

CACEO PROVISIONAL SUBCOMMITTEE

Discussion Points For Count — No Count Scenarios

These Discussion Point accompany the Provisional Count–No Count Scenarios. Together, they are presented to assist you in determining the eligibility of provisional voters. Elections Code §§ 14310-14313 refer directly to provisional voting. Note that EC § 14312 directs election officials to liberally construe the provisional statutes in favor of the voter. In lay terms, that means finding ways to count the provisional ballot, not finding ways to reject it.

Local procedures and operational constraints affect processing provisional ballots.

For a provisional ballot to be counted, all of the following must be true:

1. The provisional voter must be registered in the county in which s/he casts the provisional ballot except for emergency provisional voting as prescribed in EC § 14313. (EC § 14310(c)(2))
2. The voter must sign the provisional ballot envelope. (EC § 14310(c)(1))
3. The voter's signature must compare to the signature on her/his voter registration affidavit. (EC § 14310(c)(1))
4. The provisional envelope shall be completed in the same manner as a vote by mail envelope. (EC § 14310(b), EC § 3011)
5. The voter shall not have already voted in the election wherein s/he cast the provisional ballot. (EC § 18560(b))

Statutory References:

1. The valid provisional voter must be registered in the county in which s/he casts the provisional ballot. (EC § 14310(c)(2))
 - a. Depending on the individual voter's circumstances, s/he may be Active, Inactive, or Cancelled in error.
 - b. The voter need not appear in the precinct wherein s/he is registered. EC §§ 14310(c)(3), 14311)
2. The voter must sign the provisional ballot envelope. (EC § 14310(c)(1))

This was added in 2009 (SB 740, Ch. 611) in a Secretary of State-sponsored bill. Counties inconsistently allowed provisional ballots into the count if signatures could be conclusively connected to a particular provisional ballot envelope, say from a signature on a provisional or main roster.

3. The voter's signature on the provisional envelope must compare to the signature on her/his voter registration affidavit. (EC § 14310(c)(1))

At a minimum, there must be a signature on the provisional ballot envelope to compare to the voter's registration affidavit or digital representation of the voter's signature. The statute cited above says:

Using the procedures that apply to the comparison of signatures on vote by mail ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare or the provisional ballot envelope is not signed, the ballot shall be rejected.

4. The provisional envelope shall be completed in the same manner as a vote by mail envelope. (EC § 14310(b), EC § 3011)

EC § 3011 prescribes 11 elements that shall be on a vote by mail envelope, only three of which directly apply to the provisional voter:

- i. Signature of the voter.
- ii. The residence of the voter.
- iii. The date of signing.

Courts have held since 1986 that the lack of a residence address or signing date on a vote by mail identification envelope does not affect the validity of the vote by mail ballot as long as the signature compares with that of the signature on file (Wilks v. Mouton (1986) 42 Cal. 3d 400 and Escalante v. City of Hermosa Beach (1987) 195 Cal. App. 3d 1009). Absent a statutory requirement or case law providing a different interpretation, it is prudent to accept the provisional ballot when the voter's signature compares to the signature on file.

A provisional voter who is otherwise entitled to vote (active, inactive, pending, canceled in error, and signature compares to her/his signature on file) in the county wherein s/he cast the provisional ballot, has a statutory right to have her or his ballot counted in whole or part (EC § 14310(c)(3)). Absent reliable residence information to the contrary, the voter's residence address on file is the address of record and the voter is entitled to have counted her/his votes in races associated with her/his residence address.

Although the statute is clear that the voter shall have her/his votes counted for the races in which s/he is entitled to vote, county procedures differ for counting the ballot in the precinct where it was cast or where the voter should have voted the ballot.

SUGGESTED PRACTICE: Use an audit log that tracks where provisional ballots are cast and in which precincts they are counted.

5. The voter shall not have already voted in the election wherein s/he cast the provisional ballot. (EC § 18560(b))

Local practices differ on handling provisional voters who have already voted, usually by mail. Some elections officials will first investigate the situation, including contacting the voter, while in other counties the district attorney will investigate.

PROVISIONAL COUNT - NO COUNT SCENARIOS

The following Provisional Scenarios and accompanying Provisional Count-No Count Scenario Analysis represent the CACEO Provisional Subcommittee's best efforts at developing a common ground for California's 58 counties to determine whether to count a provisional ballot. The Subcommittee believes these Scenarios represent the majority of provisional situations and resolutions that will meet the needs of most counties. However, there likely will be times – due to provisional volume, logistics, resources, time left in the canvass, or other reasons – when the Scenarios do not perfectly resolve a given provisional ballot question. In such cases counties are encouraged to document the situation, consult with their county counsel, make the best decision possible based on the specific facts involving the particular provisional ballot, and share the situation and resolution with the Subcommittee after the election.

SCENARIO	COUNT	DON'T COUNT	NOTES
1. Registration Issues			
A. Voter is registered in County but votes in a precinct different from precinct based on residence on file.	X		EC § 14310(c)(3) says, "(3) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official."
B. Voter is Inactive in the county where s/he casts a provisional ballot indicating the same address as last registered.	X		The voter was validly registered in the county where s/he cast the provisional ballot.
C. Voter is Cancelled due to DMV, NCOA, or ACS information that the voter has moved out of county. Calvoter shows no registration in another county.	X		By signing the provisional envelope, the voter is affirming that s/he is eligible to vote and registered in the county where s/he desires to vote. EC § 14310(a)(3) NOTE: Counties should carefully review these on a case-by-case basis.
D. Voter is Cancelled due to SOS or other county notification of new registration.		X	Registering in another county supersedes prior registrations. EC § 2118 Record should be researched to make sure cancellation was not in error.
E. Voter is a HAVA Pending voter and provides identification to poll worker.	X		This is a poll worker error. On submitting acceptable identification, the voter should have voted a precinct ballot.
F. Voter is a HAVA Pending voter and signature matches that on voter's registration affidavit.	X		"A person who votes by way of a provisional ballot in lieu of submitting acceptable identification shall not be required to present or submit identification in order to have the ballot counted. The provisional ballot shall be processed according to EC § 14310." CCROV 04327, Oct. 1, 2004, para. 8, pg. 3

PROVISIONAL COUNT - NO COUNT SCENARIOS

SCENARIO	COUNT	DON'T COUNT	NOTES
G. Voter claims to be registered in a party different from that shown on the precinct's roster.	X		Review voter's registration record and affidavit to confirm correct party registration. Accept voted ballot if County erred in recording party. Duplicate to voter's registered party if voter is mistaken; send new registration card if voter did not complete one at the poll.
H. Voter is registered nonpartisan and receives ballot of party allowing crossover voting.	X		Voter is allowed to vote this party ballot.
I. Voter is registered nonpartisan and receives ballot of party not allowing crossover voting.	Duplicate to Nonpartisan		Voter is not allowed to vote this party's partisan races.
2. Vote by Mail Issues			
A. Vote by mail voter has appeared at assigned precinct and surrendered VBM ballot to poll worker and been given a provisional ballot.	X		This is a poll worker error. Voter should have been given a precinct ballot.
B. Vote by mail voter has appeared at a precinct other than that to which s/he is assigned and surrendered her/his VBM ballot.	X		Determine whether the voter has been given the appropriate ballot. County procedures determine which precinct counts the ballot.
C. Vote by mail voter returned VBM ballot to Elections Office but did not sign envelope. Voted provisional ballot at precinct.	X		Since the voter did not sign the VBM identification envelope, s/he has not "voted." Determine whether voter has been given the appropriate provisional ballot and count or duplicate as necessary.
D. Vote by mail voter is a HAVA ID Pending voter who does not include acceptable identification and signature matches that on voter's registration affidavit.	X		A person who votes by way of a provisional ballot in lieu of submitting acceptable identification shall not be required to present or submit identification in order to have the ballot counted. The provisional ballot shall be processed according to EC § 14310. CCROV 04327, Oct. 1, 2004, para. 8, pg. 3
3. Provisional Ballot Envelope			
See Discussion Points #2			
A. The envelope is not signed by voter.		X	There must be a signature to compare with that on the voter's registration affidavit. See 3.B.

PROVISIONAL COUNT - NO COUNT SCENARIOS

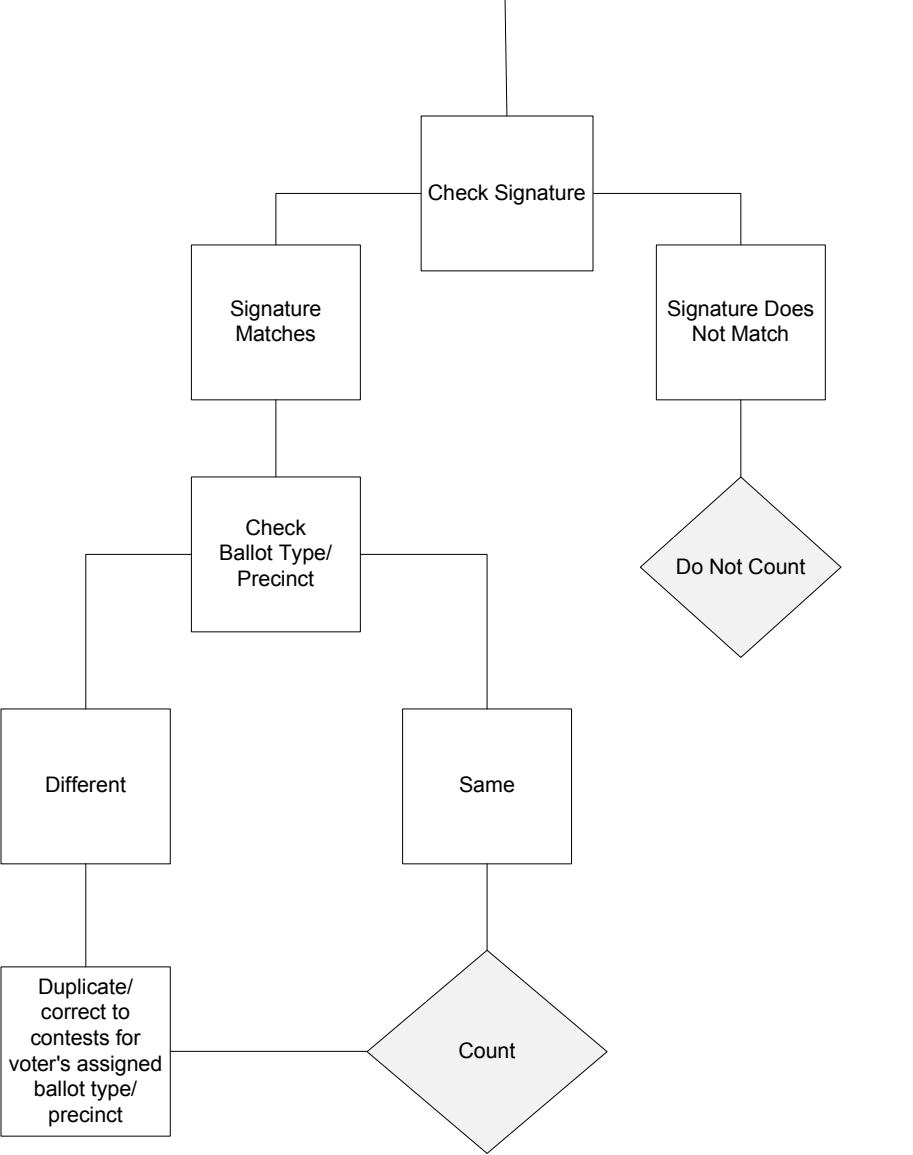
SCENARIO	COUNT	DON'T COUNT	NOTES
B. The envelope is not signed by voter but the voter is registered in the precinct where the provisional ballot was issued and signed on the main roster or the county uses a provisional roster that was signed by the voter.		X	Election Code § 14310(c)(1) was amended in 2009 to require that the envelope be signed and the signature compare to the signature on file for the ballot to be counted. (SB 740, Ch. 611)
C. The residence address line is left blank - no residence information is given; voter is validly registered in county.	X		EC 14310(b) requires the provisional ballot envelope to be "completed in the same manner as vote by mail envelopes" but courts have ruled that residence addresses are not required for a vote by mail envelope to be accepted. (Two court cases have clarified this issue: <u>Wilks v. Mouton</u> (1986) 42 Cal. 3d 400 and <u>Escalante v. City of Hermosa Beach</u> (1987) 195 Cal. App. 3d 1009.)
D. The address written on the envelope is different from the one listed on the voter registration file.	USE LIBERAL CONSTRUCTION		1. Check voter file for any updates prior to the close of registration.
	X		2. If the above research is not conclusive and voter provides an In-County address different from voter file information, duplicate or move the ballot to the precinct on new address on the provisional ballot envelope (HAVA) counting only races voter is entitled to vote on.
		X	3. If the above research is not conclusive and voter provides an Out-of-County address, reject ballot, write rejection code on provisional ballot envelope, and place envelope/ballot in "challenged" box.
E. Voter provides a mailing address rather than a residence address on the provisional ballot envelope.	X		If the voter is otherwise validly registered, count the ballot.

PROVISIONAL COUNT - NO COUNT SCENARIOS

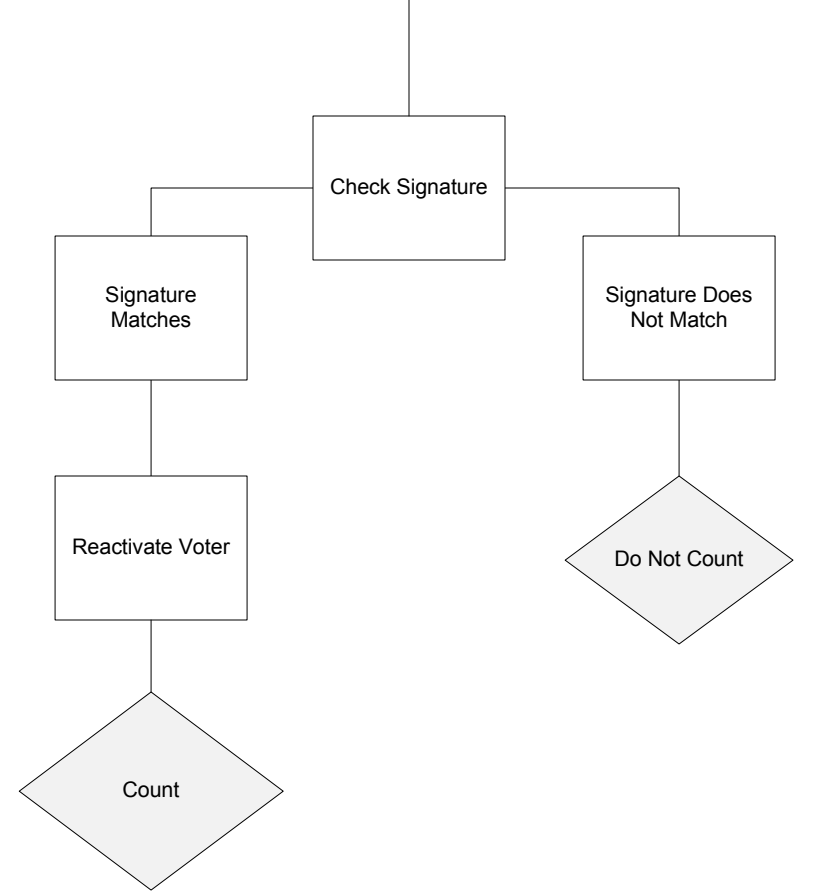
SCENARIO	COUNT	DON'T COUNT	NOTES
<p>F. The voter's signature does not match the signature on the voter registration file or the provisional ballot envelope is not signed.</p>		<p>X</p>	<p>EC 14310(c)(1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on vote by mail ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare or the provisional ballot envelope is not signed, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.</p>
<p>G. The voter printed his/her name, but has a written signature on the voter registration file.</p>		<p>X</p>	<p>EC § 3019 "... the elections official shall compare the signature on the envelope with that appearing on the affidavit of registration ..."</p>
<p>H. The voter printed his/her name and has a printed signature on the voter registration file.</p>	<p>X</p>		<p>EC § 3019 "... the elections official shall compare the signature on the envelope with that appearing on the affidavit of registration ..."</p>

Registered Voter

Voter votes in wrong precinct (1A)



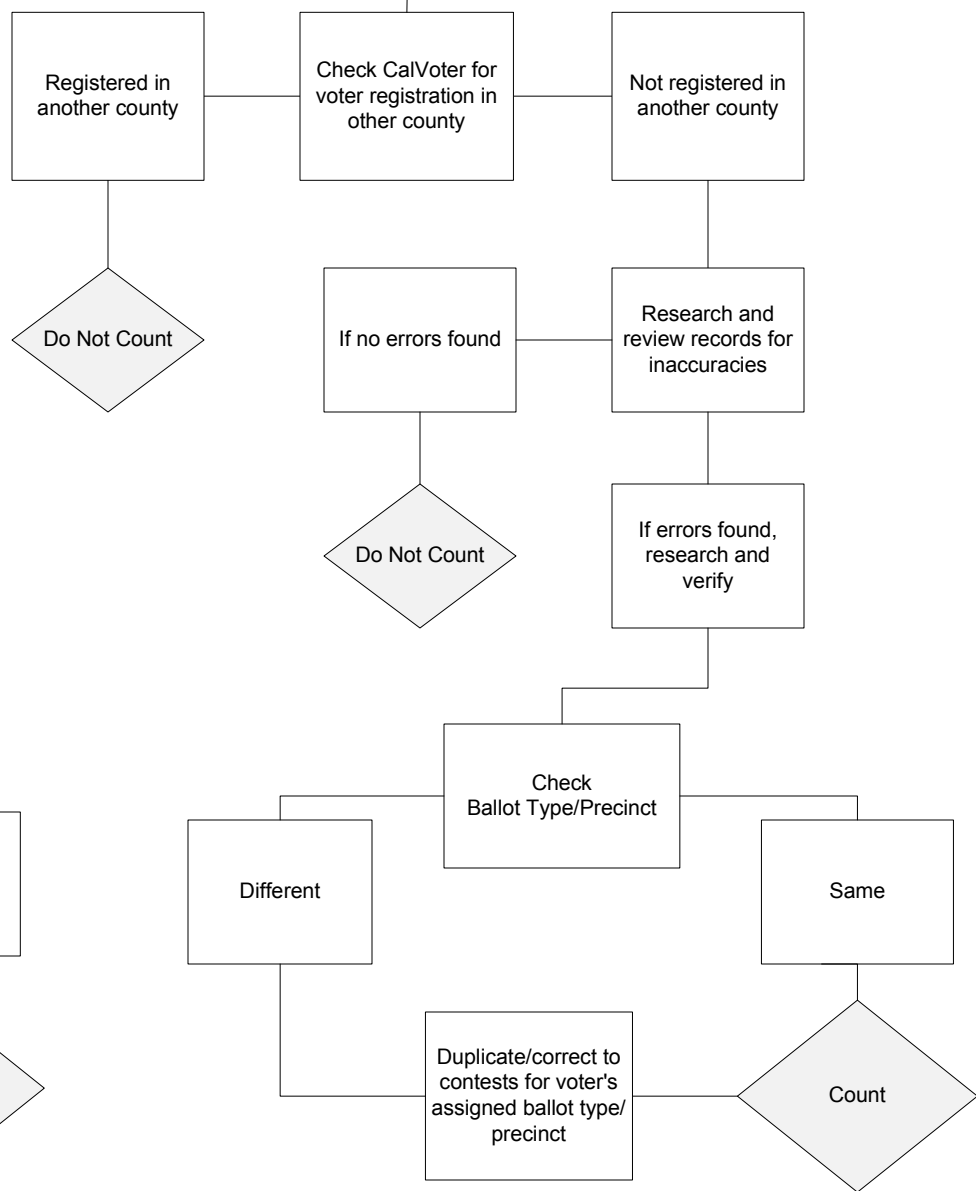
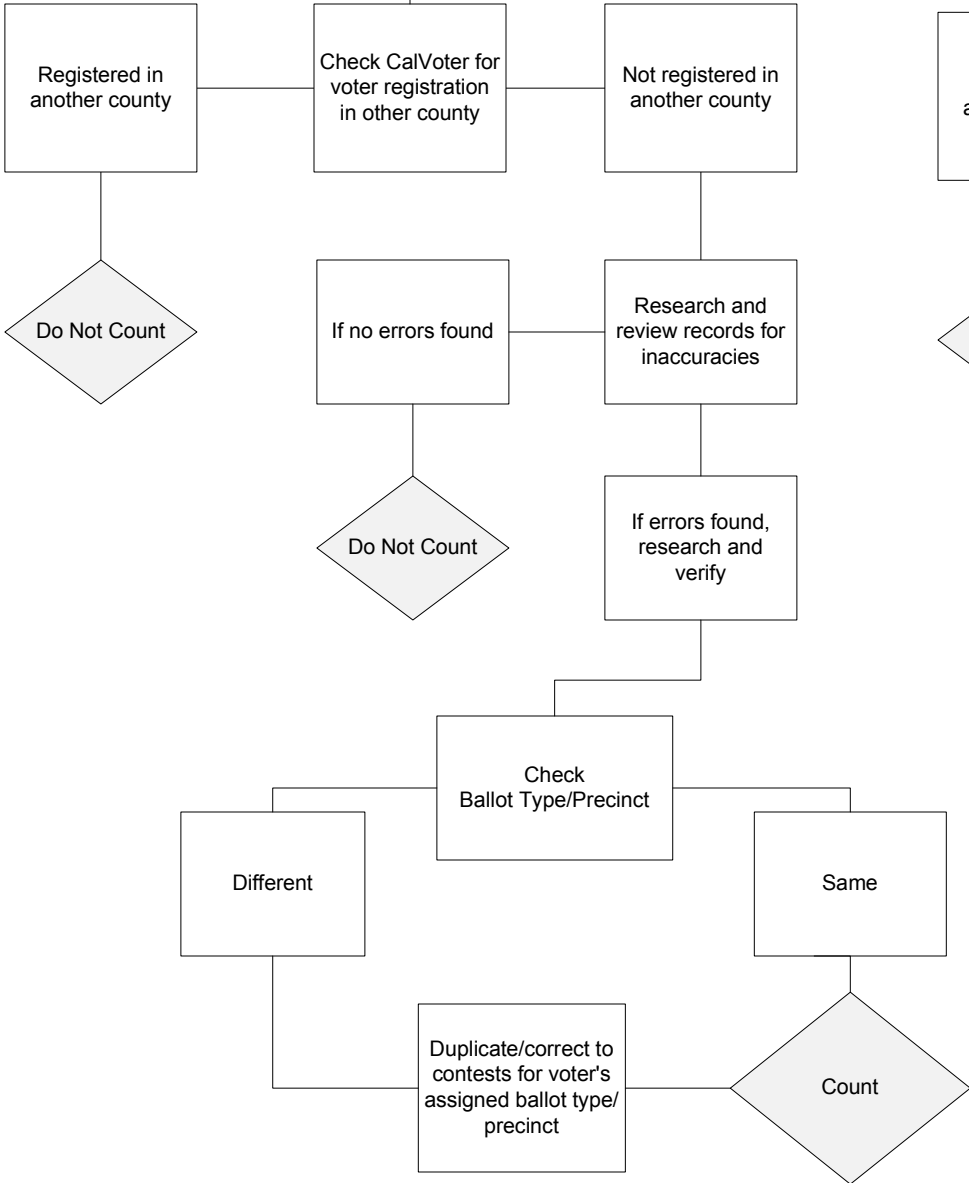
Inactive Voter
Indicates same address (1B)



Registered Voter

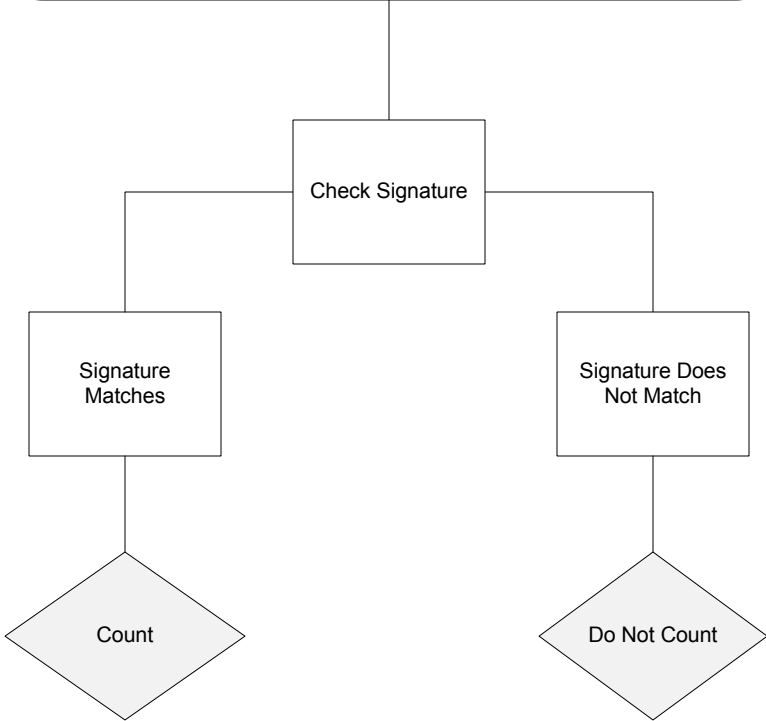
Voter cancelled due to ACS, DMV, NCOA (1C)

Voter cancelled through SOS (1D)

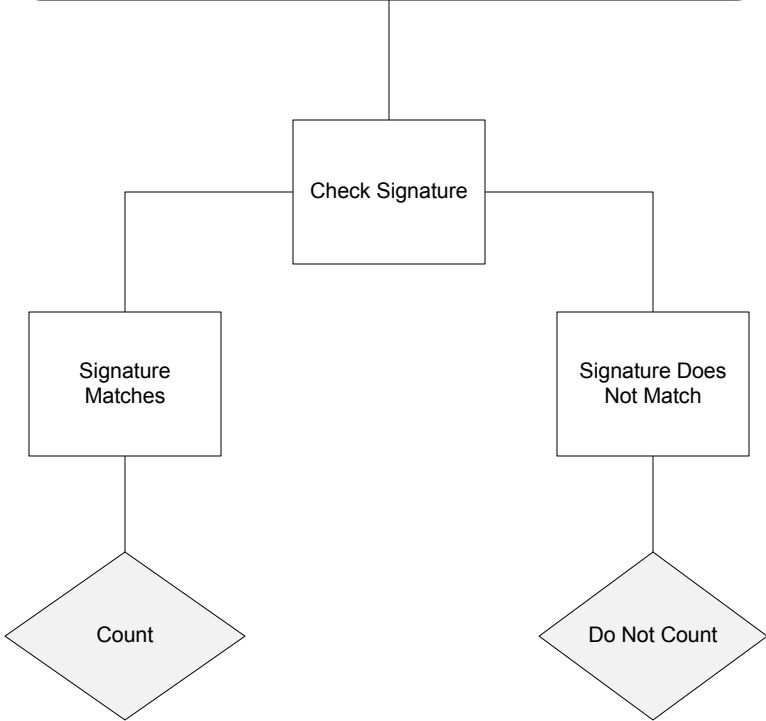


Registered Voter

H.A.V.A. Pended Regular Voter in Roster – no I.D. (1E and 1F)

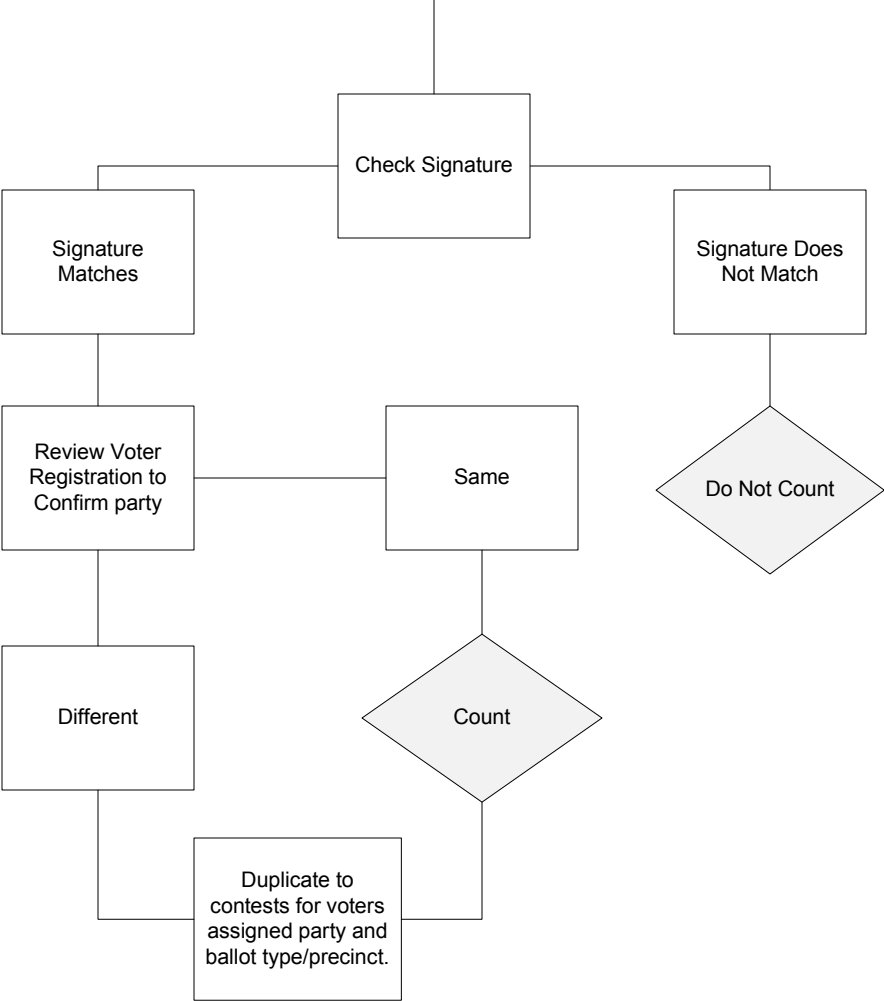


H.A.V.A. Pended VBM Voter – no I.D. (2D)

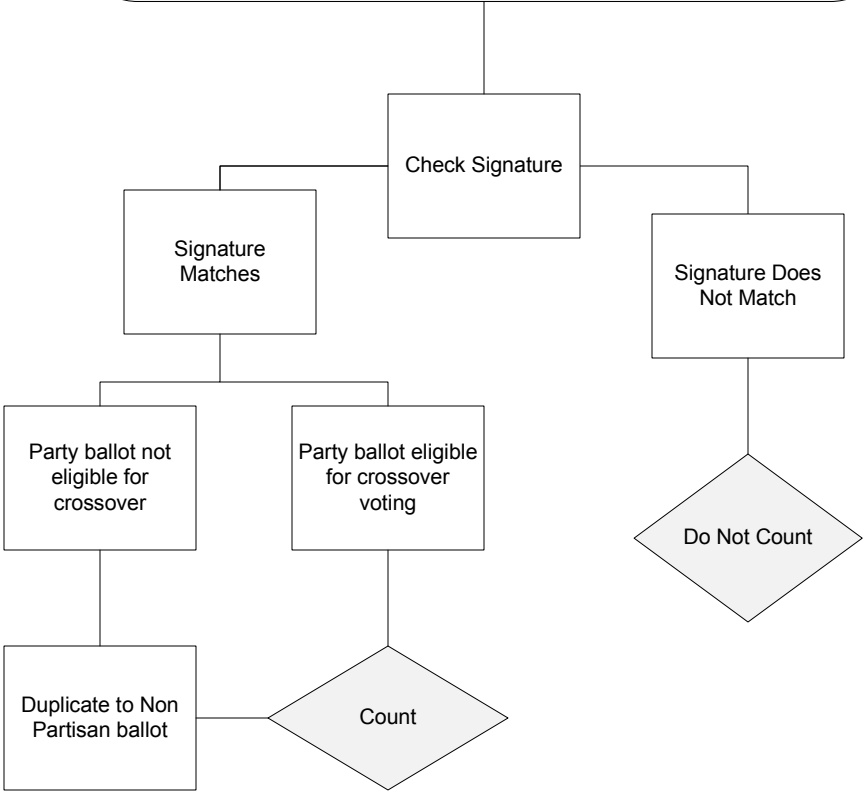


Registered Voter

Voter votes different party ballot (1G)

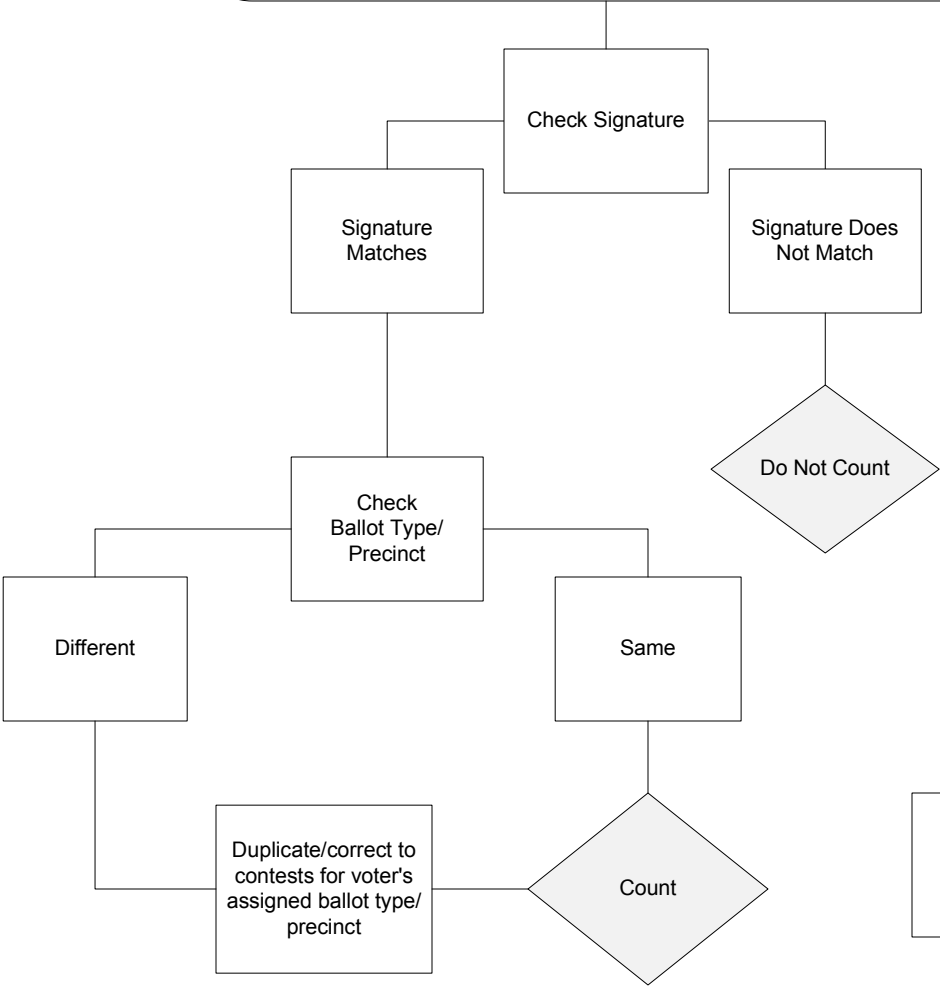


Non Partisan voter votes party ballot (1H and 1I)

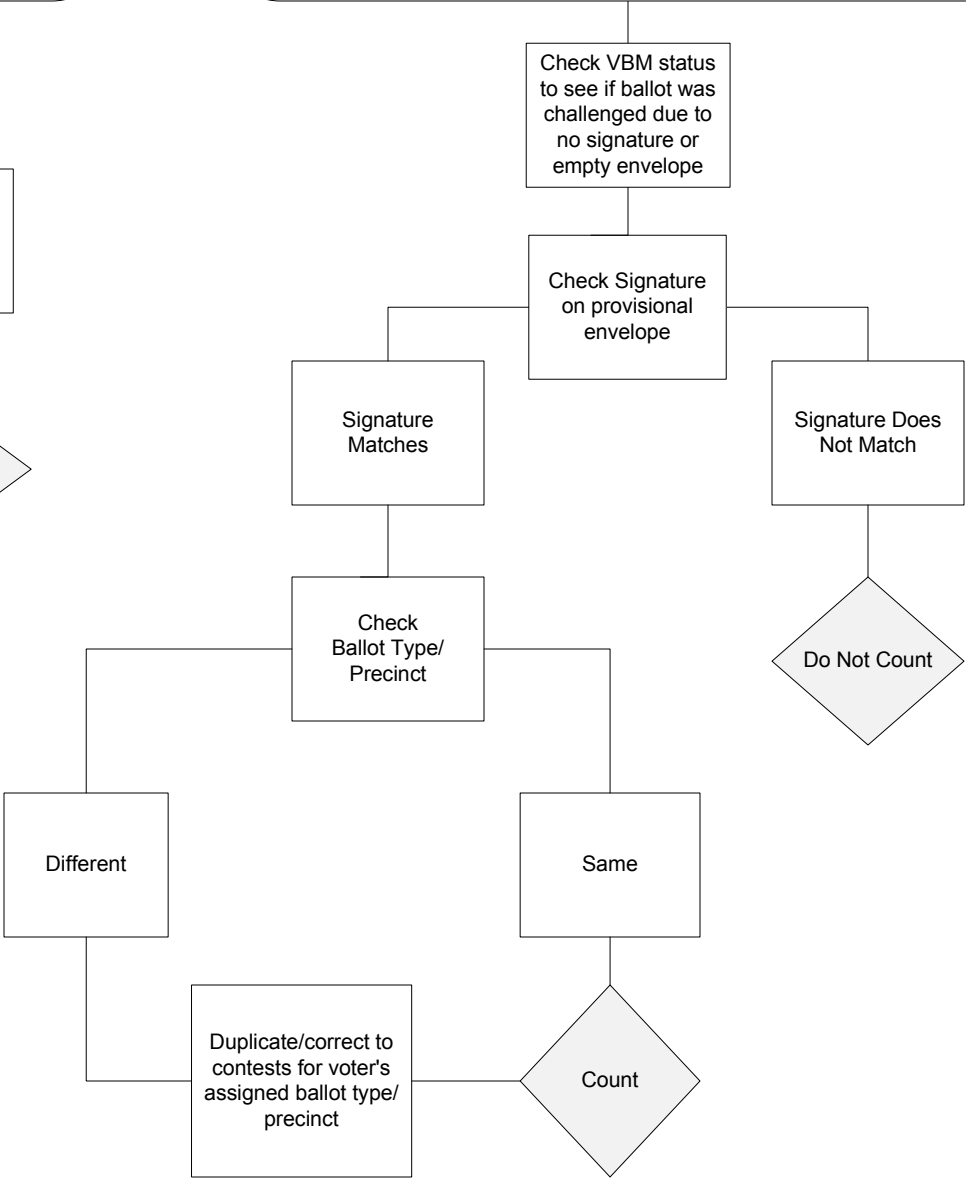


Registered Voter

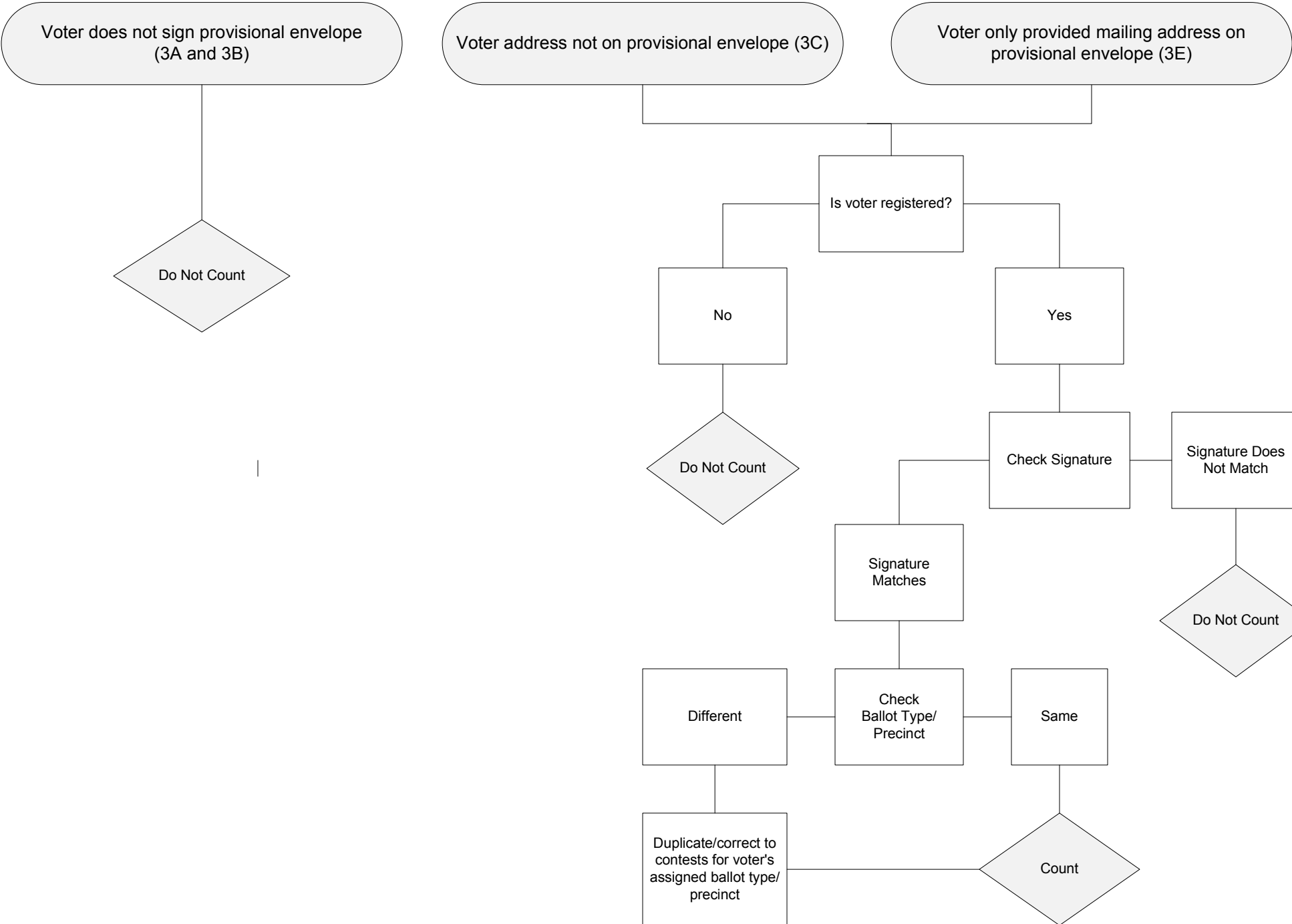
VBM voter does not surrender VBM ballot (2A and 2B)



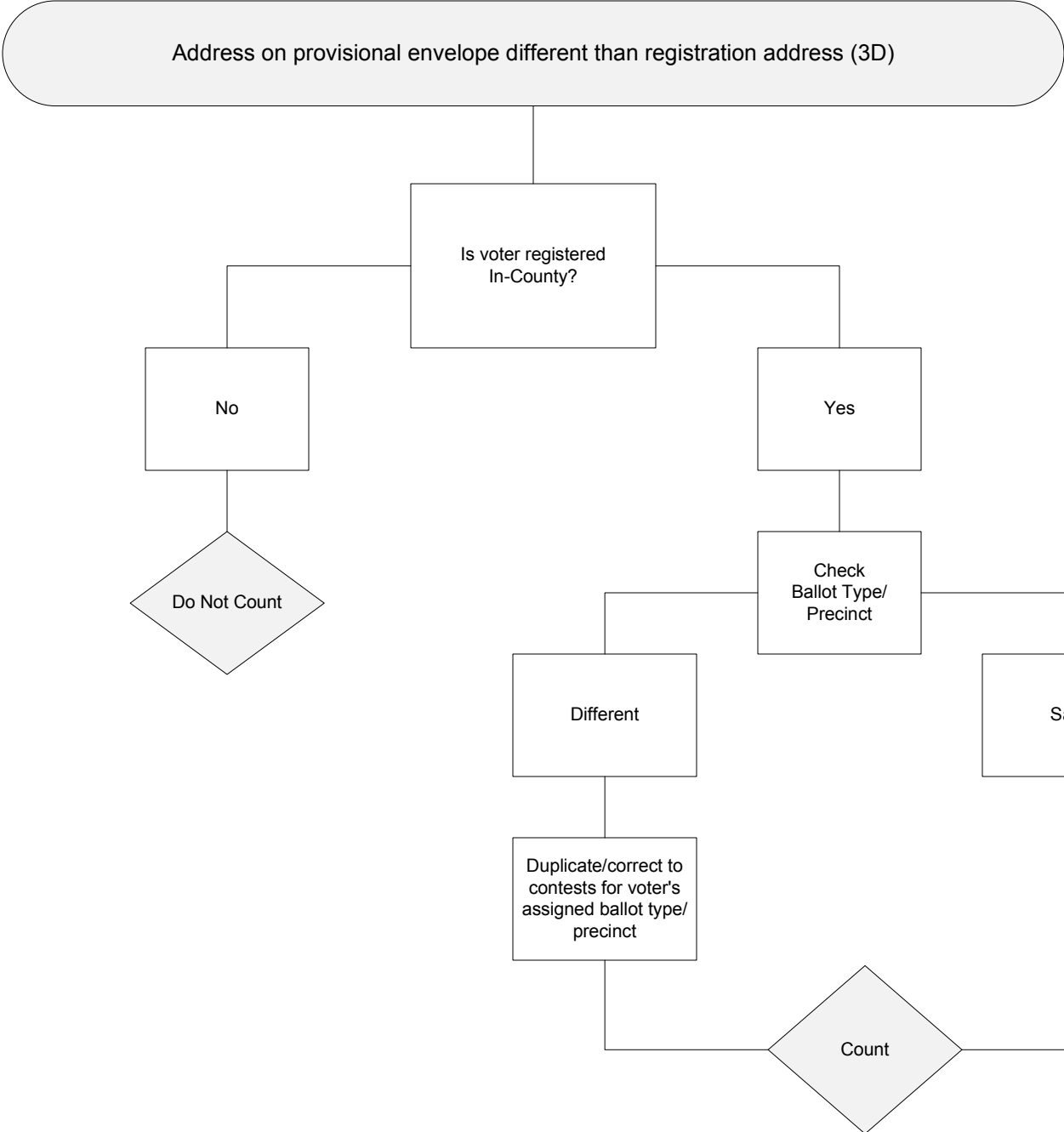
VBM voter returned VBM ballot but did not sign identification envelope and voted provisional ballot at precinct (2C)



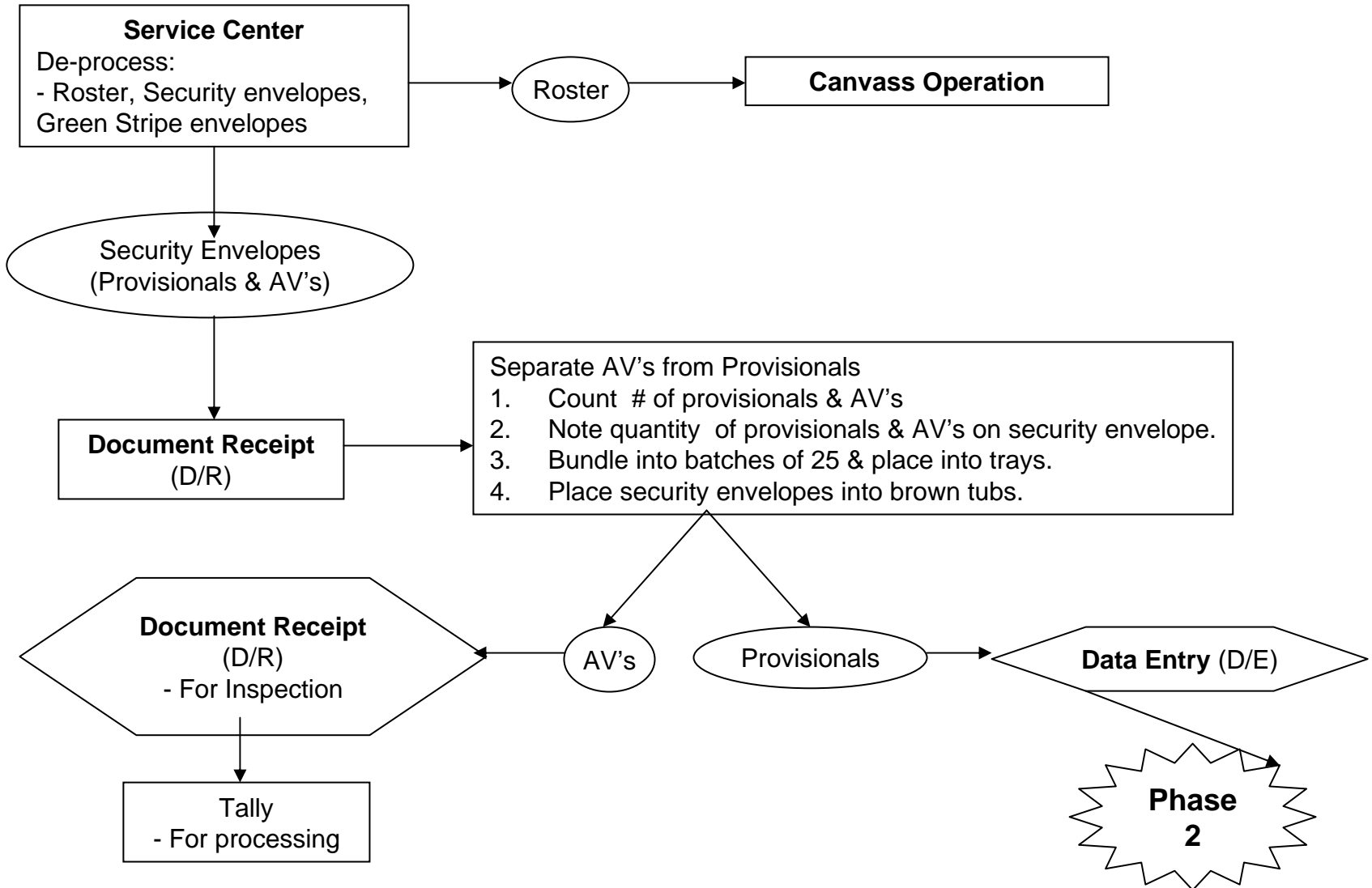
Registered Voter



Registered Voter

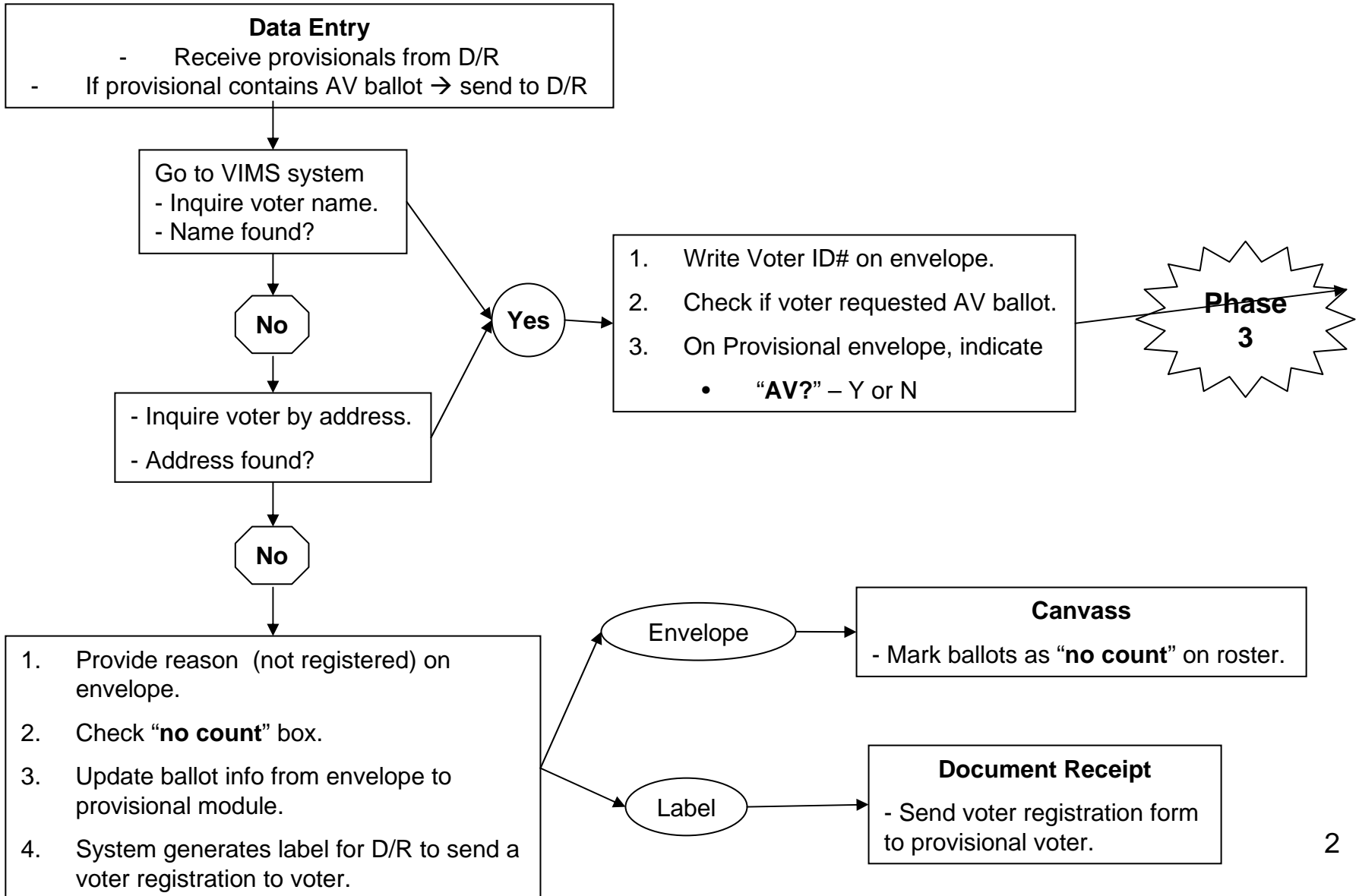


Los Angeles County Ballot Deprocessing Phase 1 – Provisional ballots receipt



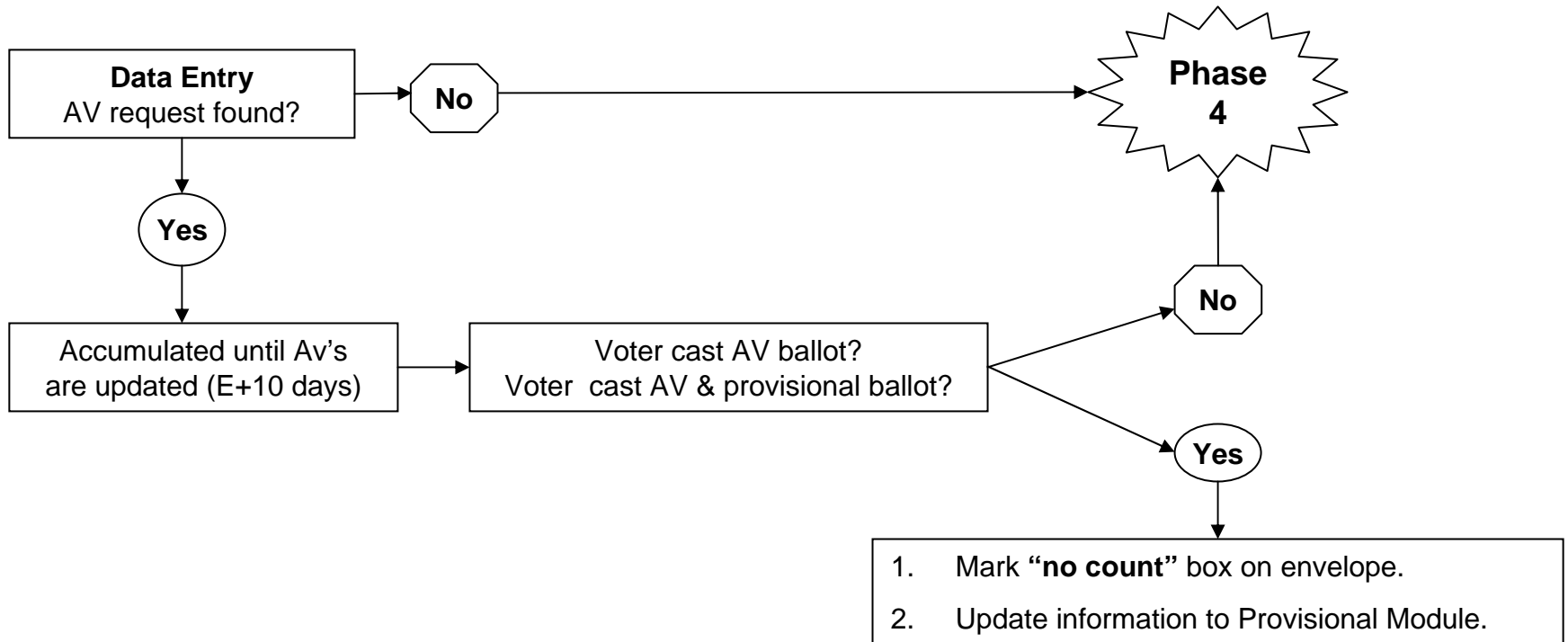
Ballot Validation

Phase 2 – Provisional ballots – Voter Inquiry Process



Ballot Validation

Phase 3 – Provisional ballots – Voter Research Process



Ballot Validation

Phase 4 – Provisional Ballots – Voter Validation Process

