

Minutes:

Task Force on Voter Privacy
December 15, 2003
10 a.m. – 1 p.m.
Los Angeles, CA

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

Chairman Willie Pelote provided an opening statement and an explanation of the day's proceedings— hearing from two panels of experts: one panel comprised of county elections offices on the process and procedures used when there is a request by someone to purchase/access the voter registration file; and one panel comprised of vendors who purchase the voter registration file on behalf of clients who are eligible under the law to obtain a copy of the voter file.

Santa Barbara County Elections Division Manager Bob Smith; Lorraine Patterson representing Los Angeles County; and Orange County Registrar of Voters Steve Rodermund testified.

Bob Smith: Voter registration is critical because it is the start of the whole voter participation process. The laws on the subject are seemingly contradictory—on the one hand the information is confidential, on the other hand access is explicitly granted in the law. The demand for this information has exploded in recent years. There is a much greater capability to provide the data, and there is a much greater capability to manipulate and use the data by those who receive it. Sometimes it strains the confidentiality provisions of the law. The process used by Santa Barbara County for working with those who request the voter file is straightforward. Training is provided to county staff and the same training is provided to data vendors, but conflicts still arise because access is highly desired. Voters call almost daily to criticize the release of the data, but again there is a seeming contradiction—on one hand confidentiality is part of the [Elections] Code and the exceptions to confidentiality are explicit in the Code. The requestor [who wants to purchase the voter file] is first advised that confidentiality is a part of the Code. Then an application is provided that includes fields for the name, telephone number and address, including a business address if that is applicable. The form also requires that the requestor provide a stated purpose for the data, and we make sure the requestor understands what purposes are allowed under the Code. Any perceived violations of the rules governing the appropriate use of the voter file are referred to the District Attorney for follow up; the Registrar's Office is not a regulatory or enforcement agency. The District Attorney takes these referrals seriously. There are many different types of requests for data—absentee voter information, voter history information, street indexes...all kinds of combinations of requests. As Election Day draws nearer—with 35 days of the election—the office is bombarded with requests.

Lorraine Patterson (manager of confidential voter records): Los Angeles County has very detailed policies on voter file transactions and confidentiality of records. There is a list of recognized vendors, but every request for purchase of the voter file must be made via an application (a copy of the application was provided to the Task Force). Government agencies are allowed to apply annually. Every purchaser of the voter file must provide credentials of some sort...proof that they are representing the entity that they claim. The public can view the voter file, but all the personal information specified under the Government and Elections codes are redacted from this file. The only persons with access to the complete file are: Los Angeles County (elections) employees; Los Angeles City (elections) employees; Martin & Chapman (the county's election-services contractor); and Sequoia (the county's election-services contractor).

Steve Rodermund: The Task Force should ensure that whatever recommendations are made can be implemented.

At the conclusion of the panel's testimony, the Chairman entertained comments and questions from the Task Force members.

TF member Bill Cavala said that there appears to be a lack of uniformity among the counties re: treatment of purchasers of the data file. He pointed out that the definitions contained in the Elections Code that

specify those with access to the file (journalists, scholars, political entities and government users) are broad. He asked the panelists whether they believe the law should be more precise regarding the definition of these terms.

Bob Smith: The law does not allow county elections officials to use discretion. There is no provision that explicitly requires credentials from those stating they are using the voter file for an eligible stated purpose. There is a need to tighten the exceptions. At present, every person requesting the file is treated the same way. Questions are asked to discern their needs and their use of the data, but placing them in an interrogative mode is not feasible. If the exceptions provided for in the law were made substantially more specific, that would be helpful to county elections officials. The need for access is understandable, but the definitions are so broad that it makes balancing the needs with the confidentiality provided in the Code difficult to implement.

Steve Rodermund: Counties are often put in an awkward position because of the law. The court is a wondrous thing sometimes because it provides clarity—tell me what to do as an elections official and I will implement the policy. I do not see it as the role of the elections official to make policy. But there is certainly a contradiction in the Government and Elections codes. The Task Force should consider more definitive guidance and reducing the counties' liability in this arena.

TF member Jim Hayes: How many violations of the restrictions on use in the Elections Code (e.g. prohibited commercial use) have county elections officials present seen in the last five years?

Steve Rodermund: In the last year, Orange County has received at least 2-3 complaints—people requesting the data were challenged by someone who claimed they were not using the data for an appropriate use, that the data was put to commercial use. These complaints are difficult for the District Attorney's Office to pursue because they are overloaded with other cases and other issues.

Bob Smith: Complaints are received by Santa Barbara County, but these present difficulties often, including the fact that the complaint is linked to an allowable use, and often the inability to know who got what information and how it was used.

Lorraine Patterson: Los Angeles County is the keeper of the records and it understands the need for access to the data; the county does not typically have a problem with the data vendor community—they tend to complete the forms accurately and follow procedures, they understand the process and the rules. But there is a need for stricter regulation of the activity. Los Angeles County does ask for credentials. The county does receive complaints and these are forwarded to the District Attorney and to the Secretary of State [Election Fraud Investigative Unit]; sometimes the county will work with vendors if they receive a complaint [to ensure appropriate use and practices]. The county receives letters regularly now from voters concerned about identity theft.

TF member Victor Salazar: Does Los Angeles County allow vendors access to confidential files?

Lorraine Patterson: No. Sequoia and Martin & Chapman (election-services providers under contract with the county for voter registration database services) have access.

Victor Salazar: Do county representatives have any recommendations for the Task Force?

Lorraine Patterson: Definitive guidelines—what's available and to whom—remove the onus from the county in making these determinations.

Steve Rodermund: The elections officials' role is to implement policy. It would often be helpful to know the legislative intent behind policies. For example, voters will be asked, effective January 1, 2004, to provide their ethnicity on the voter registration form. This is voluntary. I will treat this as confidential information unless I am directed otherwise. We need guidelines to help understand the purpose behind the policy.

Bob Smith: I agree [with Ms. Patterson and Mr. Rodermund]. We will need policies to prevent the Social Security number and the driver's license number (required now under new federal law, the Help America Vote Act of 2002 (HAVA), to be collected from voters) to prevent this personal information from getting out. The more HAVA is implemented, the more questions will arise. Will this information be posted at the polling place? Sometimes polling place lists (of eligible registered voters in the precinct who may vote at that polling place) are taken (stolen). Ultimately, the policy that is enacted must be perceived as fair and equitable. Generally, tightening the exceptions (that allow access to the voter file) is a good idea.

Victor Salazar: Do you recommend that we limit the data provided (not allow access to all the data on the voter registration affidavit)?

Steve Rodermund: That's a policy decision, but clear guidelines are needed.

TF member Beth Givens: What form does the voter file data take that is provided—is it on a CD, a disk or on paper?

All elections officials: All forms are provided; it depends on the format requested.

Bob Smith: We can provide data in any way, but not all users are sophisticated enough to use the data in different formats. We provide it in the format that is desired.

Lorraine Patterson: Generally speaking, we are concerned about being responsible for the data; we do not want to give out data that can lead to identity theft.

Bob Smith: Voters honestly believe that there are not secondary users of the data; wherever possible you should tighten down the release of the data.

Beth Givens: Is it a matter of who is granted access to the data, or is it the data itself?

Bob Smith: Look at the exceptions and decide what is absolutely necessary. Are scholars really necessary; we're bombarded with education requests at times. Political requests should be driven by the central questions—for whom and for what purpose? Government users, even, should be scrutinized—is it just any person from any agency? Each category can be tightened up.

Lorraine Patterson: We must also recognize that we do not want to discourage people from voting [because of secondary use of the data]. For example, some people do not want to register to vote because they are concerned that they become prospective jurors.

Steve Rodermund: Sometimes policy seems to create a distinction driven by technology. Campaign finance disclosure forms require the disclosure of addresses and telephone numbers of donors, but it does not appear on the forms that are posted on the Internet. It is provided to the public on the paper forms still. These differences do create conflicts.

Beth Givens: Have you ever wanted to reject a vendor because of abuses or misuse of the data that they committed; denying future access to the voter file might be a deterrent against abuse or misuse. Do you think you have the authority to deny access on that basis?

Bob Smith: The problem is that election offices are not investigative units, so it's hard to judge the appropriateness of punitive measures, or to take such steps. If we hear allegations, we can and will go the District Attorney and the District Attorney will pursue it. But the difficulty is proving intent when it comes to these allegations.

Beth Givens: Do you seed the file with fictitious names and follow up with audits?

Bob Smith: No. We do the best we can to follow up (to ensure appropriate use of the list) and we do take complaints.

Lorraine Patterson: No (we do not seed the list).

Steve Rodermund: No (we do not seed the list).

TF member Linda Berger: Balancing the competing rights is our challenge. I represent victims of domestic violence and abuse, but I have no desire to create an unbearable (administrative) burden on county election officials. Why has there been an explosion in data requests?

Bob Smith: Ten years ago we used central computers that were daisy-chained (to store voter registration file data). The prevailing attitude was that this information was primarily internal, election use. Then we evolved into a decentralized, PC-based system linked to networks. We now have the Internet, websites, CD burners and other high-tech innovations. The software products and peripherals did not exist then either that could manipulate the data. The explosion is due to technological advances in computers themselves and the ability of people to use them as tools.

Linda Berger: Does the ability to collect and manipulate data also allow for the suppression of data?

Bob Smith: Yes. We can eliminate any field of data and people do from the data we supply to them. They only want a portion of the data file we provide. I would just caution that county elections officials are overloaded now. If it means more work for us, at some point the policy cannot be implemented. For instance, confidential files show up nowhere in our data files; they are handled manually, and only one or two people in Santa Barbara County know about them and can access them.

Linda Berger: How many confidential files do you have and how do people request confidential status?

Lorraine Patterson: We assist those who request confidentiality. They request it. We send them the form. They fill it out and send it back to us, and we forward it to the court. If the court grants it, we keep those records as confidential. The hard copy with the personal information is kept under lock and key and only two people have access.

Bob Smith: The only downside to the confidential status is that these voters can only vote absentee; that is the only way we can maintain their confidentiality. If they vote at the polls, their personal data will be list on the polling place roster that is posted and publicly available.

TF member Victor Salazar: In Fresno County, it is incumbent upon the person requesting confidentiality to complete the process and provide the appropriate documentation to the elections official.

Bob Smith: Santa Barbara has about a dozen (confidential voters)

Steve Rodermund: Orange County has 250-300 (confidential voters)

Lorraine Patterson: I don't know the total number (of confidential voters) for Los Angeles County.

TF member Bill Cavala: A representative from the newspaper publishers association testified that journalists consider their access synonymous with public access; they might sue if they were required to show credentials to obtain the voter file.

Bob Smith: The difficulty is that we see this contradiction. The Government Code says that personal data is confidential. The Elections Code provides for the exceptions. If the policy were straightforward, 'this data is public,' at least the public would know and could make their desires known.

Bill Cavala: We have an in-box problem and an out-box problem. The in-box problem is that we have a new federal mandate that requires the collection of personal data, a driver's license number. First-time voters will need to show ID at the polls, and reveal this personal data there. The information may be

generally limited, but if the driver's license number is included (in the voter file and/or on polling place rosters), it may become an identity theft issue.

Steve Rodermund: I will not give out the driver's license number unless I am forced to by a court order; the same applies to the new ethnicity data (that voters can now provide voluntarily under a law that takes effect January 1).

Bill Cavala: Does each county have written guidelines and policies (on the sale of the voter file)?

Lorraine Patterson: Los Angeles County has a big poster on the wall of the elections office providing information on the policies and guidelines to the public.

Bill Cavala: Please provide copies to the Task Force staff, so the Task Force can review the policies.

All counties: Under federal law, all counties are gathering the driver's license data.

Steve Rodermund: Gathering the new voter information on ethnicity is a concern. It puts us in a quagmire. There is currently the ability to gather data on ethnicity from other sources, such as the voter requests for voting materials in native languages.

TF Chair Willie Pelote: Why is this of particular concern?

Steve Rodermund: Lawsuits and legal challenges absorb resources. If (Orange County) is not sued at least five times during a major election, I feel slighted. There are three to five deputy county counsels dedicated to the elections division of the county at any particular time to address these lawsuits.

Chairman Pelote: Can you provide some examples of the lawsuits?

Steve Rodermund: Ballot designations (disputes); spending limit agreements; we were a party in many of the (29) lawsuits related to the (October 7) recall election.

Chairman Pelote: Any lawsuits related to voter file issues?

Steve Rodermund: No.

TF member Beth Givens: Do you believe you could deny access to information brokers (as I call them) if they violated the law...could you deny future access to the voter file, if they requested?

Steve Rodermund: No. I don't think so.

Bob Smith: We ask the requestor for a stated purpose for using the voter file. Once they have stated their purpose, if it falls within the exception, we have no ability to challenge them.

Steve Rodermund: The Government Code says nothing explicit that allows elections officials to deny access to the voter file on that basis.

Bill Cavala: Ethnicity was included on the voter registration affidavit (under the law effective January 1) because of a desire to have an anti-discrimination tool available, for Voting Rights Act, Section 5, pre-clearance issues. You can't bring a lawsuit on the basis of ethnicity and dilution of voting strength in redistricting without this data.

Steve Rodermund: The concern is that this data is something never before required to be collected by an elections official. This branches us out into new areas, and the more that happens the more we get tied in knots. We just need to be able to figure out where we are going and what to do about meeting those needs.

Beth Givens: I'd like to know from county elections officials if any of the following information brokers purchase their county's voter file: Choice Point; Aristotle; Lexis, Nexis.

All counties: No (they do not purchase the Santa Barbara, Los Angeles or Orange County voter file).

Chairman Pelote: How judicious are county election officials in tracking legislation? Do you communicate with the Legislature on your desires and concerns about state policy?

Bob Smith: All the counties represented are members of CACEO (California Association of County Elections Officials, an umbrella group representing county election officials and clerks). All the counties here today are represented on the legislative subcommittee of the CACEO. The legislative committee meets monthly. CACEO sponsors legislation and takes positions on bills. Fortunately or unfortunately, the Legislature has a mind of its own. When the final judgment is made (by the Legislature), we uphold the law.

Steve Rodermund: We are possibly not nearly as successful as we should be in the Legislative arena, but we are getting better. And in some respects, we are victim of our own success—we recommend against a policy, but we manage to implement it when it becomes law because it is our job.

Bill Cavala: It seems like it's mostly a resource and money issue. With all the new mandates absorbed by elections officials, we could probably double the size of their budgets.

Chairman Pelote: Is there anything that the county elections officials would recommend removing from the voter registration affidavit (e.g. date of birth)?

Bob Smith: The information on the form may be redundant in some cases. The form itself provides the criteria to be a registered voter—including U.S. citizenship. You sign the form under penalty of perjury. But the form now also contains a check-off box for the voter to indicate that they are a U.S. citizen.

Chairman Pelote: Should certain of the exceptions provided for in the law be eliminated or limited (e.g. journalists)?

Steve Rodermund: The law just says to ask for the intended purpose. There's no way and no authority to check (on whether the intended purpose is the actual purpose). We have to take it on faith (that they are telling the truth). You just need to show us identification to indicate who you are.

Bob Smith: If they express who they say they are and say so under penalty of perjury, as provided for in the application, they can gain access to the voter file.

This concluded the testimony of county elections officials. The Chairman introduced the next panel: Shellie Garrett of Voter Contact Services and Bob Proctor of Statewide Information Systems.

Shellie Garrett: Voter Contact Services performs services for all types of clients—government agencies, providing aggregate data to scholars, but mostly political work. If the public goes to its website it can see the kind of aggregate data the firm has or can obtain. For example, Santa Barbara has 100,000 registered voters—30,000 Democrats and 40,000 Republicans. The firm does not provide any detailed information over the Internet to clients. And he will know (from candidate filings) the identity of candidates, legislative members, PACs (political action committees) or Independent Expenditure Committees that request his services. Voter file information is also requested and provided to members of Congress for “franking” privileges for mail to their constituents. By and large, the law works OK. Voter Contact Services does not get involved in commercial use of its data. The speed of data compilation and collating required and requested by clients is the largest problem—the system does not always respond to those timelines.

Bob Proctor: Statewide Information Systems services candidates, consultants, politic parties...and it provides lists and labels, and other products. Ninety percent of the work they do is “targeted” (data that is sorted by criteria and used to send specific types of mail to specific voters). The firm does try to enhance

the voter file with other information, including the National Change of Address list (to remove inaccurate addresses); gender is added to the list of data; there is a quasi-ethnicity dictionary software program that can be applied; and they “household” for mailing (eliminate multiple mailings to different members of the same household). A typical client would be the proponents of a local school bond measure. The first step is polling to determine public strength of garnering a two-thirds vote on the measure. The polling list might be generated by Statewide Information Systems, or using its data. On the basis of that information, labels for mailings and lists for walking door-to-door to campaign would be generated. A list of voters who vote by mail might be generated. Data would be used to identify likely voters and likely supporters. The three primary/immediate needs for data are (in addition to the voter’s personal data like home address) the party affiliation; the voter’s gender; the voter’s age...in addition voting history and absentee voting propensity are used. When SIS first began operating, it was approached by commercial vendors, but that doesn’t happen much any more. With confidentiality mandated, we sign a form to that effect and the forms available now do a good job of informing the vendor of the requirements.

Shellie Garrett: The new elements required on the voter registration affidavit—the Social Security number and driver’s license number have no political purpose; the place of origin/birthplace of voters is useful, but that data can also be obtained from Census data. Date of birth is of interest to members of Congress. They want to talk to senior citizens about senior issues, for instance. They wouldn’t want to send a mailing to a younger person about Medicare changes. Once the data leaves the hands of the vendor (who collates and sorts data), we don’t know what happens to it. It becomes the property of the elected official or political parties. Data vendors like Aristotle may be getting their lists from these people. If that is a concern, you could limit that by explicitly prohibiting the reuse of the list. Salting the list is impractical.

BTF member Bill Cavala: Now we are examining the “out-box” problem (see prior comments). Would Mr. Proctor’s use be considered a “political purpose,” even though he is providing a service to clients. There was legislation that was vetoed by Governor Davis that would have responded to this. Right now, it is a more open question. If there is no way to trace the possession of the list (under the current system), then there’s no chain of evidence, and that’s a problem. I’m interested in how the vendor views the data: Is it proprietary?

Bob Proctor: Arizona law does not provide for sale of the voter file, but it has a requirement to provide the voter file to the political parties on a quarterly basis. The parties provide it to the vendors who contract with them. This is used to build a statewide database. There is a tendency to take the database information and create an on-site database by candidates. Vendors have no control over the data any more. You could have them sign an agreement and try to track the data, but it becomes very difficult to judge where the data comes from and how the chain was broken sometimes.

TF member Jim Hayes: Is there any requirement to report who (a vendor) sells the data to?

Both representatives: No.

Chairman Pelote: Is this (voter privacy) a problem in other states?

Shellie Garrett: Confidentiality for us tends to mean confidentiality for our clients. Our clients are requesting data in certain ways—creating subfiles of data—the client owns that subfile; they created it. There is also data from other sources being added. The national “do not call” list is being added, for instance, so what is provided is a unique list that the client owns.

TF member Linda Berger: You get data from candidates, clients and counties?

Shellie Garrett: Politic parties and members of Congress and others have access to the data, yes.

Linder Berger: Is anything signed by your clients that shows that they understand they can’t resell the data.

Shellie Garrett: We provide notice that the information can only be used “for these purposes,” but there are gray areas sometimes.

TF member Beth Givens: Would Aristotle, Choice Point and Lexis, Nexis be getting their data from someone other than the counties?

Shellie Garrett: I don't know, but it is a point of access. Any list that is received by a member of Congress is the property of the U.S. Congress.

TF member Bill Cavala: This gets murky. Aristotle provided on contract to the California State Senate a database of registered voters in Senate Districts. This could be a public record subject to a Public Records Act request. Any person might be able to request it under the PRA, even if they do not fall under one of the four exceptions. The data may be suspect. It may be three or four years old, but if the purpose is commercial, they may not be as concerned about that. This could be a serious loophole.

Shellie Garrett: Members of Congress do the same thing (make individual requests of counties for voter file data that might be subject to a Freedom of Information Act request).

Bob Proctor: There are ways to limit access to the data, while still using private contractors. The United States Postal Service has certified vendors that process the National Change of Address data. This is a key (and valuable) database, but the process works (it does not get used improperly).

Shellie Garrett: The NCOA list keeps three addresses—the home address, the mailing address and the original address, so it is a very key database.

Bob Smith: We have not experienced any problems with the vendors that we work with on a regular basis.

This concluded the testimony of the second panel. The Chairman provided an opportunity for public comment. There was none. The hearing was adjourned.