2-3 days after the meeting.

You can find it at: bos.acgov.org

1 -- Call To Order / Roll Call at 4pm -- 2 minutes

2 -- Swearing In of New Commissioners -- none

3 -- Approval of Agenda -- 2 min

Modifications to the agenda can be made here

4 -- Approval of Minutes of October 17, 2024

Due to the election being processed now, these minutes will be approved in January

5 -- Announcements and Communications -- 5 minutes

No discussion on these items.

(a) From staff

(b) From commissioners

- Commissioners
- President

6 -- Public Comment on Agenda Items -- 20 minutes

If we have 5 or less commenters, then they will have up to 3 minutes each. 5-14 commenters will be limited to 2 minutes each. If we have 15 or more people then they will be limited to one minute each.

We encourage and appreciate written comments to be emailed to the Commission at eoc@acgov.org. (Please be aware that email sent to eco@acgov.org is not private. It also goes to staff at the ROV Department, it is legally discoverable in a lawsuit or via a Public Records Request.)

7 -- Monthly Update from Registrar of Voters Office -- 20 minutes

See attachment for topics to be covered and statistics

Statistics and comments regarding the election tallying, what phase we are in.

8 -- Old and New Business

(a) Items carried over from a previous meeting

(1) Black Male Voting Numbers (A. Moore) -- 10 minutes

Black Male Voting Numbers are very low, not just in Alameda County, but in the entire USA. Why? What can we do about it?

See Attachment

Possible actions -- asking staff for a report on this issue and agendizing for the future.

(b) Ongoing Items from Committees

All of these will be for possible action. See attachments for each committee report.

The convener / reporter for each subcommittee has an asterisk by their name.

(1) Cast Vote Record Releases (subcmte: K Butter*, I Dieter, J Belcher) -- 10 min

See Attachment

We will hear from the Committee and ROV regarding the status of CVR releases.

Consideration of asking the Committee to advocate with the SOS's office for clarity in the legislation.

(2) ACEC October Report to the BOS (Lindsay*, Valentine, Butter) -- 5 min

See Attachment

The report was edited and sent to the Board of Supervisors on [date]

(3) Structure of the ROV position (subcmte: Z Valentine*, J Belcher, Whitehurst) -- 0 min

No report this month. A recommendation will be made to the Commission in January 2025.

This is the issue about having Alameda County Registrar's position being a standalone position, as opposed to managing multiple departments.

(4) Commission Rules, Procedures and Best Practices Committee (S Henderson*, I Dieter, B Tsao, J Lindsay) -- 20 minutes

See Attachment

The committee asks for feedback from the commission and a motion to accept these items as amended our Rules, Procedures and Best Practices.

- *Special attention to item C-1 has been requested*
- *These replace what we previously accepted.*

(5) Dedicated Staff Support to the ACEC (Ramon*, Tsao) -- 5 minutes

See Attachment

This is the issue of possibly asking the BOS for funding for dedicated staff support for the Commission.

(6) Nominations Committee (Tsao*, Ramon) -- 5 minutes

See Attachment

This Committee is working on filling the Elections Expert seat and on finding a good candidate for consideration for the District 2 seat.

Another question is about the seat reserved for the City Clerks.

(c) Special Report from the ROV -- no special reports until January 2025

8 -- Old and New Business (continued)

(d) New Business -- for discussion and possible action

(1) Plan to Analyze and Report to the BOS re. the 2024 election administration -- 20 minutes

(a) What do we want included in the analysis?

- (i) It should apply to all races in 2024, not just November 2024
- (ii) It should include what the department did well and where it needs to improve.
- (iii) ROV department staff should be consulted for the report

(b) Discuss some of the Controversies and Criticisms of the Nov 2024 Election Administration

and hear from the Alameda County election administrators on their points of view on these items.

- (i) Voter Information Guides did not arrive or arrived late for lots of people
- (ii) CVRs controversy (already discussed above)
- (iii) Alleged slow count (getting results earlier)
- (iv) Continued concerns about election administration observation

(c) Possibly hold a special meeting in December [Butter]

Recommendation regarding this Report: To form a committee to do the initial analysis and draw up a draft report to be delivered by the February meeting.

(2) Oakland RCV Overvote Anomaly -- 5 minutes

Attach FairVote PDF

Recommendation: Ally with good government organizations and possibly with universities to do the analysis. The ROV Department would actively assist those researchers that are approved by the Commission and provide full access as allowed by law. Form a committee would implement this plan

9 -- Public Comment on Agenda or Non-Agenda Items -- 10 minutes

The 10 minutes here is a fixed allocation of time, and will be divided equally among all who wish to comment, with a maximum of 3 minutes per person.

If your comments are complex or if you didn't have enough time, we always appreciate it if you send your input to the Elections Commission at eoc@acgov.org. (Please be aware that email sent to eco@acgov.org is not private. It also goes to staff at the ROV Department, it is legally discoverable in a lawsuit or via a Public Records Request.)

10 -- Requests for Future Agenda Items

Commissioners can make requests directly to the president of the commission. Requests for future agenda items from the public can also be emailed to the commission at eoc@acgov.org. (Please be

aware that email sent to eco@acgov.org is not private. It also goes to staff at the ROV Department, it is legally discoverable in a lawsuit or via a Public Records Request.)

11 -- Adjournment (as close to 6:30 as is viable)

The next regular meeting will be January 16, 2025.

There will be no regular December ACEC meeting.

ELECTION COMMISSION MEETING – NOVEMBER 21, 2024

Agenda Item #7 – Registrar of Voters Monthly Report

1. Election:
 - a. November 5, 2024, General Election (as of Post Election Update #4)
 - i. Total Number of Registered Voters – 960,649
 - ii. Total Number of Youth Voters – 1,494
 - iii. Total Voters Cast – 664,052
 - iv. Total Youth Voters Cast - 554
 - v. Turnout – 69.13 %
 - vi. Turnout Youth Voters – 37.08 %
 - b. November 5, 2024, Canvass (as of Post Election Update #4)
 - i. Number of Estimated Unprocessed Ballots – 17,675
 - ii. 1% Manual Tally – Monday, November 18 2024 – until completed
 1. A Manual Tally of one percent of all the ballots (batches) counted. The purpose of the *hand count* is to confirm that the machine count is accurate. All races in the election must be included in the Manual Tally.
 - iii. Next Update – Wednesday, November 18, 2024
 - iv. Curing of Ballots - is to allow time for curing of mismatch/no signatures by voters
 1. ROV to mail 8 days before certification a notice to voters of the deadline to cure their signatures
 2. Signature curing deadline – 2 days before certification of the election, voters have to cure their signatures
 - v. Certification of the Election
 1. Thursday, December 5, 2024 – Last Day to certify results

ACEC November 21, 2024

ATTACHMENT FOR AGENDA ITEM #8a -- Black Male Voting Numbers

Resolution

It's been brought to my attention that people in Alameda county have serious concerns with the number of black men particularly in addition to individuals in like or similar situations in Alameda county that can vote and have the ability and right to vote but are not accounted for in the vote.

There are several barriers that have been identified as areas of concern, homeless populations particularly in west Oakland and deep east Oakland, formerly and currently incarcerated individuals as well as people housed in assisted living facilities, group homes, reentry facilities ect.

I have openly shared that there are new steps being taken to ensure the vote of incarcerated people in jail in Alameda is accounted for. Doing so it seems has brought about even more questions regarding just who is giving the voter the education information on the ballot measures and is it non biased information?

Because the demographic being engaged is new to the process and may not have a clear understanding of the measures the public has concerns about where the voter education is coming from. I felt this was a viable concern to bring to the commission.

The solution would seem to me fairly simple, I think we can easily enough compile a comprehensive report of all of he efforts made on behalf of the aforementioned populations and areas to show the public that we are doing our part to the best of our ability and go even further once the report is released we can ask for public comment and ideas if anyone feels we have not throughly addressed the concern.

Respectfully I request all input from my fellow commissioners as I am new to this position and want to do what is best for the people we serve.

ACEC November 21, 2024

ATTACHMENT FOR AGENDA ITEM #8b1 -- CVRs Cmte Report

DISCUSSION ONLY ITEM

To: Alameda County Elections Commission

From: Judy Belcher, Karen Butter, Irene Dieter - Committee on Cast Vote Records

Date: November 21, 2024

Since the October 17 Elections Commission meeting, the cast vote record (CVR) committee has been busy. Below is a chronology of actions as they occurred and exhibits.

1. On October 18, the Office of Voting Systems Technology Assessment for the Secretary of State issued an advisory memo to the County Clerk/Registrar of Voters (CC/ROV) stating that CVRs should be released in a PDF format and small precincts should be extracted from CVR reports. (See Exhibit 1.)
2. On October 21, Commissioner President Jim Lindsay sent a note to the Secretary of State's office pointing out the problems with the CC/ROV advisory memo and introducing solutions. (See Exhibit 2.)
3. On October 22, members of the CVR committee appeared at the Board of Supervisors meeting to speak in favor of using an encrypted JSON file for the file format for the CVRs instead of a locked PDF and a policy for redaction that makes it possible for third parties to still use the CVRs as intended to rerun election tallies. No action was taken at the meeting.
4. On October 28, the CVR committee requested an update from the Registrar of Voters (ROV) on whether CVRs would be released in locked PDF or JSON format because we preferred the JSON format. On October 29, the registrar told the committee that the department would be distributing the CVRs in a locked PDF format.
5. On October 29, Supervisor Carson wrote a letter to the ROV, objecting to the use of a locked PDF format and why, saying releasing encrypted JSON files and applying targeted redactions for only precinct and ballot IDs would be sufficient to protect privacy and retain CVR accuracy, and is in line with the board's adopted direction. He added, "If this release is unfeasible, the CVRs in the original JSON format as you have done in previous elections according to the schedule approved by the Board on October 8, 2024." (See Exhibit 3.) Registrar Dupuis responded to the Board of Supervisors, stating that it is his intention to release CVRs in a locked PDF format because of the CC/ROV advisory memo. (See Exhibit 4.) Supervisor Carson then agendized the matter for the November 12 Board of Supervisors meeting.
6. On November 9, the CVR committee sent a letter to the Board of Supervisors explaining, among other things, why releasing CVRs as locked PDFs are not usable for transparent analysis. (See Exhibit 5.)

7. On November 11, the ROV informed the Board of Supervisors that the Secretary of State granted Alameda County verbal approval to produce the CVRs in JSON format for the November 5 election after addressing the concerns raised by the Board, the Election Commission, and members of the public about the limitations of providing the CVR in a secured PDF format. (See Exhibit 6.)

8. At the November 12 Board of Supervisors meeting, committee members spoke in favor of releasing CVR reports in a JSON format and redacting only precinct and ballot identifications. In a mass motion, Supervisor Carson's letter of November 5 was approved unanimously. (See Exhibit 7.) Registrar Dupuis reported his intention to release CVRs in an unencrypted JSON format and redact precincts under 10 voters.

There are conflicting positions on the details of the redactions that protect voter privacy. The Board of Supervisors acknowledged that the Secretary of State's office advised redaction for precincts with under 10 voters, but directed the ROV to redact only precinct and ballot IDs, saying it "would be sufficient to protect privacy and retain CVR accuracy." The first CVR JSON release occurred with the November 15 election results update with the small voter precincts redacted.

We thank those who spoke in favor of releasing the CVRs in a JSON format during the canvass and particularly Steven Hill, an elections consultant with FairVote, for serving as a valuable resource.

We look forward to seeing the CVR policy being implemented correctly.

October 18, 2024

County Clerk/Registrar of Voters (CC/ROV) Memorandum #24220

TO: All County Clerks/Registrars of Voters

FROM: /s/ Rodney Rodriguez Office of Voting Systems Technology Assessment

RE: OVSTA: Senate Bill 1328 Overview

Senate Bill (SB) 1328 (Chapter 1328, Statutes of 2024) was signed by Governor Gavin Newsom on September 25, 2024, and went into immediate effect. The bill authorizes the Secretary of State (SOS) to impose additional conditions of approval for electronic poll books, ballot manufacturers and finishers, ballot on demand (BOD) systems, voting systems, and remote accessible vote by mail (RAVBM) systems.

Moreover, SB 1328 updates existing election record retention, preservation, and destruction requirements to provide clear guidance for electronic voting data. Additionally, it expands and clarifies an existing felony related to voting technology security.

The added and amended statutes are summarized and explained in the following sections. ...

4) Defines “electronic data” to include “voting technology software, operating systems, databases, firmware, drivers, and logs.” (Elec. Code, § 17600(d).)

Cast vote record data reports are electronic data. It is the opinion of the Secretary of State that these reports may be provided to requesters under the following specific conditions to ensure compliance and protect voter privacy and the secrecy of a voter’s ballot:

- a) Reports should be delivered in a secure, locked PDF format.
- b) For precincts with ten or fewer voters the data should be redacted to safeguard voter privacy.
- c) The frequency of report release is at the discretion of the jurisdiction, provided it does not interfere with the administration of elections....

To: NaKeshia Robinson, Deputy Secretary of State, and Rodney Rodriguez
Sent: Monday, October 21, 2024 12:00 PM
From: Jim Lindsay, president, Alameda County Elections Commission
Re.: CCROV Memorandum #24220 regarding SB 1328

Dear Ms. Robinson and Mr. Rodriguez,

Please note that while I am President of the Alameda County Elections Commission, and while all information below is consistent with all commission policy, I am technically writing this letter as an individual, as our last commission meeting was immediately before the CCROV was released, and our next meeting is not until mid-November. Nonetheless, I do believe it represents the will and intent of both the commission and the Board of Supervisors, who literally adopted the commission's CVR recommendation word for word.

I am writing to you in regards to your CCROV Memorandum #24220 regarding SB 1328. I would like to discuss two of its provisions, which are going to create problems in Alameda County and reduce trust in election administration in California. I also would like to propose possible solutions for both items in order to make Cast Vote Record reports enhance democracy and public trust in voting and in voting administration.

As background, you might recall that I and others met with both of you in May 2024, and that the Alameda County Elections Commission unanimously passed a recommendation that Alameda County should adopt a policy for Cast Vote Record reports that would enhance transparency, accountability, accuracy of our local elections, and trust in elections and election administration.

As you know, there has been great public concern regarding an error in the November 2022 election in which the wrong winner was certified in a contest in Oakland. That error led to public distrust in elections, the last thing we need in these times. The only reason we discovered this error was because our ROV released the Cast Vote Record report and a good government group, FairVote, was able to use those CVRs to re-tally the election and determine the correct winner. It is important to note that, if it had not been for the release of the CVRs, and the ability of FairVote to re-tally that election, the wrongly elected candidate would still be in office today.

So the Cast Vote Record policy adopted by the Alameda County Elections Commission, and subsequently also adopted unanimously by the Alameda County Board of Supervisors, was specifically designed to make sure such a mistake would never happen again in our local elections. Specifically, the policy called for the public release of the CVRs early in the election so that good government groups could use the CVRs to re-tally all elections well before the election was certified.

This CVR policy has overwhelming support in Alameda County. Both the Board of Supervisors and the elections commission unanimously voted for the CVR resolution and believe it is a crucial part of our compact with the public to run transparent, accountable, secure and accurate elections. The Board of

Supervisors adopted CVR policy is focused on regaining the trust and confidence of Alameda County residents.

So you can imagine our dismay to discover that your CCROV Memorandum #24220 would completely eviscerate this CVR policy and will have the end effect of reducing trust in elections and enabling conspiracy theorists. It would do that in two ways.

The most serious issue is that your recommended policy says that “Reports should be delivered in a secure, locked PDF format.” Besides being president of the elections commission, I have had a long career as a computer programmer across a wide variety of industries, including public elections. In addition, I have consulted with other data experts and software engineers about this matter. It is a known fact that a locked PDF is not a machine-readable format. It effectively is like releasing the CVRs as a truly massive document on paper. It would not be technically feasible to use a CVR in a locked PDF format to accurately re-tally the elections and avoid the type of scandal that happened in that Oakland school board election. There are some commercial products that can access and read a locked PDF, but the transfer of data is unreliable and is prone to being inaccurate. In addition, a PDF format would be an enormous file -- probably tens of thousands of pages -- unnecessarily extraordinarily large and awkward to work with.

Therefore, your CCROV that advises that the CVR file must be in a locked PDF format would make actual useful usage of CVRs close to meaningless. It is a technical release of a CVR file that no one can use to accurately verify an election. Your office might as well have simply disallowed CVR files ever be released -- it has essentially the same effect. Furthermore, the CCROV just made Dominion's job harder under an already tight deadline -- it just changed the specifications of their job when they were already under that very tight deadline.

We certainly recognize the need for security in elections, and toward that mutually shared goal there is a clear recommended alternative solution. Please give Alameda (and SF) County a waiver to use an encrypted JSON file for the November 2024 election. Then, a longer term solution can be determined in a more measured manner that includes having all stakeholders at the table.

Currently the Dominion system generates the CVR file in JSON format. This is a widely known and recognized format that has worked well for CVRs in San Francisco, which has been publicly releasing the CVRs for many years, where it has increased public trust in elections and public trust and well earned respect for election administration. To add enhanced security, we propose that, instead of mandating a locked PDF format, you require in the waiver that they must use an encrypted JSON file. Registrar Dupuis already was planning to make the CVR file available through the county elections website under password protection. Using encryption and passwords would be sufficient to guarantee the security of the root CVR file.

Note that if anti-democratic conspiracy theorists modified the file and attempted to claim an election was stolen it would be extremely easy to refute. The fact that the original version is right there and is

not able to be modified would make it trivial to show that their data was falsified. Furthermore, CVRs have been released in machine readable format in California and across the nation and this scenario has never been exploited, probably because they realize that it is so easy to prove they falsified the existing data. This is not a real threat. Your solution, while surely well intentioned, will have the effect of harming democracy and election administrators, it does not enhance democracy or assist election administrators.

The second issue is that if the CVR file has any redacted data the election cannot be properly verified. Ideally, the type of redaction that could work best for transparency and public confidence in elections is to simply redact the precinct ID and ballot ID from the CVR file. However, in high complex counties with a large number of overlapping jurisdictions, it is possible that the ballot type could theoretically expose a voter. Therefore, if this is a concern that this is an issue in a county, a county should be able to release the CVRs in a machine readable format that is contest by contest, thus giving complete voter privacy. This last solution would have to be done automatically by the vendor, so would not probably not be an option for the November 2024 election.

Finally, the fact that the Total Vote Record does show all ballots and does expose voters in very low precincts means that as state law stands, there actually is no full voter privacy standard in practice. This contradiction must be fixed one way or the other -- it makes zero sense as it currently stands.

I look forward to hearing from you and would welcome further discussion on this critical item.

Best,
Jim Lindsay
President, Alameda County Elections Commission

To: Registrar Tim Dupuis, Board of Supervisors, County Counsel, and Elections Commission
From: Supervisor Keith Carson
Date: October 29, 2024 3:33 PM

Dear Registrar Dupuis,

I'm writing to clarify my intent as author of the Board's direction regarding the public release of the Cast Vote Record (CVR). While the Secretary of State's recent memo (CC/ROV #24220) suggests releasing CVRs as locked PDFs, voting rights advocates and the Alameda County Elections Commission have raised serious concerns that this format limits the CVR's utility for election accountability, particularly in ranked-choice voting.

Releasing CVRs solely as PDFs would effectively counter the Board's intended goal of facilitating accurate election oversight. Essential re-tallying and error-checking—like that which revealed errors in the 2022 Oakland school board election—would be hindered by a PDF format. Notably, the San Francisco Department of Elections has opted not to adopt the SOS memo, reinforcing that it is not binding.

The following recommendations are in line with the Board's adopted direction:

1. **Release Encrypted JSON Files:** Dominion outputs CVRs in JSON format, which has supported transparent analysis in Alameda County and San Francisco. Encryption would further address security while preserving utility.
2. **Apply Targeted Redactions:** While the SOS advises redaction for precincts with under ten voters, redacting only precinct and ballot IDs would be sufficient to protect privacy and retain CVR accuracy.

If implementing these measures by the November 5, 2024, election is unfeasible, I suggest releasing the CVRs in the original JSON format as you have done in previous elections according to the schedule approved by the Board on October 8, 2024.

I appreciate your attention to these matters and your ongoing efforts to uphold transparency in our elections. I know the Board is committed to avoiding the errors that have occurred in past elections and sees this a critical tool in for that.

Sincerely,

Keith Carson
Alameda County Supervisor, Fifth District

From: Dupuis, Tim, ITD-ROV
Sent: Friday, November 1, 2024 1:40 PM
Subject: Update on Cast Vote Record (CVR) Production

Board Members,

I am writing to update you on ROV's progress regarding the production of the Cast Vote Record (CVR) following each unofficial posting of election results for the November 5 General Election per your Board's direction given at the October 8, 2024, Board meeting. I am pleased to report that, after much effort and in an extremely short timeframe, our team, working with Dominion Voting Systems and the Information Technology Department, has developed the necessary technology to generate the CVR.

On October 18, 2024, the Secretary of State issued a CC/ROV memorandum directing election officials that choose to produce the CVR do so solely as a secure and locked PDF file. In discussions with the Deputy Secretary of State, I sought to clarify whether there was flexibility to distribute these files in a different format, such as JSON. JSON is commonly used by data analysts and others who work with large datasets. The Secretary of State's office, however, emphasized that producing the CVR is not legally required. If a Registrar intends to produce the CVR, it must be in a secure and locked PDF format. The Secretary of State views this as a directive that must be followed according to state law. I noted that this format does not allow for easy data analysis. The Secretary of State's Office explained that they were aware of the limitations when they issued this directive. The CC/ROV memorandum serves as the Secretary of State's interpretation of the law, and compliance is a directive and not an advisory. Furthermore, noncompliance could result in felony charges or civil penalties.

As you may be aware, San Francisco has historically produced its CVR in JSON format, contrary to the Secretary of State's directive. The Secretary of State's office has informed me that they are in discussions with San Francisco to bring them into compliance with the CC/ROV memorandum. I don't know the current status of those discussions. As the Registrar of Voters, I am legally obligated to follow the Secretary of State's direction. Therefore, I want to inform the Board that I will be following the law and adhering to the CC/ROV's instructions as issued.

ROV is on track to release the first secured, locked PDF of the CVR on Wednesday, November 6, which will be available upon request. Let me know if you need more information or further discussion.

Thank you for your understanding.

Respectfully,
Tim Dupuis
Registrar of Voters

To: Alameda County Board of Supervisors
From: Irene Dieter, Karen Butter, Judy Belcher
Alameda County Elections Commission - Committee on Cast Vote Records
Date: November 9, 2024

Re: Agenda Item 28 - Strengthening the Alameda County Cast Vote Record Policy

We commend the Board of Supervisors to ensure your policy on the early release of cast vote record reports (CVRs) during the canvass is implemented correctly.

The Registrar of Voters' current method of executing early release runs contrary to the board's intended goal of facilitating accurate election oversight. We continue to believe the CCROV memo is an ill-informed recommendation. The Registrar wrote, "The Secretary of State views this as a directive that must be followed according to state law," because it serves as "an interpretation of the law." It is not law, nor mandatory, nor a directive to go unchallenged as the Registrar asserts.

The Secretary of State's website says it "periodically provides written guidance and information to the state's county elections officials to help ensure a smooth electoral process" and that CCROVs are "written advisories." (<https://www.sos.ca.gov/elections/advisories-county-elections-officials#>)

Therefore, we hope you will side with transparency and accountability by duplicating the San Francisco model.

Releasing CVRs as locked PDFs are not usable for transparent analysis. The release in locked pdf format as opposed to the customary JSON format is not machine-readable so that third parties cannot accurately re-tally ballots to ensure the counting results are correct. Furthermore, election technical experts have informed us that when CVR data is converted to a pdf format, it is unreliable and prone to inaccuracies.

Furthermore, redacting only the precinct and ballot ID for small precincts will preserve the voting data, while at the same time protecting the confidentiality of voters.

We urge you to support (1) releasing the text cast vote record reports in the encrypted JSON format not as a locked PDF and (2) redacting only precinct and ballot IDs for precincts under 10 Voters.

If implementing these two conditions is not feasible, please direct the Registrar of Voters to release the CVRs in the original JSON format as the county has done in previous elections according to the schedule approved by the board on October 8, 2024.

We look forward to continuing to work with the Registrar of Voters and Board of Supervisors to fully implement the CVR policy that meets its intended purpose.

Exhibit 6

From: Dupuis, Tim, ITD-ROV
Sent: Monday, November 11, 2024 2:16:02 PM
To: [Board of Supervisors]
Cc: [County Counsel]
Subject: Alameda County release of Cast Vote Record in JSON format

Good afternoon, Board Members,

I am pleased to inform you that, over the weekend, the Secretary of State granted Alameda County verbal approval to produce the Cast Vote Record (CVR) in JSON format for the November 5, 2024, election. I have been working closely with Deputy Secretary of State NaKeshia Robinson to address the concerns raised by your Board, the Election Commission, and members of the public about the limitations of providing the CVR in a secured PDF format.

This afternoon, I sent a follow-up email to Ms. Robinson to confirm and document this direction (see below).

As you know, the CVR production is scheduled for discussion (item 28) at tomorrow's Board Meeting. I hope this direction from the Secretary of State will support you in making an informed decision. Thank you for your patience as we worked through this complex issue with our partners at the Secretary of State. I believe this step will provide the additional transparency you have been advocating for in the election process.

Thank you,
Tim

<attachment>

From: Dupuis, Tim, ITD-ROV
Sent: Monday, November 11, 2024 1:51 PM
To: [Secretary of State office]
Subject: Alameda County release of Cast Vote Record in JSON format

Hello NaKeshia,

Thank you again for taking time this Saturday, November 9 and Monday, November 11 to discuss the release of electronic Cast Vote Records (CVR) data reports in JSON versus PDF format. I write to confirm the substance of those discussions.

As we have discussed, in Alameda County, members of our Board of Supervisors, our Elections Commission, and some members of the public have advocated for our Office to produce CVR data reports along with our periodic updates during the canvassing period, and with our final results after we certify the election. I have consistently taken the position that our Office is willing to produce CVR reports, to the extent the law permits.

Since SB 1328 passed earlier this year, questions have arisen about its implications for producing CVR reports. On October 18, the Secretary of State's Office issued CC/ROV Memorandum #24220 to address this issue and other impacts of SB 1328. That memo opined that, while CVR "data reports are electronic data" as defined by Elections Code section 17600, an elections official may provide CVR reports to members of the public, but only so long as the reports are "delivered in a secure, locked PDF format." CC/ROV Memorandum #24220, at page 2.

Consistent with that directive, our Office has, so far, provided CVR reports related to the November 5, 2024 General Election to members of the public who have requested them, but only in "secure, locked PDF format." Members of the public, including members of our County's Elections Commission, have expressed dissatisfaction for producing CVR reports in PDF format because it does not allow them to analyze the CVR data to check for accuracy in the vote tally. Instead, they have requested production of CVR reports in JSON format, or in another format that allows them to analyze the CVR data. Additionally, our County's Board of Supervisors plans to consider whether to direct our Office to produce the CVR data in JSON format at its meeting scheduled for November 12, 2024.

Beyond this level of concern in Alameda County, we understand that, in this November 5, 2024 election, the City and County of San Francisco has so far continued its prior practice of posting both CVR reports, in JSON format, and ballot images online. Based on our discussions this weekend, I understand that the Secretary of State's Office will request San Francisco's Department of Elections to stop posting ballot images to its website, but the Secretary will not, at this time, ask San Francisco to remove or stop posting CVR reports in JSON format.

In our discussions this weekend, you explained that the Secretary of State's Office would similarly permit our Office to produce CVR reports for the November 5, 2024 General Election in JSON format. You stated that the Secretary would prefer that we encrypt and redact any such CVR reports produced in JSON format, but that, if we could not resolve technological issues necessary to encrypt or redact CVR reports in JSON format, then the Secretary of State's Office would permit us to produce the reports in JSON format, without encryption or redaction. You also stated that your Office would provide us with a copy of its correspondence with San Francisco related to ballot images and CVR reports.

Relying on those representations made during our discussions this weekend, our Office will begin releasing CVR reports for this election in the JSON format with our canvassing updates later this week. I will also inform the Alameda County Board of Supervisors of our discussions and the plan to begin producing CVR data in JSON format. Thank you again for your time and guidance on this issue. As always, please feel free to contact me to discuss any of these issues further.

Thank you,
Tim Dupuis
Registrar of Voters
Alameda County

Exhibit 7

November 12, 2024
Honorable Board of Supervisors ...

SUBJECT: DIRECT THE ALAMEDA COUNTY REGISTRAR OF VOTERS TO RELEASE THE TEXT CAST VOTE RECORD REPORTS IN THE JSON FORMAT WITH TARGETED REDCATIONS

Dear Board Members:

RECOMMENDATION:

- A. Direct the Alameda County Registrar of Voters to release the text Cast Vote Record reports in the encrypted JSON format; and
- B. Direct the Alameda County Registrar of Voters to apply targeted redactions.

SUMMARY/DISCUSSION:

On October 8, 2024, the Alameda County Board of Supervisor directed the Registrar of Voters to adopt a policy releasing the text Cast Vote Record (CVR) reports concurrent with election results for all elections and races in Alameda County.

On October 18, 2024, the Secretary of State released CC/ROV #24220 which suggests releasing CVRs as locked PDFs. The locked PDF format limits the CVR's utility for election accountability, particularly in ranked-choice voting. Releasing CVRs solely as PDFs effectively counters the Board's intended goal of facilitating accurate election oversight. Essential retallying and error-checking—like that which revealed errors in the 2022 Oakland school board election—would be hindered by a PDF format. Notably, the San Francisco Department of Elections has opted not to adopt the SOS memo, reinforcing that it is not Binding.

The following recommendations are in line with the Board's adopted direction:

1. **Release Encrypted JSON Files:** Dominion outputs CVRs in JSON format, which has supported transparent analysis in Alameda County and San Francisco. Encryption would further address security while preserving utility.
2. **Apply Targeted Redactions:** While the SOS advises redaction for precincts with under ten voters, redacting only precinct and ballot IDs would be sufficient to protect privacy and retain CVR accuracy.

If implementing these measures prior to certification of the November 5, 2024, election is unfeasible, you should release the CVRs in the original JSON format as you have done in previous elections according to the schedule approved by the Board on October 8, 2024....

Sincerely,
Keith Carson
Supervisor, Fifth District

ACEC November 21, 2024

ATTACHMENT FOR AGENDA ITEM #8b2 -- Report to the Board of Supervisors

Alameda County Elections Commission

Report to the Board of Supervisors

October 2024

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Introduction

The Alameda County Elections Commission (“Commission” or “ACEC”) was constituted in late 2023, and held its first meeting in December 2023. The ACEC was constituted for the purposes of:

1. Promoting the integrity, efficiency and accuracy of policies and procedures related to voter registration and elections
2. Encouraging the widest possible voter participation in elections
3. Promoting voter education and outreach
4. Providing appropriate and timely information and advice to the Registrar of Voter (ROV) and the Board of Supervisors (BOS) on matters related to 1-4
5. Reviewing election plans drafted by the Registrar and conducting post election assessment which will then be reported to BOS

The Commission seeks to collaborate with the ROV whenever possible to help achieve the five purposes above. The Commission also makes recommendations to the Board of Supervisors.

The Commission has an advisory role with the Board of Supervisors, and an oversight role with the Office of the ROV.

The authorizing ordinance requires that the Commission “periodically report back to the Board of Supervisors regarding the proper administration of general practices of the registrar of voters as it pertains to administration of elections in the county.”

This is the first report from the Commission to the BOS. Moving forward, it is our intention to provide a general report to the BOS each October and April, and after each general election. The next report will be in April 2025, and will provide an assessment of the 2024 General Election, as required by our authorizing ordinance.

Membership

- 5 Members are Board of Supervisor appointments: Alexander Ramon (D1), Karen Butter (D3), and Jim Lindsay (D5).
There are two open Commission seats, from Districts 2 and 4. The district 2 seat is open due to a resignation.
- 5 Members are to be nominated by the ACEC specifically to represent impacted communities: Benita Tsao, Judith Belcher, Allie Whitehurst, and Alissa Moore.
There is one open seat to be nominated by the ACEC: the election expert seat. This seat is open due to a resignation.
- 3 Members were nominated by organizations: Irene Dieter (League of Women Voters), Susan Henderson (disability rights organization), Zabrae Valentine (voting rights organization)
- Officers
Jim Lindsay is the Commission president
Zabrae Valentine is the Commission vice-president

Organizational Structure

The Commission's first substantive meeting was in March 2024. It has now had seven meetings. This Commission is a new entity. It is a very large Commission. It is the first Brown Act body the Office of the ROV has ever supported. Getting ourselves organized and building a sustainable and effective Commission is an ongoing process.

We are organized into ad hoc committees. Each ad hoc committee works on an issue and reports back monthly at each Commission meeting, and makes recommendations to the entire ACEC.

If Commission members need information from ROV staff or want an item agendaized, they make that request to the Commission president or vice-president.

Agendas are initially drafted by the ACEC officers, and then a meeting is held with the ROV and Deputy to collaboratively finalize the agenda. The Board has assigned a Clerk who manages the Brown Act meeting requirements.

The Office of the ROV and ACEC officers also work informally to prioritize Commission information requests, requests to make changes to the website, and other noncontroversial issues to which there is no opposition. This collaboration has led to a number of positive steps forward, as noted in the next section of this document.

We are also working on codifying Rules and Best Practices for the Commission to use going forward.

Accomplishments

In our short time as a Commission, we have a number of accomplishments. We have collaborated with the ROV to enhance the administration of elections and we have sent recommendations to the BOS.

Enhancements Implemented In Collaboration With The Rov's Office

1. Increased transparency and provision of information
In a significant number of cases, interested parties are better able to get information from the ROV's Office. Examples include: Answers on how votes are tallied, improved special election reports, a number of information requests from ad hoc committees have been completed, and arranging for Commissioners to tour facilities and see first-hand how election observation works.

2. Understanding the ROV Department processes and work
At our request, the ROV has given presentations and answered questions on a number of topics including but not limited to: (a) How votes are gathered and counted, (b) How the voter registration database is managed, maintained, and updated, (b) The department's organizational structure, staff, and budget, (c) How the ROV manages both departments at the same time at a high and low level, (d) How the ROV has historically managed CVRs, (e) Understanding why it seems to take so long to get election results and how the public can help, and (f) What kind of outreach is done to the community.

3. Actions by the Office of the ROV taken to improve elections and community relations
(a) Answering an ACLU request regarding communication with incarcerated voters was implemented, (b) sharing a letter written to the Secretary of State's office asking for clarification re. SB 1328 and CVRs, (c) improving support for Albany PRCV elections, (d) adding an alert list so that election activists will be notified quickly and accurately regarding election counting activities, and (e) helping to get an urgent item agendaized with the BOS.

The Alameda County Elections Commission appreciates this positive collaboration with the ROV and the elections department staff.

Recommendations Sent To The Board Of Supervisors

1. The Commission provided nominations for Commission vacancies seats, as required.
We thank the BOS for appointing these Commissioners.

2. The Commission recommended a small fix to its authorizing ordinance to allow for a backup city clerk to represent the city clerks on the Commission.
The BOS has not yet addressed this item.

3. The Commission recommended in June that the Alameda County ROV release text-based Cast Vote Records (CVR) reports for all elections and all races at the same time they release election results, commencing with the 2024 General Election. At the October 8 BOS meeting the Supervisors adopted the Commission's recommendation, and as a result we expect CVRs to be released on the agreed upon schedule for all elections, starting this November.

Issues Currently Before the Commission

1. SHOULD THE ROV BE A STANDALONE POSITION?

An ad hoc committee has been gathering information on and analyzing this question for a few months. The committee is planning to submit a report to the full Commission for review at the January 2025 Commission meeting.

2. WHAT SHOULD BE THE COMMISSION RULES AND BEST PRACTICES?

An ad hoc committee is meeting weekly to recommend Commission Rules and Best Practices for the Commission. Some rules have been instituted by the Commission, but the work is not yet complete.

3. SHOULD THE COMMISSION HAVE DEDICATED STAFF SUPPORT?

An ad hoc committee is analyzing whether the Commission needs dedicated staff support for the Commission.

4. IS THE CAST VOTE RECORD POLICY BEING IMPLEMENTED PROPERLY?

On October 8 the BOS directed the ROV to implement the Commission's cast vote records recommendation for the November 2024 general election and release CVRs on the same schedule as other results. The Commission will be monitoring progress on this matter to ensure full and timely compliance with the BOS's direction.

Future Activities

Of the 53 items we have been asked by Commissioners and the public to consider, we have 27 items outstanding.

Priority items include:

1. Increasing voter turnout, especially among groups that have historically low turnout, such as youth, Latinos, Black males, and eligible voters that are incarcerated.
2. Review and report on the administration of elections, including but not limited to the Grand Jury Report of 2022.
3. Improving the quantity and quality of support for those who need election materials in languages other than English.

Challenges

The Commission wishes to identify a few challenges we are encountering, as currently constituted. We expect to produce suggestions for how the BOS might address these conditions in future communication.

- As noted previously, much of the Commission’s work involves the need for serious research and analysis, but there are no available resources for those duties.
We are attempting to mitigate this by doing some research ourselves, finding research that has already been done, using community groups to help us with research, and getting help from the ROV’s office when they are able to do so, however in some significant cases this is proving to be insufficient.
- The Commissioners serve as volunteers. This is proving to be a challenge in some instances because the workload is at times high, and many Commissioners have full-time jobs as well as family or other responsibilities that limit the time they have available for this commitment. In the eight months this Commission has been active, three Commissioners have already resigned due to the workload and their life situations. The BOS may find that this feature of the role may favor those who are retired or otherwise economically independent by some measure, and so reduce the potential diversity of views and experience the Commission is able to represent.
We are mitigating this by prioritizing our work, and only taking on what we think we can handle as a workload. Re. diversity, we are highly conscious of this and doing our best to find commissioners that reflect the full diversity of Alameda County. For new members we have assigned an onboarding liaison to work with new commissioners.
- Overall the Office of the ROV works hard, and has been collaborative toward the Commission. However, we often do not see timely responses to information requests or flexibility in considering new ideas and different ways of operation.
We are mitigating the information challenge by prioritizing and tracking information requests from the commissioners. With regard to being open to new ideas and different ways of operations, that is a long term process that we are working to figure out.

Questions for the Supervisors

1. Are there any election related topics or issues that you would like the Commission to address?
2. How can we best get nominations, recommendations, and requests to the BOS agendaed?

Signed on behalf of the Alameda County Elections Commission
October 20, 2024

James R Lindsay, President
Zabrae Valentine, Vice-President

ACEC November 21, 2024

ATTACHMENT FOR AGENDA ITEM #8b4 -- Rules Cmte Report

Action Item

DATE: November 21, 2024
TO: Alameda County Elections Commission
FROM: Rules and Procedures Ad Hoc Committee
Benita Tsao, Jim Lindsay, Susan Henderson, Irene Dieter

On September 19, the Elections Commission approved the committee's initial proposal for the "Order of Business" and the "Rules of Order." After further consideration, the committee has removed two supplemental rules and placed those provisions in the guidelines.

The committee now introduces the entire rules and procedures document (see below) for consideration of approval. These rules and procedures are divided in three sections—meetings, internal guidelines, and external guidelines—and can be updated as needed.

Furthermore, the committee has opted for the commission to hear and consider item #C-1 of the external guidelines separately because Commissioner Judy Belcher has requested that the written public comment section be revisited. Thus, two votes may be taken. As part of that consideration, know that any correspondence sent to an "@acgov.org" email address is retrievable by the Information Technology Department upon a public records request, even when there are no county employees as recipients.

RECOMMENDATION: Approve the rules and procedures for the Elections Commission.

Alameda County Elections Commission

Operating Rules & Procedures

The purpose of the Elections Commission is “to oversee all public federal, state, district and municipal elections conducted by the Alameda County Registrar of Voters. The commission shall oversee the implementation of general policies for the registrar of voters, and shall periodically report back to the Board of Supervisors regarding the proper administration of general practices of the registrar of voters as it pertains to administration of elections in the county.” ([Mun. Code, sec. 2.134.010](#))

In pursuit of this mandate, the Elections Commission has adopted the general guidelines herein, which are intended to:

- Promote healthy group dynamics and orderly meetings that are efficient, meaningful, and a good use of people’s time;
- Set clear, reasonable expectations about our activities and procedures for commissioners, Registrar of Voters staff, and members of public; and
- Balance the needs for (a) substantive discussion among commissioners as the basis for decisions and collective action, with (b) advice and feedback by members of the public, especially those from communities that experience barriers to voting.

These rules and procedures were developed to be easy to understand and apply, with an emphasis on simplicity, accessibility, and plain language, especially for commissioners who are new to board service generally or the Elections Commission specifically.

This document may be periodically updated as needed or desired by a majority of the commission, so that the Elections Commission adapts to change and continues to function well as a group in order to fulfill its purpose.

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A. Regular Meetings

These guidelines apply to Elections Commission meetings and describe how meeting-related processes should be conducted.

A-1. Number and Timing of Meetings

Regular meetings shall be held on the third Thursday of each month, starting at 4 p.m. lasting no later than 6:30 p.m. The commission does not meet in August or December. The location of the meetings is 125 12th Street, 4th Floor, Suite 400 Hayward/Union City Rooms. Any changes to this schedule shall be made by a supermajority of the commission. The President may cancel a regular meeting, subject to provision of appropriate notice, but shall do so only when necessary, such as due to lack of quorum.

Commissioners are expected to participate in person, and those who are unable to attend a given meeting should notify the President and the Elections Commission clerk in advance if possible. Commissioners should submit requests for accommodation to the President and/or Vice President.

A-2. Brown Act Meeting Reminders

Only items included on the agenda can be discussed and acted upon during the meeting. If a commissioner wants something to be discussed, they may make a formal request to put it on a future agenda (see A-6. Agendizing Matters). The commission cannot take action or discuss any item not on the agenda. Brief announcements are not considered discussions.

The location for the meeting and/or teleconferencing location, must be accessible to the public and accessible to the disabled. The public must have an opportunity to directly address the body before or during the consideration of any agenda items, and regular meetings must include a general comment period to address any matters related to the Elections Commission (see A-5. Public Comment).

For more on the Brown Act, see:
A-8. Subscribing to Notifications

Commissioners may participate remotely in up to two meetings per year when they have just cause or when emergency circumstances prevent them from attending in person, such as due to a medical condition, disability, or a physical or family medical emergency. In these instances, the commissioner must notify the President as early as possible to request permission to attend the meeting remotely. If at least a quorum of the Elections Commission is participating in person and the President grants permission, the commissioner agrees to use both audio and video technology to appear remotely, and they must notify the Elections Commission clerk as far in advance as possible.

Commissioners who want to participate remotely in meetings, without just cause or emergency circumstances, may do so from a public place that is accessible to members of the public, including people with disabilities. This location must be listed in the posted agenda for anyone who would like to participate in the meeting from that location.

A-3. Order of Business

Having a predictable order for the Elections Commission to address relevant matters during its meetings makes it more likely the commission will stay focused and not lose track of any decisions or actions. This consistent format for how the commission will routinely spend meeting time is called the Order of Business, and the commission will progress through these items in order, one at a time. This template is

the basic outline for every Elections Commission meeting agenda, so participants and observers can easily follow what's happening:

1. Call to order / Roll call
2. Swearing-in and welcoming new commissioners
3. Changes to the agenda
4. Approval of minutes
5. Communications or announcements from staff and commissioners on non-agenda items
6. Registrar of Voters monthly update
7. Public comment on items on the agenda
8. Regular agenda items – labeled action or discussion
 - a. Items carried over from previous meeting
 - b. Ad hoc committee reports, recommendations
 - c. Other items, which may include new business
9. Registrar of Voters special presentation
10. Public comment on agenda and non-agendized items
11. Adjournment

A-4. Rules of Order

Groups and organizations often agree on rules for conducting meetings and making decisions, so there's an orderly way for members to deliberate issues and determine the will of the majority.

Many groups, including this Elections Commission, have adopted an existing system of rules called Rosenberg's Rules of Order. For details on Rosenberg's Rules of Order, read the free digital version of [Rosenberg's Rules of Order](#) (PDF, 10 pages) available at the League of California Cities website at www.calcities.org. The President of the Elections Commission is charged with guiding the meeting and applying these rules of order, and the Vice-President of the Elections Commission fulfills this responsibility when the President is not available.

In addition to Rosenberg's Rules of Order, the Elections Commission adheres to the following supplemental rule:

Counting Votes: No proxy voting shall be allowed. The vote count on a motion will be called by the clerk. The Vice-President and President will be called upon last to vote.

A-5. Public Comment

The Elections Commission welcomes public input and feedback. There are two portions of the agenda set aside for public comment: one for all agenda items collectively, typically for up to 20 minutes, to take place in advance of any commission action or discussion on these items; and another for agenda and non-agenda items, typically for up to 10 minutes, toward the end of the meeting (see A-3. Order of Business).

Staff or commission members may provide a brief and factual response to a comment, but no action or discussion may occur during the meeting.

No speaker may cede time to another person or speak on the same agenda item twice.

a. Clerk's Responsibilities

The Registrar of Voters staff member assigned to support the commission as its clerk will facilitate public comment, keep time, and alternate between speakers in the room and those who have joined virtually. People who wish to give public comment will be called upon to speak in the order that they either:

- Submit a speaker slip to the Registrar of Voters staff members stationed outside the meeting room, indicating they want to comment in person on an agenda item(s) and/or non-agenda item(s). The staff members will give these speaker slips to the clerk assigned to the Elections Commission, or
- Raise their hand in Zoom when asked to by the clerk at the beginning of that portion of the agenda, if joining the meeting virtually.

At the onset of each public comment portion of the agenda, the clerk will state the total number of people who want to speak and the President will confirm the time limit per person. When the time allocated for public comment ends, the clerk will remind everyone that the Elections Commission accepts written comments at eoc@acgov.org (see C-1. Written Public Comment). (Note that this group email address will be changed to ElectionsCommission@AlamedaCountyCA.gov as part of the county-wide transition to a new domain name.)

b. Expectations and Protocols for Speakers

Speakers should be aware that Elections Commission meetings are recorded and posted online, including all public comments. Persons attending the meeting in person and wishing to address the commission must submit a speaker card to the clerk in person at the meeting.

All speakers are encouraged to first introduce themselves by name, say if they are commenting as a representative of an organization, and identify the relevant agenda item, if applicable. In addition:

- Speakers joining in person are expected to use the provided microphone so everyone can hear their remarks, and the podium will be positioned so the speaker can easily see the countdown timer. Speakers will see a green light around the microphone when it's amplifying.
- Speakers joining virtually are encouraged to turn on their camera for the duration of their comment. The clerk will enlarge this view from the speaker's camera for the participants in the room, without obstructing the speaker's view of the countdown timer.

All speakers, regardless of whether they are commenting as a member of the public or in their capacity as an elected or appointed official, will wait to be called upon by the clerk, and:

- for the public comment period at the beginning of the meeting on agenda items, each speaker will usually be given three (3) minutes,
- for the public comment period at the end of the meeting on agenda and non-agenda items, each speaker will usually be given two (2) minutes, and
- the President has the discretion to alter the per-speaker time limit as needed. Time limits for public comment are imposed only to ensure efficiency and should generally be consistent for all topics.

Requests for accommodations by members of the public should be made to the Elections Commission clerk.

A-6. Agendizing Matters

The President, Vice-President, Registrar of Voters, and Deputy Registrar of Voters retain the list of agenda requests, prioritize the possible agenda items, and create the agenda for each meeting. This list of requested agenda items is available to commissioners and the public at: <http://bit.ly/4fz4SGM>.

Commissioners who wish an item to be agendized should send a formal request to the President with enough information for the public to know what the commission will be considering during the meeting. A recommendation to the commission for action may be included, and this material will be published with the posted agenda (see A-7. Submitting Materials for Agenda Items).

A-7. Submitting Materials for Agenda Items

Reports by ad hoc committees submitted for inclusion with the agenda packet should list all of the committee's members and state whether the item is for action or for discussion only.

If a commissioner wants material on any agenda items to be part of the public record, they should submit their comments or material to the Elections Commission clerk in advance of the meeting if possible. The material must be related to items on the agenda.

- If the material is sent to the clerk before the agenda packet has been posted, it shall be posted with the agenda.
- If material for an existing agenda item is sent after the agenda has been posted, it will be included with the meeting minutes and the printed agenda packets distributed at the meeting.

Commissioners who wish to email the entire commission should review B-6b. Recommended Practices for Commissioner Communications Under the Brown Act.

A-8. Subscribing to Notifications

Notice for regular meetings must be posted 72 hours (three days) in advance, per the Brown Act, and the posted agenda must briefly describe all matters to be discussed (see A-9. Agendas, Recordings and Minutes). To be alerted via email when agendas are posted or if a meeting is canceled, contact the President of the Elections Commission at jim@jerel.com. You may also subscribe to county e-subscriptions, including updates

from the Registrar of Voters office, on election results and to observe election processing, at: <https://public.govdelivery.com/accounts/CAALAME/subscriber/topics>.

For more on the Brown Act, see:
A-2. Brown Act Meeting Reminders

A-9. Agendas, Recordings and Minutes

Agendas, video recordings and meeting minutes are posted at this Alameda County Board of Supervisors web page on Committee Meetings: <https://bos.acgov.org/committee-meetings/>. Video recordings are posted several days after the meeting, and meeting minutes are added only after they are formally approved by the Elections Commission, typically one month later.

Meeting minutes are an official record of the decisions made, tasks assigned, and actions decided upon. They preserve the knowledge and intentions shared, making them a valuable point of reference for what transpired at a meeting. The chair of the meeting can help the notetaker by summarizing discussions before moving to the next topic. Also see B-4. Maintaining Records.

A-10. Special or Emergency Meetings

If the Elections Commission meets at a time or place other than the time or place specified for regular meetings (see A-1. Regular Meetings), it is either a special or emergency meeting:

- a. The President may call special meetings to address specific matters. No other business than the special subject shall be considered at the special meeting. Special meetings may be called at any time but notice must be received at least 24 hours prior to the meeting by all members of the body and by all media outlets that have requested notice in writing.
- b. Emergency meetings, which are extraordinarily rare, may be called upon one-hour notice to media outlets that have requested notice in writing. The Brown Act defines an emergency as a crippling activity, work stoppage or other activity which severely impairs public health, safety or both.

A-11. Closed Sessions

The commission is authorized to hold closed (non-public) sessions for limited purposes to discuss and act on matters such as threats to the security of the Registrar of Voters Department; pending litigation; contracts; and certain other matters as may be authorized by law. The President may call a closed session upon consultation with the county counsel, and after determination a closed session is both authorized and appropriate under the circumstances.

* * * * *

B. Internal Working Guidelines

These guidelines apply to internal activities that take place outside of regular meetings, such as commissioners' interactions with each other and the Registrar of Voters office, for example.

B-1. Commissioners' Requests of the Registrar of Voters

The President and Vice-President are the commissioners' points of contact for the Registrar of Voters office. All requests for information or other tasks must be sent by a commissioner to the President and Vice-President. The list of pending requests from commissioners and others is available only to the President, Vice-President, Registrar of Voters, and Deputy Registrar of Voters because some information must remain confidential.

These requests are triaged and tracked by the President, Vice-President, Registrar, and Deputy Registrar. The request list is not public, but commissioners who have requested information or action should be kept up to date on the status of their requests, and may ask the President or Vice-President about the status of their requests.

B-2. Directing Staff

Commissioners are not empowered to direct or order county or city staff to perform tasks or provide information.

B-3. Gathering Information

Information-gathering from interested organizations or individuals is allowed. Commissioners are encouraged to do independent research and can, as members of the public, request information from public agencies using the same mechanisms as the public, and this includes formal public records requests. When requesting information as a private individual regarding elections, the person should be explicit that they are communicating as a private individual and not as an elections commissioner.

Alternatively, the Elections Commission may agendaize and vote to request certain information as a body. Individual commissioners may request information from the Registrar of Voters office, but must work through the President or Vice-President, see B-1. Commissioners' requests of the Registrar of Voters.

B-4. Maintaining Records

In order to preserve and pass on to successive commissions relevant information, the Vice-President shall maintain a dated annual list, as well as a cumulative index, of all substantive issues decided upon by the Elections Commission, and indicate which issues were sent to the Board of Supervisors. Background documents are stored on the Board of Supervisors county website under agenda and minutes on the date the issue was heard and accepted, see A-9. Agendas, Recordings and Minutes.

Before any officer's term ends, that commissioner should ensure that hand off key documents to the incoming President or Vice-President. The outgoing and incoming officers should work with the Elections Commission clerk to update access to relevant folders and files in the Google Drive specific to the Elections Commission. The Elections Commission clerk is responsible for managing access to this Google Drive and keeping it organized.

B-5. Recommendations for the Board of Supervisors

After a proposed recommendation to the Board of Supervisors is approved by the Elections Commission, the President will forward it to the entire Board of Supervisors with its supporting materials. The President shall work to get the recommendation on an upcoming agenda of the Board of Supervisors. The lead of the relevant ad hoc committee may wish to follow up to ensure that the issue is agendaized, and questions and concerns are addressed.

B-6. Commissioner Communications Under the Brown Act

The Brown Act is California's law that requires that all meetings for local government agencies, including related bodies like commissions, be open and public. The purpose of the Brown Act is to ensure that public agencies consider and take action on official business in a public manner. This has implications for how commissioners may communicate with each other outside of its regular meetings. (See the [Appendix](#) for Brown Act Scenarios.)

a. Mandatory Training on the Brown Act

Upon appointment, commissioners must educate themselves on the Brown Act by:

- watching this video created by the City of San Diego, https://www.youtube.com/watch?v=o_4copyoRCg&t=31s, and
- reading this guide by the League of California Cities, <https://www.calcities.org/resource/open-public-v-a-guide-to-the-ralph-m.-brown-act>.

These materials will inform commissioners about appropriate conversations among commissioners between meetings and the Brown Act requirements that the commission must conduct official business in a public manner.

b. Recommended Practices

- Rather than avoid contact with other members entirely, commissioners are encouraged to understand how to comply with the Brown Act so they can communicate with each other on issues of interest between meetings. These conversations are not considered meetings under the Brown Act so long as they include only a few members and less than a majority of commissioners.
- Be intentional about your conversations with other commissioners. For example, check first whether your colleague has already discussed a given topic with any other commissioners, to make sure that speaking with you too does not involve a majority of Elections Commission members. When there are no vacant seats on the Elections Commission, a majority of members is seven people; when there are open seats to fill, this number is fewer.
- When sharing information with the entire Elections Commission, consider sending the information to the Clerk of the Commission and ask that it be included in the next agenda packet under Communications, instead of emailing the entire commission.
- Refrain from Replying All to any emails sent to eoc@acgov.org, and be sure to send emails to this group email via blind carbon copy (bcc:), so any responses go only to you, instead of to the entire group. This helps avoid email discussions involving the entire body, which would be in violation of the Brown Act. (Note that this group email address will be changed to ElectionsCommission@AlamedaCountyCA.gov as part of the county-wide transition to a new domain name.)
- Commissioners may not respond on social media to other commissioners' posts on matters before the commission. That means no liking, commenting, upvoting, retweeting, or heart-ing the social media posts of other commissioners.

c. Brown Act Questions and Concerns

Commissioners are encouraged to promptly raise questions and concerns so they have clarity on appropriate behaviors and so any violations can be addressed right away and corrected. Questions or concerns related to the Brown Act can be directed to a more experienced commissioner, to the President for possible addition to an upcoming agenda, and/or to the county counsel assigned to the Elections Commission.

For more on the Brown Act, see:
— A-2. Brown Act Meeting

B-7. Recusals and Conflicts of Interest

Public officials are expected to make decisions that serve the public interest and promote the greatest public good, and conflicts of interest interfere with a person's ability to maintain an objective and impartial perspective. An elections commissioner has a disqualifying conflict of interest when their other commitments, obligations, duties or goals could reasonably affect their decisions as an elections commissioner, in ways that could financially benefit themselves, other individuals, entities or parties, or if they have a duty or loyalty to another entity that conflicts with the interests of the commission. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's duties to other entities, groups or people. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision.

Commissioners who are concerned about a possible conflict of interest should speak with the president and the county counsel assigned to the Elections Commission, to determine whether their particular situation constitutes a conflict of interest and to identify appropriate next steps. Commissioners who intend to recuse themselves from any matter due to a conflict of interest should notify the president in

advance of the meeting, so the recusal can be announced at a meeting before the item is heard. When commissioners recuse themselves from voting on an item they must leave the panel until the item is concluded. The recused person must not send information to other commissioners or staff about the issue.

B-8. Onboarding New Commissioners

The Elections Commission selects one commissioner to serve at least a year as a liaison for new commissioners to offer assistance during their transition onto the commission. The liaison will provide the new commissioner(s) with access to [this useful links document](#) and answer any questions.

B-9. Fulfilling Appointed Terms

Commissioners serve at the discretion of the Board of Supervisors. Appointment terms are provided in the ordinance establishing the Elections Commission and are posted online at the portal for the Alameda County Board, Commissions and Committees: <https://www.acgov.org/bnc/#/board/a0U6T00000XmqABUAZ>.

Commissioners are encouraged to complete their appointed term, as resigning midterm may cause disruption. It is the responsibility of each commissioner to inform their nominating source when their term is about to end and to say whether they are interested in serving a consecutive term, if eligible. Also see B-4. Maintaining Records, for steps for commissioners whose service will end soon.

B-10. Terms for Serving as President and Vice-President

The commissioners serving in the roles of President and Vice-President are chosen by the Elections Commission and serve for at least one year, but for no more than two consecutive years. The nominations and election of these two Elections Commission officers should take place at every January meeting.

B-11. Ad Hoc Committees

An ad hoc committee is a temporary group formed to complete a specific task or address a particular issue. The commission may create ad hoc committees when it determines, by a majority vote, such additional committees are necessary. Each ad hoc committee will have a lead, and the committee will report on their progress and/or make recommendations to the commission. The ad hoc committee will be disbanded by majority vote of the commission after it fulfills its responsibilities.

* * * * *

C. External workings guidelines

These guidelines apply to public activities that take place outside of regular meetings, such as commissioners' interactions with members of the public, for example.

C-1. Written Public Comment

Email messages sent to eoc@acgov.org go to all members of the commission and the clerk for the Elections Commission. The recipients' names will be clearly stated on the county website, and recipients may forward emails to whomever they want; there should be no expectation of privacy. Any emails sent to eoc@acgov.org are considered part of the official public record and subject to disclosure under the Public Records Act. (Note that this group email address will be changed to ElectionsCommission@AlamedaCountyCA.gov as part of the county-wide transition to a new domain name.)

[Committee seeks additional thoughts from ROV, Deputy ROV, county counsel and other commissioners, on including Tim and Cynthia as recipients on group email]

C-2. Engaging with Members of the Public

Commissioners are encouraged to engage with members of the public and especially with historically-underserved communities and other groups that experience barriers to voting. Gathering input and hearing feedback from the public outside of meetings allows us as a body to fulfill our duties related to promoting voter registration, education and outreach, and encouraging the widest possible voter participation in elections.

Commissioners may speak individually to any member of the public outside of meetings and may respond directly to emails from members of the public, so long as they do not copy more than a quorum of the commission. A commissioner should interrupt or otherwise try to stop a member of the public from disclosing what any other commissioners have said about a given topic (see Serial Meetings in the Appendix: Brown Act Scenarios). Commissioners may, but are not required to, disclose any private conversations with constituents.

In response to matters brought up by the public, commissioners may seek to agendize an issue at a future meeting, see A-6. Agendizing Matters. For responding to public comment during meetings, see A-5. Public Comment.

C-3. Regular Reports to the Board of Supervisors

The Elections Commission is an advisory body to the Board of Supervisors. The President and Vice-President lead the process of reporting to the Board of Supervisors at least twice per year, in April and October. The Elections Commission will also report to the Board of Supervisors after every general election with a post-election assessment.

* * * * *

Appendix: Brown Act Scenarios

The Brown Act restricts the communications that commissioners may have with each other outside of an open and public meeting. This appendix presents several scenarios to illustrate the kinds of communications among commissioners that are permitted or prohibited. Many of the scenarios are adapted from a presentation by attorney Ravi Patel.

Definition of a Meeting

A “meeting” is “any congregation of a majority of the members of a legislative body ... to hear, discuss, deliberate, or take action on any item within the subject matter jurisdiction of the body.” When there are no vacant seats on the Elections Commission, a majority of members is seven people; when there are open seats to fill, this number is fewer.

This means that it’s fine to meet with other commissioners in between regular meetings and discuss elections-related topics, so long as it includes less than a quorum, i.e. the minimum number of members who must be present in order to legally conduct business, typically one more than half the members of the body. Just be very sure that you don’t violate the Brown Act by having a majority of commissioners, directly or indirectly, in any discussion.

Scenarios: Is it a meeting under the Brown Act?

1. Seven commissioners meet to discuss Cast Vote Records – YES, a majority of the body (7 of 13) met to discuss and deliberate a topic before the Elections Commission. This is the kind of scenario you want to avoid in order to comply with the Brown Act
2. Two groups of four commissioners meet to discuss Cast Vote Records – NO, as long as the two groups don’t coordinate with each other, no meeting has taken place
3. Ten commissioners gather to have lunch and watch the Olympics. They talk about family, sports and vacations, but do not hear, discuss or deliberate anything related to elections – NO, as long as they really did not discuss items likely to come before the Elections Commission, no meeting has taken place.
 - o This is not considered a meeting under the Brown Act, just commissioners socializing. It is also acceptable if many commissioners happen to participate in a professional conference or attend the same community event or public meeting, for example.

Serial Meetings

A meeting of the majority of the body may still occur, through intermediaries or a series of smaller meetings, calls, emails, or text messages, for example. These are called serial meetings and are prohibited under the Brown Act: “A majority of the members of a body shall not, outside of a meeting ... use a series of communications ... to discuss, deliberate, or take action on any item of business”

More Scenarios: Is it a meeting under the Brown Act?

4. One commissioner has separate conversations with six other commissioners about a specific agenda item before the commission – YES, called hub-and-spoke meetings with the one commissioner as the hub, this is considered a serial meeting and would be a violation of the Brown Act.

5. Two commissioners have each met with three different members about a specific topic on an upcoming agenda. Afterwards, these two commissioners exchange emails about their respective meetings and share other commissioners' opinions about Cast Vote Records – YES, this is a serial meeting where eight commissioners, i.e., a majority of the body, have through a series of communications, discussed, deliberated, or take action on an item within the subject matter jurisdiction of the body, outside of an open and public meeting.
6. Three members of an ad hoc committee on Cast Vote Records meet to discuss Cast Vote Records – NO, because committees by definition have fewer members than a majority of the body. Ad hoc committees are appointed by the body at a public meeting, have a limited subject matter scope and duration, and are expected to conduct business outside of open and public meetings.
 - Brown Act violations can still occur when committee members engage other commissioners in their discussions and actions, resulting in a majority of members doing business outside of an open and public meeting.

Supplement rule #3

Last meeting we discussed standing rules, specifically I felt there was a need for more discussion of SR-3 concerning e mails to the Elections Commission (EC) and who should get them. As Irene said the EC rules are meant to be a living document. The First Amendment right to privacy in the political sphere, as interpreted by the courts, essentially protects individuals' ability to hold and express political beliefs without government excessive scrutiny. including the right to associate with political groups, donate to campaigns, and participate in political discussions without being forced to disclose personal information beyond what is necessary for legitimate government interests; this means the government cannot compel individuals to reveal their political affiliations or beliefs unless there is a compelling reason to do so

I believe when the public sends the EC an email , they believe they are sending it to the 13 members of the Elections Commission as defined in the Ordinance No. 21-23 , Chapter 2.134 of Title 2 of Alameda County Administrative Ordinance Code.

While the government can monitor political activity to some extent, it cannot excessively surveil individuals' political beliefs or associations without a warrant or strong justification.

For example, imagine if a resident of Oakland sent an email to the Oakland Police Commission complaining about a police officer or even the chief of police. And then that email was forwarded automatically, without the permission of the Oakland resident, to the chief of police or even to the police officer complained about. That would be a violation of the complainant's privacy and would undermine the legitimacy of the police commission itself. It would cease being a forum for the broader public to bring their views about the police commission for adjudication or investigation. The police chief and the police officer, having been automatically notified about the complaint, could then take steps to cover up the undesirable behavior. This example makes it clear that any commission must be independent of those they are legally charged with overseeing, and that independence is best realized by retaining channels of communication that are independent from those they are overseeing.

Therefore ,I move that any e mails sent to the EC email address, eoc@acgov.org be received only by EC commissioners and the EC clerk, who shall not forward them anywhere else except in a Public Information Request

ACEC November 21, 2024

ATTACHMENT FOR AGENDA ITEM #8b5 -- Dedicated Staff Cmte Report

Staff Support Committee: Alexander Ramon, Benita Tsao
For Discussion

We plan to recommend a **full-time Management Analyst** join the Registrar of Voters department in order to support the work of the Elections Commission. This person would:

-
-
- conduct research and make recommendations on assigned projects, and
-
-
-
- assist the Elections Commission president, vice-president and committee leads liaise with the Registrar of Voters department and Board of Supervisors.
-

We will likely need to hire someone into this role because there are no Management Analysts currently in the department who can be assigned these tasks. (See job description at: [https://www.jobapscloud.com/Alameda/specs/classspecdisplay.asp?ClassNumber=0206&LinkSpec=RecruitNum2&R1=&R3=.](https://www.jobapscloud.com/Alameda/specs/classspecdisplay.asp?ClassNumber=0206&LinkSpec=RecruitNum2&R1=&R3=))

We will be working next on ways to secure funding for this position. The budget would be \$159,169.92, to cover the annual salary and benefits at the highest end of the range.

ACEC November 21, 2024

ATTACHMENT FOR AGENDA ITEM #8b6 -- Nominations Cmte Report

Nominations Committee: Benita Tsao, Alexander Ramon

For Discussion

We expect to be able to recommend a candidate to the Commission in January 2025. We are currently recruiting to fill an at-large seat reserved for someone with expertise in elections and elections technology. "Expertise in elections and elections technology" can be interpreted broadly since it is not defined in the administrative code, so committee members have reached out to several people in the areas of computer science, elections administration, law, political science, public policy, statistics, and technology, for their recommendations of likely candidates in Alameda County.

ACEC November 21, 2024

ATTACHMENT FOR AGENDA ITEM #8d2 -- Overvote Anomalies

https://drive.google.com/file/d/1I289M1TTdn8iv1fn65Fux_wQK0rAOnA/view?usp=sharing

Location

8484 Georgia Avenue,
Suite 240
Silver Spring, MD 20910

Contact

dotis@fairvote.org
Phone +1 240-242-9406

WWW.FAIRVOTE.ORG

November 11, 2024

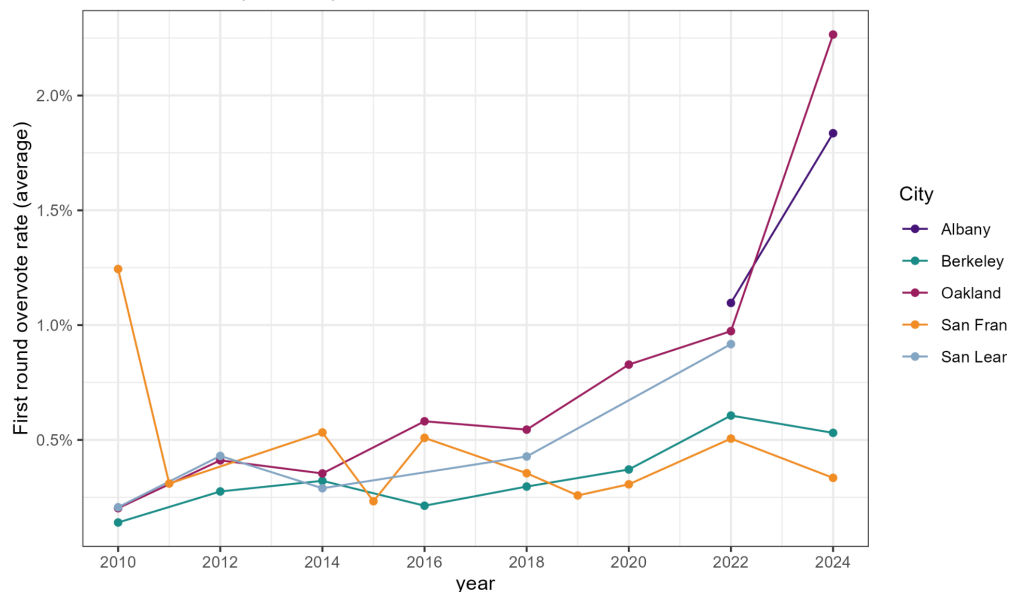
Dear Alameda County Elections Oversight Commission and Registrar Tim Dupuis,

I write to you regarding an unusually high rate of overvotes in the preliminary election results for the election held on November 5, 2024. I encourage the registrar and the elections oversight commission to investigate the issue.

FairVote has tracked the rate of overvotes in Alameda County since 2010 when some cities in the county first began using ranked choice voting. Preliminary results from this November's election show a **first-round overvote rate of nearly 4%** in Oakland's at-large city council race, with several of the district councilor races also having an overvote rate above 2%. Albany similarly has an overvote rate of nearly 2%. This is highly unusual. The **typical overvote rate in ranked choice voting elections is 0.2%**.

The chart below shows the average overvote rate in ranked choice voting elections in four Bay Area cities. As you can see, overvotes in Oakland have been climbing for several years and reach an alarmingly high rate in 2024, based on preliminary results.

First-round overvotes in Alameda and San Francisco Counties, 2010-2024
2024 Results are preliminary as of Nov 11

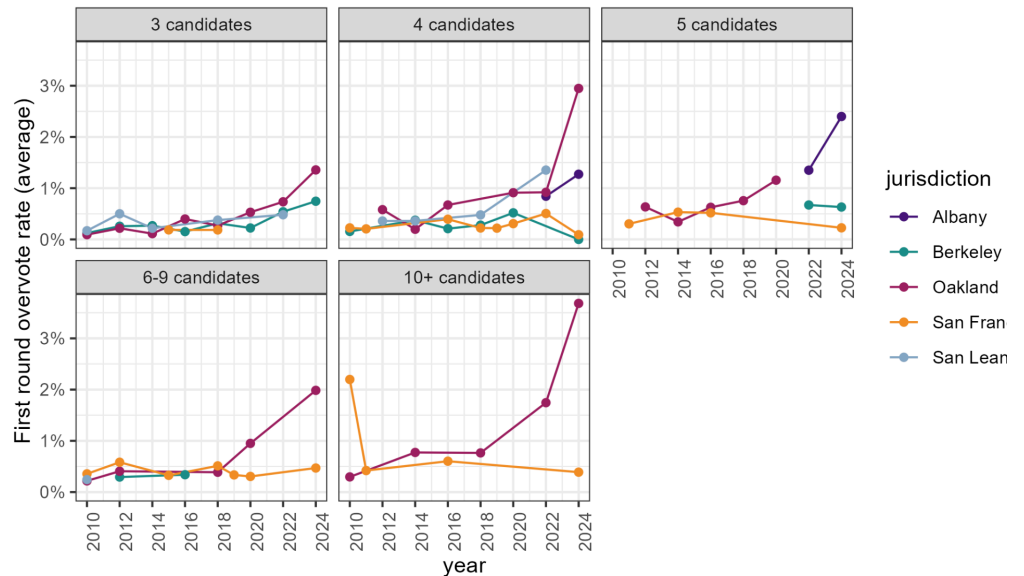


The points above are annual averages in each city. While Oakland's 2024 average is 2.7%, some individual races are higher, such as the at-large council race.

Naturally, elections with more candidates have more overvotes, both in single-choice and ranked choice elections. However, the Oakland 2024 elections are an outlier for small and large races.

First-round overvotes by number of candidates, 2010-2024

2024 Results are preliminary as of Nov 11



This is an outlier not just in the Bay Area, but also compared to all over ranked choice races we've tracked in the 50 jurisdictions that use it.

We recognize that results are still preliminary and, at the time of this writing, there are many ballots left to be counted. However, this overvote rate is enough of an outlier that we wanted to bring it to your attention immediately. It is possible there is an issue with ballot design or with the way the scanner or tabulation software is reading the ballots.

We would be eager to be part of any deeper research into what may be behind this anomaly, and to help develop best practices for the future, if requested. In particular, we hope this can be investigated and addressed prior to the upcoming mayoral special election in Oakland.

Thank you for your consideration.

Sincerely,

Deb Otis

Deb Otis
Director of Research and Policy
FairVote