

SOS-CACEO Conference Call  
October 26, 2007

Attendance:

Amador	Sacramento
Butte	San Bernardino
Colusa	San Diego
Contra Costa	San Francisco
El Dorado	San Joaquin
Fresno	San Luis Obispo
Glenn	San Mateo
Imperial	Santa Barbara
Inyo	Santa Clara
Kern	Santa Cruz
Lassen	Shasta
Los Angeles	Siskiyou
Madera	Solano
Marin	Sonoma
Mariposa	Stanislaus
Mendocino	Sutter
Merced	Tehama
Monterey	Tulare
Napa	Tuolumne
Orange	Ventura
Placer	Yolo
Plumas	Yuba
Riverside	

Secretary Debra Bowen

Good morning. Thank you all for taking the time to join the monthly conference call this morning, and thank you for accommodating my need to delay it from Wednesday. What I'd like to do is walk quickly through the items on the agenda, and then as usual, open it up for questions.

**HAVA Contract Update** The Section 261, Polling Place Accessibility, and Section 301, Voting System Upgrade Contracts have been sent to all counties that had balances left from their initial allocation and some of those contracts have already come back to us for signature. Please, if your county is involved remember to wait until you get the contract back signed by our contract unit before you formally enter into any agreements or you incur any costs that you want to pay for out of that contract. As Chris Reynolds keeps reminding me, if counties don't wait until they have the signed contract in hand, there is some chance that they will be deemed by the EAC to be ineligible for reimbursement, and we don't want that to happen.

Four counties, Napa, Tehama, Inyo and Imperial have contracts to complete the migration from their current EMS to a compliant EMS, and once those contracts have been finalized we will work on the acceptance testing for the new MS that each county has acquired.

We still have no word on the EAC on how or if HAVA funds can be used to accommodate the costs of the voting system modifications pursuant to the recent recertifications and decertification order. We'll let you know as soon as we know.

**Pending Voting System Certifications** There are no new certification applications here beyond what we discussed last month, but I want to give you an update on the status of the three reviews that are going on or about to get underway.

First, the Premier GEMS systems that has been designed for Los Angeles County. That testing is proceeding; much of the function testing has been conducted, and our personnel are going down to Los Angeles for what we hope will be the final round of testing, on Monday. The Red Team Penetration testing is complete, and the Source Code testing should be done in about two weeks. Another Los Angeles-specific item, though this one falls under the Top to Bottom Review umbrella, is the InkAVote Plus System. Red Team penetration testing for that system has been done and the Source Code Review is nearly complete.

Returning to the new certifications, ES&S has finally completed its application to have its new Unity 3.0.1.1/AutoMark System tested, and that testing is scheduled to begin on Monday, November 5<sup>th</sup>. Now, because of the ES&S delays, and the fact that the testing process is a minimum of ten weeks, that means we are looking at a January date to make a decision on whether that system can be certified. We have no reason to suspect that the upgrade will not be certifiable we just simply cannot complete the work in the time frame that ES&S has allotted us. At least one ES&S county has told my staff that that will be too late to implement the new system in time for the February election and that as a result, will be using the currently certified version of Unity/AutoMark voting system. I don't know yet what the rest of the ES&S counties view as their drop-dead date for getting approval on a new system, but I would imagine that a similar timing problem will exist in all counties. As a practical matter that means we will now embark on, on what I assumed we might have to do with ES&S declined to submit the Unity/AutoMark voting system to the Top to Bottom Review, preferring instead to submit it's newer system, and that is we use the provisions of the certification of the existing system to add conditions to the use of the current system. Those conditions are likely to be similar to conditions that have been adopted for the other three systems that did go through the Top to Bottom review, and we will be discussing this with ES&S counties, beginning in the week or two.

The next item is San Francisco-specific. ES&S still has not submitted its new ranked-choice voting system to this office for review and certification and I do not know whether the company will ever proceed with that application. What's happened is this: ES&S

submitted a single application to us that included both the base Unity/AutoMark system and the San Francisco ranked-choice voting system. But they mixed two systems together, essentially trying to get two systems tested while paying only for one. Staff here spent over two months trying to get ES&S to decide what it wanted to have tested and to supply the necessary documentation to proceed, and that is something that ES&S completed only on Monday, October 22<sup>nd</sup>. So that's the reason for the delay. I noticed yesterday that the Secretary of State in Colorado has had as many problems with ES&S as we have had, currently put a moratorium on any ES&S voting system use in Colorado, because of the difficulty that he has had in getting ES&S to provide documentation. And I would simply note for you that that is, there we have a Republican Secretary of State appointed by a Republican Governor, so it's clear that the difficulties we are encountering are not partisan in nature.

**Amended Top-To-Bottom Review Recertification Agreements** I'd like to thank everyone who spent time meeting with my staff last week to work through the amendments to the recertification agreements. I think that we got all of your concerns and issues about clarity and practical considerations addressed during this process. The Sequoia and Premier amended recertification documents were sent to counties yesterday. Hart documents have not been sent because they require some unique and additional changes. That system has been unique from the beginning, because the architecture is different, and the original conditions imposed on it were different. Now, amending the conditions is also different and that has been driven mainly by the Use Procedures that were submitted by Hart, probably 60 pages or so, procedures very different from what we got from other vendors. These Hart use procedures make it clear that we need to be more specific about some of the conditions in the Hart recertification, and so we are now working on that. That obviously affects more counties, we wanted to get the others done first.

**Post-Election Audit Standards** I know that there was a great deal of discussion about the Post Election Audit Standards during the conference call held last week, and again I want to thank people for working jointly with us on that. One of the main issues was to have a fixed point in time to decide whether a race was close enough to warrant going through an expanded audit. Selecting an official point in time is not without its problems, but I think it's the best option available, that's the feedback I got from you, so we've selected the semi-official canvass results as that point in time. There has been some discussion about amending the Elections Code so that this type of audit can be conducted outside the 28 day canvass period, and there is merit in discussing that, but that can't be done in time to deal with the 2008 elections, so we have to deal with the Elections Code as it is for next year. Particular thanks to you, Becky, for all of your time and the teams of people you put together to work through this, also I want to thank Gail, Cathy, Barbara, Elaine, Keith, Neal and everybody who I've mentioned who spent their time working with us on this, I appreciate it. Everyone's spent a great deal of time over the past few weeks to resolve issues, shape the voting system security plans, and work through the revisions to the recertification conditions and I hope that will pay off by not having unanswered questions to deal with in the future.

**Fire Effects On November 2007 Elections** There are a few UDELs that are affected; Los Angeles County has 16 cities, one and a half million voters, roughly 40% of the county's registered voters. Orange County, a very small, one community college district, with 92 voters. Riverside and San Bernardino are the two counties I have the most concern about; Riverside has 5 cities, 438,000 voters, which is 60% of the county's registered voter total. San Bernardino, two cities, totaling 600,000 voters and 85% of the county's registered voters. Ventura has one city, 127,000 voters, 34% of the county's registered voters. I know that many of you have elections to conduct a week or two from today, and those of you in the areas I just mentioned have special challenges. Finding replacement polling places, dealing with employees who may have been displaced, getting ballots to voters, replacing absentee ballots that may not be where they are supposed to be at this point, any number of other complications. Please know that if you have something specific that you need me or my staff to do, I'd like to be able to take some of the load off you, if I can figure out what to do. But I really need your help in identifying what, specifically you need. I am happy to go the Governor to get additional resources if you can be specific about what's helpful. I know you're dealing in those counties with incredible challenges, and I stand ready to do whatever I can to try to assist. And also, if there is a need to do in some regional areas, some public service announcements or communications campaign that's another thing that could be done I think with state funds rather than asking counties to try to sort that out with all the other emergency communication that is currently going on.

**Referenda Update** I assume that you all saw the CCROV that Cathy Mitchell put out earlier this week regarding the referenda schedule. Referenda are not things that the Secretary of State's office or the counties deal with at the state-wide level very often, so I wanted to make sure that everyone has facts and key dates at their disposal. Based on when the referenda proponents began collecting signatures and turned them in to all of you, the law gives counties until December 3<sup>rd</sup> to report whether the proponents have submitted a sufficient number of valid signatures. Referenda process does not permit the Legislature to modify or waive any statute, including the 20 day public display requirement. And that means, that should the referenda be certified as having qualified for the ballot on December 4<sup>th</sup>, this office will not be able to supply you with a final ballot label and title and summary information until after the 20 day public display requirement or December 26<sup>th</sup>, which we all realize is E-41. There's nothing I can do about it, it's the law.

Speaking of the law, on the legal front I'm sure you know that three of the referenda are being challenged in court. The Martin/Rondo case will be heard on November 13<sup>th</sup>. This case deals with the question of whether the proponents only has to collect their signatures in the 90 day time frame, or whether the entire process, from signature collection to county verification had to be completed in the 90 day window. The \*unintelligible\* that it was only the signature provision came into being I believe in 1997 or 98, and it was as a result of an unwritten bench ruling in a prior litigation, and has been the case through all of the various Secretary of State administrations since then, in the Jones days. The second case, the McCarl/Pachonga case, deals with the same question, and we'll be in court on November 20<sup>th</sup>. Initially this case was to be heard at

the same time as the Martin/Rondo case but for whatever reason the court ruled that the issues were sufficiently different so that the cases should be heard separately. Third, the Melanovich/Avocalenente case: that case will be in court on November 27<sup>th</sup>, this one deals with an entirely different issue, which is whether the gaming compact themselves, were even subject to the referendum process. Under the Constitution, all statutes are subject to referendum except for urgency statutes, statutes calling elections and statutes providing for tax liens or appropriations for the usual occurring expenses of the state, and we'll see what the court has to say about the argument that the compacts were not subject to the referendum process. Again, I have no control over what happens in court, and understand that the earlier that these are disposed of, along with the signature verification, the simpler our timing issues become over, although they are certainly not simple.

**Election Day Poll Monitoring** I intend to continue the successful poll monitoring program that was developed by the prior administration, and I know that Chris Reynolds mentioned to some of you at the last CACEO meeting here in Sacramento that we would like to partner with people in places where that makes sense. If he has not been in touch with you yet, Chris Reynolds or Kaye Kaufman will be calling you soon to talk about ways to improve the checklist of things that observers look for. So that we can make this program as useful for everyone involved as possible.

**High School Mock Election** In the next week or so I will be officially rolling out the High School Mock Election. I know this has traditionally been done for the General Election, but I wanted to do this in February to see if we could start getting kids involved in the process earlier, and maybe get a different reaction if we have kids choosing between Republican nominees or Democratic nominees, as well as just engage in the General Election. One of the things that will be done on the Mock Ballot is to include some mock ballot measures, that are not on our real ballot, but may be more relevant to a high schooler's life, such as whether high school students should be required to register to vote, or should new car buyers have to pay environmental impact fee, if they buy a car with higher green house gas emissions. I'm very excited about this project, working with the Superintendent of Public Instruction, Jack O'Connell, and I'd love to have all of you involved, trying to get high school students in the project. These are our future voters, and our future poll workers, so it's a great project to have out there.

Those are all the things that I wanted to make sure you were updated on, and I'm ready for questions.

## **Questions**

Gail Pellerin, Santa Cruz – Any idea when those Post Election Audit Procedures will be back out in print form so we can review them?

Evan Goldberg – They have been posted on the web along with the amended recerts.

Gail Pellerin – So those are final as far as you're concerned?

Evan Goldberg – Yes.

Gail Pellerin – On just another note, on your mock election, Santa Cruz County has been doing Kids Voting for a number of years, through what used to be California Kids Voting, the guy that was running that, Justin Trin-Halperin is a teacher here in this county; he'd just be a good resource for you guys, if you want to talk to someone who's been involved for a number of years.

DB – Ok, great, we'll follow up, get a phone number.

Gail Pellerin – We actually do a ballot with real propositions, real candidates on there, and it's kindergarten through 12<sup>th</sup> grade.

DB – I look forward to learning about it.

Elaine Ginnold, Marin – I wanted to ask you about the AutoMark. The five counties that have those AutoMark that have a different manufacturing process used on them, will we be able to use those in February, will the provisional requirements apply to those?

DB – A decision is pending. I need to review the documentation from the staff, and I will do that as rapidly as possible but I have made no decision yet, I've been more concerned with getting – I know it's an issue for those five counties, but I wanted to get the Diebold or the Premier and Sequoia recertification stuff done.

Elaine Ginnold – Thank you.

Steve Weir, Contra Costa – On the Post Election Audit; we appreciate the chance to talk with your staff. My position was, and I'm only speaking for myself right now, that I was intrigued by David Jefferson's committee, which included Elaine Ginnold, and thought that it produced a lot of good material for discussion. Part of the material is the background material that pertains to that, and there was a report on the Minnesota voting systems. I would hope that we could delay doing this for February, define the certification at the point at which the trigger would be pulled, seek whatever legislation is necessary to extend the canvass on that, and obviously deal with SB90 stuff, but most importantly, if this doesn't go into more discussion, is to define what discrepancies mean. Because I think that, right now, is undefined, and if you define discrepancies as voter error, I think that that's a real slippery slope. The document that dealt with Minnesota voting very clearly said you have to exclude voter error from being included from being included in the definition of discrepancies. Do you have a sense of your willingness to extend this? And/or, how we can flesh this thing out with defining what a discrepancy is?

DB – I am actually surprised you are bringing this up now rather than in the process, but-

Steve Weir – I brought it up during the discussion.

DB – The term discrepancy has been changed to variance. So the documents no longer refer to discrepancy.

Steve Weir – So how does one define a variance?

DB – It's in the material that was taken to you yesterday, and I don't know that there's a definition per se, but there's a methodology for how to calculate the variance percentage.

Steve Weir – I'm sorry, but I haven't seen it.

DB – It went up last night. So, why don't you have a look and see if it – it was an attempt to reflect and deal with the concerns were raised by people about the term

discrepancies. So I hope it has been delay with adequately. As to the timing issue, I am not willing to delay this, because if we do get legislation, it wouldn't be effective until the 2010 elections, and it's just something that I believe we need to do, the case for it was made pretty strongly by the post Election Audit Standards Working Group. And I was very concerned about trying to do this in June; we had feedback actually from many of the Registrars that they would prefer to do it first in February because they believe that there are likely to be larger number of close races in June, and if we do it in February we have the ability to learn from our experience before we get into a situation where we're dealing with a traditional Primary ballot. The ballot is fairly limited in February, so we may wind up with no test at all of this in most counties. But I am willing to continue the conversation about how, on a permanent basis, how the timing should work, whether it should be outside the canvass period, whether it should be dealt with as basically a type of recount, something that's handled just in an entirely manner, but it is, as it stands for the February Primary.

Steve Weir – I apologize, I'm at the post Election Audit Standards Working Group web site and I don't see an update there, am I missing it?

Evan Goldberg – Steve, it should be attached to the recertification document. Under the amended recertification documents dated October 25. Post Election Manual Tally Requirements.

Gail Pellerin - Are the same for each voting system? You've got one under Diebold, one under Sequoia?

DB – They are same. They were done this way because as with the recertification and my goal has been that a Registrar, a member of the public, a reporter, whatever, can go to one place and have everything they need right there rather than have to know that they should be looking someplace else.

Gail Pellerin – Just making sure they are all the same.

DB – They are all the same. They're just attached to each one because it's easier and legally the certification requirements, it needs to be done that way.

Elaine Ginnold, Marin – I wanted to ask you about the referenda schedule. The E-41 date is right around the time that we're getting ready to mail the sample ballots, and they should go out very close to that time, if we sent out a sample ballot with the original draft of the referenda that hadn't been changed by any court proceedings, after that, and then if there were changes and we sent out a notice to voters could we do that?

DB – We're going to have to sort through all of that, as we see what happens with this. The time frame is really unfortunate, and one of the things that's clear to me is that I need to put this on the list of things to discuss for legislative change because with the timing being as close as it is, this wouldn't be an issue obviously if we had a June Primary, it's only the push of the February Primary that makes this so problematic. But it is something where I think that the statute ought to provide for what happens in the event that a referenda-able legislative action is taken in the time frame where the statutory requirements for public display and signature gathering put it this close to an election day. Obviously we can't change that without calling the Legislature back into session, I wouldn't hold my breath for that. But, we'll work with you to try to get the best outcome we can. Obviously if we know that this has qualified earlier than December

3<sup>rd</sup>, the 20 day display period can start earlier, and then it would be E-49 rather than E-41. So this is a situation where if every county gets the count completed earlier, we'll all have more time.

Laurie Cassidy, Butte – I was wondering is there a way that the Governor could have impact on this issue – it would be a huge cost to have something printed and then re-printed again.

DB – I don't know, we've looked at that, the Governor's, you know, it's in the statute, we saw this during the energy crisis, the Governor has the power to do an emergency order but it only lasts for 60 days, and it's always unclear that whether an action that goes for longer than that is subject to challenge. So, we'll be looking at how to handle this, we'll be in touch with the Governor's office, but I think that the earlier that the signature verification can take place, the more time we have not only to deal with these kinds of questions but also there's less problem with trying to deal with the sample ballot.

Sandy Brockman, Kern – Is there any possibility that there could be some kind of representation in the court hearing, that maybe someone could recommend to the judge that there's this code that's written pertaining to a June election, that he could refer it to be on the June ballot?

DB – Actually the code wasn't written to be in a June election, the code deals with any election, so it just happens that the compliments of the February Primary and the end of the Legislative Session made it turn out this way, but the code is not specific to the June Primary. It's not in the code, I'm sorry, it's in the Constitution. So I think that means that the Governor can't waive it by emergency declaration.

Laurie Cassidy – You only mentioned the sample ballot booklet, but at that time frame the official ballots are on the presses being printed, too.

DB – Again, this is in the Constitution, the 90 days, I can't change the Constitution, neither can you, neither can the Governor. So, that's the reason that I'm urging counties; I mean, I don't like urging counties to speed things up, in a politically sensitive referendum, which this is, but just from the standpoint of trying to deal with the practicalities of it, you know, the Constitution doesn't give an exception for a February Primary if the session ended. And the only way for us to get that would be for us to put a Constitutional amendment before the voters, and we're obviously not going to – we have no remedy to deal with the law, in a way that helps us solve the current problem. So we're just going to have to do our best, I understand, and I will be working with the Governor's office to deal with the cost if we should wind up having to reprint.

Marsha Wharff, Mendocino – It's not an issue of reprinting, it's an issue of there isn't going to be a February election. There will not be ballots able to be printed in time for February. Period. There's no way that you can print all of the state's ballots in that short length of time. That's what we're dealing with.

DB – The Constitution says what it says and not having an election is not one of the options I have. I mean, I hear you, it's just not one of the options we have.

(unknown female voice) Military and overseas voters are going to be very disenfranchised.



DB – Yes, yes, yes. I agree.

(another unknown female voice) I mean, what are we to do about that?

DB – We're going to have to figure it out as we go along. When we know whether its qualified. I didn't cause this problem, keep in mind. There's a Constitutional right to a referendum, and the people who are out gathering the signatures are exercising their Constitutional right. And we're going to have to figure out how to make things work around that.

Cathy Darling, Shasta – Can I interject? I just went to my board of Supervisors this past Tuesday to ask for money to buy equipment for February, and so I'm very familiar with the don't kill the messenger phrase. So I just wanted to encourage my colleagues not to – I don't believe, Madam Secretary, that you were out there beating the bushes for signatures.

DB – No, thank you, I'm not beating the bushes for signatures, but, again, to beat a dead horse just momentarily, if the signature verification process were to be completed 14 days earlier, then we'd have E-55 instead of E-41, and that wouldn't eliminate the problems, it's not going to change the fact that we have a challenge with overseas and military ballots, and that we may well need to send out amended overseas and military ballots, I don't know what we're going to have to do, but obviously the more time we have to do whatever it is, the better off we're all going to be, so thank you Cathy.

Steve Weir – We don't want to formally present this, but worst case scenario, we would be looking at a two ballot option, and I don't know if that would be legal. It's possible that you would send out two ballots to the 60,000 overseas and military voters, on or about the 7<sup>th</sup> of December, and be placed in the position where one of them was potentially in play. Obviously I don't want to suggest that as an option just yet formally, but worst-case scenario, it may be the only place to land.

DB – Well, thank you for that suggestion, I know we're right now looking at what the options might be, and it might be possible to do something like that, or to send out a second ballot that only deals with the referendum, so that there's not confusion about people picking the wrong, overseas personnel picking the wrong ballot. If the second one is only the referendum it will be clear to people, gee, presidential candidates aren't on here. We'll work through that. I understand that means double work, I understand.

Marsha Wharff – I just want to say that I never wanted to imply that you had anything to do with this, at all, I am just very concerned about the printing capability of printers in the state. We as a county are generally one of the earliest ones to get our order in, and we've always gotten our ballots in time. But many counties even under the current print deadlines that they normally deal with aren't getting their ballots early, like they need to get them. And to then compress the dates like I realize the Constitution says, is of great concern whether or not the printers who are already printing 24 hours a day, will be able to even print ballots in time to get them to counties, not just for absentee voters but for election day voters. So that's where my concern is coming from, and I'm wondering if we shouldn't be looking at doing two ballots – the ballot that we know about, and then when the referendum gets all done, that ballot separately.

DB – We will look at all these options, and we do have printers certified both in California and in other states. And even though Iowa just moved its caucuses to January 3<sup>rd</sup>, there still aren't a lot of states that have primaries as early as we do so one of the things that we might need to do is for all of us to evaluate where there might be print capacity in other states. I realize that changes shipping costs for ballots, when you're moving things further, but again, we're just going to have to figure it out.

Bill Schultz, El Dorado – Just an update, from the Angora Fire, we experienced in South Lake Tahoe. Immediately after that I requested and received from our OES/GIS section a list of all people affected that they knew of, and we received that and we sent vote cards out to all those people immediately, and so far we've just got a few straggling back in but we've been able to correct most of the people who were affected by the fire. DB – Great, thank you, that's a useful piece of information and we will be working with OES, that's a great suggestion. I think, my bigger concern is that, and I'm sure experienced this too, in the counties where there are still fires out of control, people are dealing with things other than sending vote cards to voters. So, and particularly in counties where the Registrar also handles all the record keeping, and their basic functions are grossly disrupted right now. So again, for those counties that are affected, if there's something that we can do to help fill in, if we can get OES on your behalf and ask for this, if we can coordinate, then please let us know.

Gloria Coulter, Sonoma – I just wanted to ask a question with regards to the Hart amended recert doc – any idea when we might be getting that document?

DB – The answer is ASAP, but let me see if I can get a better answer than that.

Lowell Finley – I think we are going to be able to do that within about 10 days.

Gloria Coulter – 10 days? Thanks Lowell.

Lind Tulett, Monterey – Election code section 15360, are you working at all on any regulations for random selection of precincts? We've been using a random number generator and just wondering if there are any other options out there that you are on, according to that regulation?

Evan Goldberg – Linda, I know our Elections Division has a number of regs packages that they're working on, let me get you a status update on that one.

Juan, Fresno – We use Diebold, and one of the recertification item #4 states that voting system software needs to be reinstalled prior to the February election. We need to obtain that from the federal testing laboratory, or the Secretary of State – do you know when that would be available?

DB – I think that's available right now. This is the same procedure that has been used basically always I believe, which is that we get the materials from the testing facility, we then keep track of where it's going, keep the appropriate copies, encrypt it, keep a custody record of it, send it to the county or counties that need it, follow up with the means to deal with the decryption, and basically keep a chain of custody that way.

Bruce?

Bruce McDannold – With respect to the Premier system, I believe that is still the same software that we did a trusted distribution before. So if you have that cd, which was

(unintelligible) you already would have a trusted version from which to do the reinstallation but if you contact members of the team, Brian, Jason or Miguel can make arrangements to send you're a new copy.

Juan - I believe we do have a new copy, just didn't know if you guys at the Secretary of State's office were going to release whatever version they have to the counties as a matter of formality to assure that this is the current version that you guys have and this is what should be used.

DB – Where did you get your new copy?

Juan – No, I'm asking, we've had our sent from the Secretary of State in the past.

Bruce McDannold – It has not changed, I believe.

Lowell Finley – That's right, it's still the same certified version.

Juan – Thank you.

Lowell Finley – The answer is we don't need to redistribute this to anyone who already has it, in the way that you do, if anyone does not they should contact us and we'll get it out.

Thank you, we'll go back to the regularly scheduled Wednesday in November, on the 21<sup>st</sup> at 10 am. Happy Halloween. Please let us know, particularly those counties with fires, let us know if there is something we can do. Thank you.

Respectfully submitted  
Cathy Darling  
CACEO Secretary  
Shasta County Clerk/Registrar of Voters