

# **“ALL MAIL-IN BALLOTING” IN MENDOCINO COUNTY’S GENERAL ELECTION**

Was My Vote Counted?

April 6, 2021

## **SUMMARY**

Concerns were raised regarding All-Mail-in-Ballots (AMB) for the November 2020 election. California’s Governor’s Executive Order N-64-20 mandated all registered voters would receive a mail-in ballot. This order did not limit opportunities for in-person voting.

The Grand Jury (GJ) investigated the impact of AMB distribution and operations of Mendocino County’s Elections Office for the November 2020 election. The GJ further explored the status of Mendocino County’s participation in the Voters Choice Act of 2016 (VCA) and the computer systems installed for the 2020 Primary and General elections.

The GJ concluded that the citizens of Mendocino County may continue to rely on the election results reported by the Elections Office of Mendocino County to assure accurate vote tallies. The impact of the California Governor’s Executive Order on the workload for the local county Elections Office staff and volunteers was essentially unchanged from prior elections.

## **BACKGROUND**

Due to the outbreak of COVID-19, California Governor’s Executive Order N-64-20 mandated that all registered voters would receive a ballot by mail for the November 3, 2020 General Election. Prior to this Executive Order, mail-in ballots were only provided to those voters requesting permanent or temporary absentee status. The Executive Order did not limit in-person voting.

All mail-in-balloting opened several questions for County citizens:

- Can a voter still vote in person at their assigned precinct?
- Will the mail-in-vote be counted?
- Will the completed ballot arrive safely?
- Can the ballot be tracked through its various stages?
- Can voter fraud occur (voting more than once or for others without their consent)?

## **METHODOLOGY**

The GJ reviewed documents including:

- Governor’s Executive Order N-64-20,
- California Voter’s Choice Act of 2016 (SB 450),
- Senate Bill 207 approved by the Governor on February 13, 2020,
- Mendocino County Elections Press Release dated August 28, 2020,
- Mendocino County Polling Locations & Ballot Drop Off Locations,

- Sample Ballot & Voter Information Pamphlet.

The GJ conducted interviews with Mendocino County employees, toured Elections Office equipment storage facilities and reviewed the verification and tabulation process and workflows within the Elections Office.

## DISCUSSION

### How accurate is the data source for mailing ballots to voters?

New voter records are added based on updates from the Department of Motor Vehicles (DMV) (new driver or identity card issuances), or by voter registrations. Address changes are provided from DMV records or voter registration changes reported to the County. Typically, five to twenty-five voter records are removed weekly based on death certificates filed in Mendocino County. If Health Department reports indicate deaths outside the county, the voter registrations will be removed for decedents names with matching addresses.

Ballots were printed and mailed to all registered voters by Mendocino County's print vendor. This vendor was first used for the March 2020 Primary Election. Ballots were mailed through the USPS starting October 5, 2020 and ballots should have been received no later than October 15, 2020. The Sample Ballot & Voter Information Pamphlet mailed to all registered voters in the County describes the complete process for requesting replacement ballots, Spanish Language ballots, and disabled voter balloting.

Return Service from the USPS is requested for mailings from the Elections Office to registered voters. It is illegal for voter materials to be forwarded to a new address by the USPS. Returned materials indicate that the voter no longer resides at that mailing address, so the Elections Office inactivates that voter from the roll. If the voter chooses to vote in person, they will receive a provisional ballot which is processed according to standard procedures of the Elections Office.

The County has been proactive in requesting voters to update their signatures if they believe they may have changed from when the voter last registered. This should assure that the Elections Office has the most recent signature on file which are used for comparison to those on the ballot envelope.

Based on the procedures described by the Elections Office, the GJ concluded that the roll of registered voters is maintained accurately.



Voters could track the status of their mail-in ballots using California's BallotTrax system which provides the location via email, text, and voice options. Voters could sign-up at: <http://wheresmyballot.sos.ca.gov/>

Figure 1: Home page <http://wheresmyballot.sos.ca.gov/>

### How are ballots returned?

Completed ballots could have been returned by depositing in a regular USPS collections box (postage is prepaid), in one of the six County Drop-off boxes, or returned to a polling place.

Voters who chose to vote in person at their designated polling place could exercise that right.

To help prevent the spread of COVID-19, the County Clerk publicly encouraged voters to return their completed mail-in ballots by USPS mail or by the County's Drop-off boxes whenever possible. Ballots delivered in drop-off boxes were collected daily by two designated individuals sworn to the Constitutional oath required of election officials, such as City Clerks and City Managers. Ballots were logged and securely transported to the Elections Office on Low Gap Road in Ukiah on a regular basis.

The County Clerk's Office followed recommended health guidelines to prevent the spread of COVID-19 at polling places.

- Voters and poll workers were required to wear masks while indoors,
- occupancy was limited and controlled,
- social distancing was strictly enforced maintain six-foot distances,
- disinfectants, hand sanitizer, wipes, masks, and single-use pens were made available at all polling locations.

To address concerns of voter intimidation or other suppression of basic voting rights, the Elections Office and Sheriff's Office coordinated their efforts to ensure that all patrol routes had coverage on November 3 with special attention given to routes with polling locations. Although this had been standard practice in past elections, the 2020 effort included town hall announcements and a press release published on Facebook to publicize the allocation of personnel to encourage civic engagement.

### **How are ballots processed in the Elections Office?**

Ballots received by USPS mail and those delivered to drop-off boxes supplied by the County were processed by elections staff of at least two people working together for internal control beginning October 29, 2020 and continuing until all of the ballots were tabulated. Mail-in ballots must have been postmarked no later than November 3 and received at the County Elections Office by midnight on November 20, 2020.

Election related materials returned by USPS are processed along with all other mail that is addressed to Mendocino County's Administrative Offices at 501 Low Gap Road, Ukiah, CA 95482. The assigned Mail Clerk sorts the mail by the addressed room number and delivers mailed-in ballots to the Elections Office daily. The Mail Clerk(s) are presently not all sworn to the Constitutional oath as elections workers are required to be.

Ballots are processed following established workflows and controls used for prior elections. The process was expected to flow efficiently if the ballot is properly marked and signed per the informative guidelines in the Voter Information Pamphlet and the ballot envelope instruction.

### **Other observations of the Grand Jury:**

Election processing efficiency and productivity is diminished due to issues related to voter requests for replacement ballots. An estimated 80-90% of replacement ballots were not required in previous elections, as the original mailed ballots were used. When a replacement ballot is

requested, the original is flagged as inactive and a replacement is mailed. If the inactivated original ballot is returned, it is rejected, and election officials must inactivate its replacement to re-activate the original. This workflow increases staff workload.

The County does not have computerized systems to automatically compare signatures on ballot return envelopes with digital signatures of registered voters. Voter signatures on every mail-in envelope are manually verified by comparison against signatures stored digitally in the Registrar's Office.

Americans with Disabilities Act compliant vote-in-person polling place *Verity* branded devices, on-demand ballot printers, and Elections Office ballot tabulation equipment were purchased from Hart InterCivic of Austin, TX. Hart is certified at the ISO9001:2000 level after an audit by Underwriter Laboratories and provides rapid support of its systems if any issues develop during the election cycle. The *Verity* hardware is not connected to any network (internet) service and is physically locked to prevent unauthorized access. Much of this equipment was first used for the March 2020 Primary Election. Equipment is stored in climate- controlled locations at 501 Low Gap that have security monitoring systems and controlled access.

Non-tabulation election materials reportedly sustained damaged during relocation to a new site after the March 2020 election. Election officials are now required to obtain access to this site through another County department, rather than having the ability to access and assess the condition of the equipment as part of their normal job routine. Equipment used at polling sites – excluding tabulation equipment which is maintained in a locked and alarmed location – was relocated to another storage facility without advance notice to the Elections Office.

In the 2016 General Election, only 76% of registered voters in Mendocino County exercised their right to vote. Although this is higher than the national average of 55%, the Elections Office encouraged all voters to have their voices heard.

In the 2020 General Election, 82% of registered voters in our County exercised their right to vote, representing an increase over the prior 2016 General Election of 16 % points. The turnout was 70% of the total of those in Mendocino *eligible* to vote. Both percentages compare similarly with those of the State's overall totals with 81% of those registered voting and 71% of those eligible voting.

For the March 2020 Primary Election, 29,603 ballots were submitted and of those 29,527 were tabulated (99.74%). Of the submitted ballots, 76 could not be counted even after attempts by the Elections Office to contact the voter:

- 25 lacked a voter's signature on the mail-in envelope (0.08%),
- 51 had voter signatures that did not match registration signatures (0.17%).

As of November 3, 2020 there were 53,651 registered voters in Mendocino County. This is an increase of 1,049 from the 52,602 registered voters as of February 18, 2020.

For the November 2020 General Election, 44,237 ballots were submitted and of those 44,135 were tabulated (99.77 %). Of the submitted ballots, 92 could not be counted after attempts by the Elections Office to contact the voter to obtain signature corrections:

- 23 lacked a voter’s signature on the mail-in envelope (0.05%),
- 61 had voter signatures that did not match registration signatures (0.14%)
- 8 ballots were submitted using ballots from the March, 2020 primary election (0.02%)

A total of ten ballots were referred to the District Attorney for further investigation of alleged attempts by voters to vote more than once in the November 2020 election.

Based on reports of the California Secretary of State and the Mendocino County Elections Office:

- For the November 2020 General Election, of the 53,697 registered voters, 44,135 cast ballots, representing a turnout of 82%. This compares favorably with the overall turnout in California of 81%. Of the cast ballots, 43,801 were from vote-by-mail voters or 99% of ballots,
- for the March 2020 Primary Election, of the 52,602 registered voters, 29,527 cast ballots, representing a turnout of 56%. This compares favorably with the overall turnout in California of 47%,
- for the 2016 General Election, Mendocino County had 51,061 registered voters with 38,730 casting ballots for a turnout rate of 76%. Of the cast ballots, 32,694 were from vote-by-mail voters or 84% of ballots.

For the November 2020 Election, the Elections Office found that the AMB system performed smoothly with no issues identified regarding the integrity of the voting process.

Mendocino County’s 250 polling places facilitated submission of 1,544 provisional ballots (which are tabulated as absentee and processed last), 283 conditional ballots (for same day registrations) and 334 ballots for those who elected to not use their VBM ballots (polling place ballots). Polling places are considered essential as they encourage all eligible voters to cast their ballots.

The GJ investigated and assessed if the VCA should apply to Mendocino County’s elections. The VCA, adopted by 15 of California’s counties as illustrated on the side diagram, allows voters to choose how, when, and where to cast their ballots by:

- Mailing all voters a ballot,
- expanding in-person early voting,
- allowing voters to cast a ballot at any voting center (e.g., polling place) within their county.

The County of Mendocino is among the 43 mainly rural counties not participating in the VCA due to difficulty in recruiting staff for its mandated additional early voting requirements,



Figure 2: Counties participating in the VCA

insufficient internet coverage, and network access in the rural populated parts of Mendocino County.

The County Clerk asserted all eligible voters are entitled to vote and to have their votes accurately counted. Any person casting fraudulent ballot (voting for another person, misleading a voter needing assistance, voting more than once, tampering with a vote, etc.) will be prosecuted to the full extent of the law. Illegal voting has remained a felony in the State of California subject to up to a three-year prison sentence and fines of \$1,000 to \$10,000 dependent on the violated statute of the California Elections Code Division 18 Penal Provisions 18000 -18700.

**What was new in the November 2020 General Election?**

	<u>Previous General Elections:</u>	<u>General Election November 2020:</u>
Who receives mail-in ballots in advance of the election?	Voters who requested absentee ballots as temporary or permanent absentee voters.	<i>All registered voters</i> will receive a mail-in ballot.
How were mail-in ballots returned?	USPS or delivered to a polling location.	By USPS, <i>deposited in a County drop-off box at selected locations</i> or delivered to a polling location.
Could a voter vote illegally (for example, more than once)?	Controls were in place to prevent illegal voting. Persons committing voter fraud will be prosecuted to the fullest extent of the law as a felony.	Controls are in place to prevent illegal voting. Persons committing voter fraud will be prosecuted to the fullest extent of the law as a felony.

**Preliminary Results for the November 3, 2020 General Election**

The Secretary of State will certify all election results on December 11, 2020. As of the date of this report the official results of ballots counted in Mendocino County.

All 38 polling places in the County have reported.

Of the 53,651 registered voters in the County, 44,237 ballots were returned and counted. This is 82.45% of all eligible voters.

This data is available on the county’s website:

<https://www.mendocinocounty.org/government/assessor-county-clerk-recorder-elections/current-election-results>

The Superior Court of Sutter County declared Executive Order N-64-20 unconstitutional as it was a regulation not passed by the Legislature which is Constitutionally mandated to establish Election procedures. The ultimate outcome of this case cannot be determined as of the date of this report. The counties’ implementation for processing the AMB would not be impacted other than a minor reduction in the volume of AMB.

## **FINDINGS**

- F1. Registered voter turnout during elections in Mendocino County usually exceeds the California average but more voters could benefit from County participation in the VCA.
- F2. The Elections Office use of AMBs reduces the risk of spreading COVID-19 and brings Mendocino County closer to alignment with the spirit of the VCA.
- F3. All employees performing the duties of a mail clerk in the Mendocino County Administration Center are not sworn to the State of California oath found in § 3, *Article 20 of the State Constitution* which may pose an accountability risk for the internal handling of Election mail.
- F4. Voter requests for replacement ballots diminish Elections Office efficiency and productivity due to the reliance on manual processing of replacement ballots.
- F5. The ballot count log should be contained in the transport box to mitigate manipulation after sealing the ballot box.
- F6. The County does not have a computerized system that automatically compares signatures on ballot return envelopes with digital signatures of registered voters. Voter signatures are manually verified for every mail-in envelope by election staff comparing against signatures stored digitally in the Registrar's Office resulting in increased labor expense and a higher likelihood of human error.
- F7. The County of Mendocino is among the 43 mainly rural counties not participating in the VCA due to difficulty in recruiting staff for its mandated additional early voting requirements and due to insufficient internet coverage and network access in the rural populated parts of Mendocino County which affect voter turnout.
- F8. The Elections Office does not have complete oversight of all its stored equipment but retains the full budget liability for replacing damaged equipment. This makes budget planning problematic.

## **RECOMMENDATIONS**

The Grand Jury recommends that:

- R1. the Election Office explore eligibility exceptions to participation in the Voter's Choice Act pertinent to rural counties with resources and infrastructure limitations. (F1 and F2)
- R2. Mendocino County Elections have its own United States Post Office Box for receipt of elections related materials to avoid delay caused by additional sorting in the Mail Room of the Administrative Office. (F3)
- R3. Mail Clerks who process mail from the USPS be administered the California Oath given duly sworn elections officials. (F3)

- R4. for procedures regarding replacement ballots, the County Clerk's Office request a feature from the tabulation software vendor to record either the original ballot or its replacement to automatically inactivate the unused ballot which would eliminate manual intervention by elections staff to inactivate and reactivate ballots. (F4 and F6)
- R5. two sworn individuals count and log the number of ballots collected from drop-off boxes in double custody. The dually signed count log be placed in the ballot transportation box and transported to the Elections Office. (F5)
- R6. the Elections Office inquire if a signature validation feature is available from Hart InterCivic or other vendor to automate the signature verification process, requiring only manual validation for mis-matching signatures which will reduce staff workload and automatically identify potential mismatching signatures, reducing the possibility of human error. (F6)
- R7. Mendocino County's Executive Office notify the Elections Office at least one week in advance of any relocation of election-related materials and arrange for a representative of the Elections Office to supervise any relocation of election materials to avoid damages to equipment and budget liabilities to the department. The Elections Office must have independent and immediate access to any storage area housing its equipment. (F8)

## **REQUIRED RESPONSES**

Pursuant to Penal Code § 933 and § 933.05, the Grand Jury requires responses as follows: the following official is required to respond within 60 days:

- Assessor, County Clerk, Recorder: Findings (F1, F2 and F4 through F8) and Recommendations (R1, R2 and R4 through R7)

## **INVITED RESPONSES**

Pursuant to Penal Code § 933 and § 933.05, the Grand Jury invites responses as follows:

the following official is requested to respond within 60 days:

- Chief Executive Officer: Findings (F3 and F8) and Recommendations (R2, R3 and R7)

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code § 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury
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