

Minutes:

Task Force on Voter Privacy

November 12, 2003

10 a.m. – 1 p.m.

San Diego, CA

Members Present: Chairman Willie Pelote; Members: Jim Hayes; Linda Berger; Victor Salazar; Beth Givens; Bill Cavala

Chairman Willie Pelote began the proceedings with Opening Remarks and introduction of the Task Force members.

Panel #1 – Nuts & Bolts: Collecting & Handling Voter Information

Sally McPherson - SD County Registrar of Voters - Offered the panel her welcome wishes to San Diego on behalf of the County. She expressed her belief that these meetings are timely, as she too was a victim of mail/identity fraud last week when someone went through her mailbox. The SD Registrar's office provides voter registration forms to the county. Forms are distributed at her office, at government offices, at schools, at the DMV, to campaigns and candidates, and to registration drives. At times, her office gives out about 10,000 registration forms per day. These forms ask for personal information, including Drivers License, Social Security Number (these items are voluntary, and if not volunteered, a voter must present their I.D. at the polls to vote). Her office has the technology to know how many forms come back from each party. If a voter does not mail back their forms personally, the registrant has to sign personally & deliver within 36 hours. Any violations are reported to the D.A. Voters can also download forms from the SD Registrar's website.

In San Diego County, there are 1.25 – 1.4 million voters registered at any time. Voter files are on a secured network that is not available online. The voter file is confidential but still provides access for campaigns and government use. It is made available for campaigns for candidates or initiatives and for scholarly, legal or journalistic use. Before 1995, anyone could request this info, but it has tightened up since. Drivers License and Social Security Numbers are always confidential. Public citizens can also request information. While judges & D.A.'s info is usually confidential, their address will become public when they run for office.

While complaints and violations are referred to the D.A., there are not always satisfactory results. An individual complained that he received junk mail with the same misspelling as in his voter file.

Questions:

Task Force Member Victor Salazar mentioned that in Fresno County, debt collection agencies call for info, but they refuse that information. He asked Ms. McPherson what her experience has

been. Ms. McPherson responded that they do not do that in San Diego, even though she and her office get those calls.

Task Force Member Salazar followed up by asking if there were any recommendations that Ms. McPherson could make. Ms. McPherson stated that a voter's date of birth should be confidential information because of its use in banking records access. Salazar mentioned that D.O.B. is used to check against other signatures with the same name. Ms. McPherson expressed that she thought that the information should still be gathered, but it should be kept confidential. Ms. McPherson also mentioned that the Registrar's office has a voter guide that is given out & she has thought about letting voters know about the confidentiality of their information on this guide, but didn't want to confuse them.

Task Force Member Beth Givens added that one of the options discussed earlier was to put confidentiality notice at the bottom of registration forms. Ms. McPherson agreed that that would be a good idea & that it should go on the bottom of the forms.

Task Force Member Bill Cavala commented that perhaps only the year of birth is relevant for checking against other signatures & that maybe the date of birth itself can be made confidential.

T.F. Member Cavala asked Chairman Pelote if the Task Force knew what information was always confidential and what information was available. Ms. McPherson added that she follows regulations set by the Secretary of State's office. Task Force Member Salazar mentioned that, in Fresno County, voter information is not given to those requesting it unless they fall under the exceptions. He adds that the problem is that the exceptions are broad and almost available to anyone.

T.F. Member Cavala pondered that if campaigns are an exception, then what is defined as a "campaign". Are active campaigns the only exception, or can candidates get info during their off season. Can someone who intends to be a candidate or run a campaign in the future get access to this information? Ms. McPherson's Deputy Registrar, Tim McNamara, answered that these exceptions can get information but must provide detailed and specific purposes in writing. He added that the people who ask for this info are very experienced and generally do not want to tarnish their reputation by improperly using the voter file.

T.F. Member Givens mentioned that newspapers might use voter information to find people that they are reporting on instead of for voter analysis. She asked if there was a user's agreement that parties had to sign to access this information. In addition, she inquired whether Ms. McPherson's office kept a log of how information was used. Ms. McPherson stated that the Registrar's office is not an enforcement agency and her deputy added that they do perform audits of transaction logs to review how data was used.

Chairman Pelote asked Ms. McPherson if she felt her system was safe from outside hacking. She responded that she felt it was safe because a person would need user codes to access the information, and different levels of her staff had different access levels.

T.F. Member Salazar asked whether Ms. McPherson had any concerns on absentee ballot return info. Ms. McPherson & her deputy mentioned that the voter signature is on the outside of an absentee envelope, but that is what the law provides for. Chairman Pelote asked if they would recommend any changes. Ms. McPherson and her deputy stated that an envelope within an envelope might be a possible solution. T.F. Member Salazar asked if there were any problems with that & Ms. McPherson stated that there would be extra costs.

T.F. Member Givens stated that it was a surprising and unintended consequence that absentee ballots are not provided in confidentiality.

Chairman Pelote asked Jim Wisely, another panelist, to comment on the suggestion. Mr. Wisely added that adding an envelope within an envelope would create an extra step and possibly slow down the BRC process, which must be completed within 72 hours. He cautioned against throwing the baby out with the bath water. The Postal Service may have issues with an extra step.

Jerry Mailhot, Political Petition Coordinator - Mr. Mailhot stated that petition gatherers are motivated to ask for information to protect against forgeries and fraud. Some petition gatherers have done this for years and know the ins and outs of the system & may try and manipulate the system to get more money from firms. His main concern is enforcement of the law. His experience is that when firms report their concerns, not much action is taken. He had a well-documented case of fraud that his firm took to the D. A., and they said they would actively pursue, but it was never successfully pursued.

Questions:

Task Force Member Beth Givens asked if there was any other place where Mr. Mailhot could go to instead of the D.A. for law enforcement. Ms. McPherson stated that the SOS had a special investigations unit, but Task Force Member Bill Cavala added that they don't handle those types of inquiries. Cavala recounted that the former Secretary of State had tried to hold petition-gathering firms responsible, but the legislature had resisted. Mr. Mailhot countered by saying he was not negligent. He stated that he works hard to detect problem gatherers and refer them, but no follow up is given.

T.F. Member Cavala added that the relationship between registration fraud and voter fraud is not the same. The former is trying to cheat the signature-gathering firm, while the latter is trying to compromise the voting system. That is why the SOS does not deal with the former.

Jim Wisely, Speakers Office of Members Services - Mentioned that his organization noticed that by hiring their registration gatherers on a full time basis, they have minimized the issues associated with "bad apples" and they have been able to use them for other "field related" uses. His recommendation was to try and improve the signature gathering culture, which has relied on questionable people with prior convictions. Safeguards should be employed, such as sending out

postcards to registrants to see if any are sent back as incorrect. Mr. Wisely also agreed with the statement that District Attorneys do not take these violations seriously.

T.F. Member Salazar asked Mr. Mailhot to respond to the proposal that photocopying of voter registration cards be considered mail fraud. Mr. Mailhot stated that his firm has to photocopy VRCs because it helps them verify the legitimacy of the process. T.F. Member Cavala agreed with Mr. Mailhot's statement & added that there has to be an independent way to verify that he is providing legitimate registration for his clients. Mr. Mailhot added that they shred their photocopies after the verification process is completed.

T.F. Member Beth Givens agreed with Mr. Mailhot & asked for thoughts on a law outlawing digital scanning of voter registration cards.

Chairman Pelote asked how many voter file requests are received per year. Ms. McPherson answered that she receives thousands per year. Everyday she receives requests for county, local, personal information.

Chairman Pelote asked Ms. McPherson whether she believed we should tighten the list of those who can obtain access to the files. Ms. McPherson responded by saying that she had not heard any concerns or complaints regarding that. Chairman Pelote asked what concerns she has heard. Ms. McPherson said she would come up with a list, but most prominent was using voter files for commercial purposes.

Chairman Pelote mentioned that the task force will have internal discussions after the meeting in Los Angeles to discuss recommendations.

Panel #2 – Intimidation and Misuse of Voter Information

Bill Wood, Senior Attorney, Secretary of State Elections Division - Petitions are statutorily defined as non-public or confidential documents. Two trial courts, one in Sacramento and the other in Los Angeles, appear to be breaking down this definition without insisting that there be a very strong reason to do so. The statute governing petition confidentiality is Government Code section 6253.5, part of the Public Records Act. It allows petitions, recall, referendum, or initiative, to be examined by proponents to determine why signatures were disqualified. Other governmental agencies, including the Secretary of state, may only examine petitions after obtaining an order from the appropriate superior court. But these two trial courts have permitted opponents of measures to not only examine but copy petitions, one for a recall and the other for an initiative, based on the argument that some relevant information might be revealed, not that any could not be found in other ways that still preserve the confidentiality of the petitions. The TF should review this unsettling development and consider these remedial steps:

- 1) Standards in statute for non-proponents examination of petitions (harm of disclosure is outweighed by benefit)
- 2) In-camera review by judge mandated
- 3) Protective order mandated when petitions may involve employees of opponents

Questions :

T.F. Member Jim Hayes asked if there were any safeguards in existence. Can recall proponents retain records? Mr. Wood said they can retain records only up to the point that they turn them into election officials. As an example, during the current recall, 1.7 million signatures were turned in; subsequently the proponents received 300,000 to 400,000 but they did not turn them in.

T.F. Member Givens stated that she would like to get an attorney from the AG's office to give their opinion on the proposed constitutional amendment on PRA.

Panel #3 – Implications of Losing Personal Information

Joanne McNabb, California Office of Privacy Protection, Consumer Services Agency -
Gave a power point presentation regarding what the Office of Privacy Protection, Department of Consumer Affairs roles and responsibilities are as it relates to promoting privacy of personal information. (All TF members were provided a packet from Joanne.)

Lisa Weinreb, Deputy DA, County of San Diego, Project Director – CATCH – Gave a power point presentation similar to Joanne's regarding identity theft. CATCH is otherwise known as Computer and Technology Crime High Tech Response Team.

Questions:

T.F. Chairman Pelote asked if identity theft can be related to voter registration. Ms. McNabb did not know but thought that some of the victims of identity theft who did not know how their information was stolen, voter registration information is a possibility.

T.F. Member Berger asked about what sort of role the internet plays in identity theft. Ms. McNabb and Ms. Reinreb stated that the internet plays a huge role.

Public Comment:

Public comment card in San Diego Regional Office. Awaiting information to complete the minutes for this meeting.

T.F. Chairman announced the next hearing, Friday, November 21st in San Francisco from 10:00 a.m. to 1:00 p.m.

T.F. Chairman adjourned the meeting at 1:00 pm.