



SECRETARY OF STATE
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Report on the Secretary of State's Review of Kern County June 6, 2006 Primary Election

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Introduction

All California Primary Elections are complex. Last Tuesday's June 6, 2006 Primary Election was no exception. In addition to the multitudes of ballot styles, we had two new major requirements, including a federal law requiring accessible voting machines, and a state law mandating that electronic voting systems be equipped with a paper audit trail. Almost half of California's fifty-eight counties had to implement new technology and train staff and poll workers on that technology.

Even considering these new hurdles and its complexity, the statewide election went well overall. Our inquiry to date indicates that the issues involving Kern County were due to communication and implementation errors, as opposed to machine or system errors. None of the issues listed below affected the security or integrity of the voting system and the accuracy of the election results.

Three main issues arose during the June 6 Primary Election in Kern County:

1. Voter Access Cards (VACs). VACs are the cards that carry the voter's ballot style. VACs are not memory cards and do not hold or store any vote information or tallies. Old VACs that were deployed for use in some polling places were not "cleared" from the previous election and, therefore, did not work;
2. Paper Ballots. It is alleged that the polling places may not have been supplied with enough paper ballots to handle all the voters under the circumstances; and
3. Tabulation. Kern County was inaccurately showing 100% precincts reporting shortly after beginning tabulation.

The Secretary of State's Office was immediately aware of the VAC issue on the morning of Election Day and was in regular contact with the County Auditor-Controller-Clerk, Ann Barnett. In addition, on June 8, 2006, two senior members of the Secretary of State's Office went to Kern County to review the events with Ms. Barnett, members of her staff, poll workers, Board of Supervisor members, and others. As part of this review, we randomly contacted approximately forty polling site supervisors. The following report is based upon the numerous interviews conducted both in person and over the telephone and addresses the three issues noted in Kern County.

KERN COUNTY REVIEW REPORT

Voter Access Cards (VACs)

By way of background, Kern County used all paper ballots (optical scan) in the Presidential General Election in November 2004 and the Special Statewide Election in November 2005. In the Presidential Primary Election of 2004, Kern County used only Diebold TSX (touch screen), as it did in the June 6, 2006 Primary Election.

Sometime after the TSX was first used in California, the vendor instituted new security measures for the VACs that included an encrypted key specific for each election. This required that old VACs used in previous elections be cleared before use in a current election with the encryption key. This was really only an issue for three counties that had purchased and used the original TSX prior to the institution of the new security measure: San Diego, Kern and San Joaquin. Both San Diego and San Joaquin used old and new cards during their pre-election testing and, therefore, became aware of the issue before the June 6, 2006 Primary Election. However, Kern County had already packed their old VACs for deployment to their polling places. Accordingly, they conducted their pre-election testing using only new cards, which were not subject to this clearing requirement.

Instructions on clearing the old VACs is found in the Diebold VCProgrammer 4.6 User's Guide (Revision 1.0 – April 3, 2005), Diebold Voter Card Encoder 1.3 User's Guide (Revision 1.0 – February 10, 2004), and Diebold Key Card Tool 4.6 User's Guide (Revision 1.0 – April 13, 2005). It appears that Kern County never received any of these documents from their vendor. Kern County's vendor has acknowledged that they did not notify the County of this issue with the older, used VACs, nor have they trained their customer support staff for Kern County on the issue.

For last week's Primary Election, Kern County had a total of 151 polling sites with 340 precincts in those sites. Of those, 41 sites with 170 precincts had no VAC issues because they had either received all new cards or had a mixture of old and new cards, with a sufficient number of new cards to function sufficiently. For this election, the County sent 15 VACs per precinct (up from 10 sent in 2004). In total for this election, 2000 new VAC cards were used and 4000 old cards from 2004 were used.

The problem of mixed old and new VACs was detected upon opening of the polls at 7:00 a.m. Initially, several polling places shared cards to meet the immediate needs of the voters. The County air shipped cleared cards to Ridgecrest because of its remoteness. By approximately 10:00 a.m. all the precincts had a full complement of VACs and were operating normally. Between 7:00 a.m. and 10:00 a.m., most polling places kept running, albeit slower, being limited by the number of available VACs.

Once the problem was identified, the following instructions were given by the County response team to poll workers, site supervisors and troubleshooters:

1. Test all cards to identify the old cards;
2. If necessary, bring the old cards to Headquarters, the office of the Clerk, to be cleared;
3. Use paper ballots (including sample ballots); and
4. If out of paper ballots, instruct poll workers to:
 - a. Use sample ballots;
 - b. If possible, photo copy ballots; or
 - c. Have voters go to central office to vote.

Several examples of County election personnel responses illustrate how the VAC issue was handled.

The Secretary of State's Office interviewed a county staff member who manned the polls and was assigned to Freedom Middle School located in West Bakersfield, approximately 45 minutes away from the Clerk's office because of traffic. The polls opened at 7:00 a.m., on time, with all equipment ready. The staffer's site had a problem with VACs right away. Only one of the cards was working. The staffer's site called the Clerk's office and was instructed to "use the paper ballots". They began using the one VAC to vote on the TSX unit (some voters were willing to wait to use the TSX) and simultaneously issuing paper ballots (to those voters that did not wait to use the TSX unit). A County troubleshooter arrived and instructed them to send back the used cards to be fixed. The staffer's site sent one poll worker to return the cards at approximately 7:20 – 7:30 a.m. The poll worker returned with the fixed VACs at approximately 8:45 a.m. They never ran out of paper ballots, having used only 23 between discovery of the problem and resolution.

Another County staff member who worked the polls as a troubleshooter was assigned to Team No. 20 and was responsible for nine polling sites. He was at one site when the polls opened. The problem with the VACs was observed immediately. He called in to the County's vendor support staff at approximately 7:15 a.m. At his site there were 45 VACs, 15 of which were new and 30 were old. He had 10 additional new cards in his possession, which he left at that site. He stayed at the site until approximately 7:45 or 8:00 a.m. to make sure everything was going smoothly, then went to the next site, where he encountered the same problem. By then, the cause had been determined and the County was requesting sites to send in the old VACs to be cleared. He then rapidly went on to visit his other sites. The next two had a majority of new cards and were functional. The majority of his sites had working cards to keep running throughout the day. Once the VAC issue was resolved at his sites, they had no further problems with equipment the rest of the day. None of these sites ran out of paper ballots.

According to a third County staff member who was a site supervisor assigned to Lebec, a remote site located near the top of Grapevine, the polls opened on time at 7:00 a.m., with all of the equipment ready to use. When VACs did not initially work (15 at his location), he stopped and rechecked all of his work. This meant that when he finally did call, all the lines were flooded and

he had difficulty getting through. It was 7:30 a.m. before he got any direction, at which time he was told to use the paper ballots. At approximately 8:00 a.m. he received a call advising him to send back the old cards. At that time, he sent one of his poll workers to return the cards. At approximately 9:30 – 9:45 a.m. he was down to the last two Republican ballots when his troubleshooter arrived with 5 cleared cards. He estimates that 5 voters left during the first half hour however, he believes that they all came back and voted later that day. No others left the polls without voting.

Conclusion: The VAC problem was an unfortunate communication and implementation error. Based upon our review, once the issue was identified, the County took reasonable measures to quickly remedy the problem.

This issue did not occur in any other county. As an added safeguard for the future, the Secretary of State's Office recommends that Kern County, as well as all counties using electronic voting systems have a user group checklist meeting with their vendor prior to an upcoming election to ensure that all necessary voting system procedures have been followed.

Paper Ballots

On April 7, 2006, the Secretary of State's Office issued a CCROV (correspondence commonly used by the Secretary of State's Office to communicate with County Clerks and Registrars) stating in relevant part:

“ . . . [A]ll county election officials shall have an adequate supply of paper ballots, as determined by the election official, available at the voting locations for use in the event of a temporary loss of the ability to use electronic equipment, or if a voter chooses not to vote on electronic equipment.

This back-up supply can be absentee ballots or other option as determined to be reasonable by the election official. If absentee ballots are used at the polls, the voter need NOT apply for an absentee ballot in order to be able to use it to vote at the polls. You may also use paper provisional ballots to satisfy voters wishing to vote on paper in the event that DRE counties do not have a sufficient supply of absentee ballots to satisfy the needs of the precinct voters. If your supply of back-up paper ballots becomes exhausted, the election official, pursuant to Elections Code Section 14299, shall deliver the necessary additional supplies to the polling place. Since voters can vote absentee ballots at the polls (as we noted above), by extension it is possible that officials might provide a supply of “reasonable facsimiles” of sample ballots to polling places since such facsimiles are allowed to function as absentee ballots, pursuant to Elections Code Sections 13316 and 13317, until additional supplies can be delivered to the polling place....”

Kern County did have paper ballots at the polls. Each polling place had 20 each of Democratic and Republican ballots in English and 20 each of Democratic and Republican ballots in Spanish. They had 10 each of all others ballot styles in both English and Spanish.

It has been alleged that in the supply of paper ballots that were sent to each polling place, there was not included separate Non-Partisan Democrat or Non-Partisan American Independent ballots for Decline to State voters who chose to exercise their option under California's "slightly ajar primary rules. However, because neither the Democratic or American Independent parties had central committee elections on their ballots, the contests available to Decline to State voters for these parties were identical to the contests available to partisan voters for these parties and, therefore, separate Non-Partisan Democrat and American Independent ballots were not required to be printed.

As indicated above, once the problem was identified the supervisors and/or poll workers were given instructions on how to handle the situation and all issues were resolved on or before 10:00 a.m.

The County had a phone bank set up for Election Day. Incoming calls went to the phone bank and staff manning the phones provided instructions to the poll workers. The phone bank was manned with eight temporary workers, two technical staff and one permanent County elections staff.

The Secretary of State's Office spoke with two County elections staff members that were part of the team calling the poll workers and providing instruction.

According to one County elections staff, she arrived at the Registrar's Office, which was Election Headquarters at approximately 6 a.m. on Tuesday morning. Just after polls opened at 7:00 a.m., the phone calls started coming in to the phone bank. Within approximately 15 minutes they had determined what the problem was and the appropriate solution. Staff was immediately assigned to start calling polling sites and troubleshooters. The phone bank was also told to give information and instructions if/when sites called in to them. Once the phone bank slowed, these people were also tasked with calling all the sites and troubleshooters to ascertain that everything had been resolved.

Another County elections staff member also indicated that those polling places that had an adequate supply of working VACs and were located in remote areas were requested to share their working VACs with other polling places in need. Once the initial flurry connected to the VACs subsided, elections staff went back through their list of sites and called each one to verify that the machines were now functioning and that everything was running smoothly. For those calls related to a shortage of paper ballots, she instructed them to make photocopies of the ballots and to use the photocopies. Specifically at the Delano Regional Medical Center polling place, they ran out of paper ballots and were instructed to make photocopies.

According to County elections staff, many voters did come to the county office to vote. In some instances out at the polling sites, where they ran out of English ballots, voters were given a Spanish ballot, together with an English sample ballot.

Based upon interviews of the response team, no one from the response team instructed poll workers to "ask voters to come back later". However, based upon our survey of poll workers,

some poll workers did nevertheless give that option to voters. The comments from pollworkers in affected sites were that voters:

- Wanted to use the new touchscreens, did not want to use the paper ballots, and were willing to wait at the polling place until the touchscreens were available;
- Wanted to use the new touchscreens, did not want to use the paper ballots, and left on their own accord to return later when the touchscreens were available;
- Cast their ballots on a paper ballot (or photocopied ballot);
- Left on their own; or
- Went to an alternative voting site.

A question has arisen as to whether the pollworkers were sufficiently trained. The County reports that each poll inspector was required to attend a three-hour class on how to setup and operate the AccuVote-TSX machines. After the class, each participant had to pass a test that demonstrated their ability to setup and operate the equipment. Those that could not pass the test were not allowed to be poll inspectors. Furthermore, all poll workers, including inspectors were required to attend an additional 2-3 hour class on general policies and procedures for polling places. Poll workers and inspectors were also given a poll worker manual, DVD training videos and laminated quick reference guides.

This training regimen appears to be substantive. It should also be noted as an indicator of the quality of the training, that there were no reported problems in setting up the equipment and opening the polls on time, nor was there a pattern of problems throughout the rest of the day once the VAC issue had been resolved. Additionally, there were no reported problems with the closing the polls.

Conclusion: The County had a solid infrastructure and training in place to deal with this Primary Election issue. The County did have paper ballots at the polling places in accordance with the Secretary of State's CCROV and proper instructions were given to poll workers. While some poll workers may have given voters the option of returning at a later time or some voters may have left on their own accord, we have received no substantiated reports of voters who were truly unable to cast a ballot.

Tabulation

On Election Night, Kern County experienced two issues during tabulation. First, the County showed 100% reporting prematurely and before all ballots had been tabulated. Second, the County had difficulty getting results from the remote location of Ridgecrest.

Regarding these two tabulation issues, the following information is useful:

100% precincts reporting:

Shortly after beginning tabulation of the paper ballots, the reporting incorrectly stated that 100% of the precincts had been tabulated. This was due to the County defining the paper ballot voting center in GEMS, part of the vendor's system, to be all precincts (as opposed to tabulation by individual precincts). The assumption was that paper ballots would not be counted for this center until the official canvass, 'where all precincts would have already reported.'

If the County had initially defined the vote center to tabulate by individual precincts, they would not have had the problem tabulating paper ballots and TSX memory cards simultaneously. Once the County discovered this issue, they immediately corrected it by deleting all counts from the paper ballot voting center, as this was a relatively small group of ballots. The tabulation of these ballots was left for the official canvass, as originally planned and provided for.

Results from Ridgecrest Center:

The Ridgecrest Center is a remote regional collection center for:

- o Ridgecrest
- o Inyo-Kern

At this collection center there were approximately 131 memory cards between all remote sites to upload. The County had successfully completed remote modem of unofficial results to the central counting center in past elections (Statewide Special Election in 2003 and the Statewide Special Election in 2005).

The County chose to do remote modem of unofficial results to the central counting center based upon safety concerns. They wanted to avoid tired poll workers driving 2 ½ hours on mountain roads late at night, after a long election day. Rather, their plan was to modem the unofficial results to the central counting center, then the following day drive the memory cards to the central counting center to be re-tabulated.

The County had tested the system on June 1st with smaller data sets, testing connectivity only. For security on June 6, 2006, the County kept remote access service on the vendor's GEMS servers off and kept modems off until time to upload the data. At that time, a unique password was generated and provided to remote site to use for transmission.

Initially on Election Night, the County reports they were able to upload results from approximately six memory cards before they were disconnected. The line kept failing on repeated attempts. They tried troubleshooting, including rebooting the equipment and verifying all settings were correct for modem transmission. The County determined they had issues at higher data transmission rates (19200). The County found it was better to step back to a lower transmission rate of 9600 baud, but at that rate it was taking more than two minutes per memory card to complete the upload.

The tabulation of TSX results was halted while they took the above steps to resolve the issue, for fear that the local TSX upload could have been interfering with the remote upload. It is still uncertain whether the problem was entirely attributable to bad phone lines and trying to transmit at 19200 baud over these lines that were unable to handle that higher transmission rate. During the pre-election testing, the County never actually tried simultaneous tabulation while uploading at 9600 baud.

At approximately 10:00 p.m. the County abandoned this effort because it was interfering with the regular tabulation of the memory cards. At that time, they had only read approximately 17 memory cards from the remote center at that point and each card was taking over two minutes to transmit. There were still more than 100 cards remaining to be transmitted.

The County elected to have all the remaining cards hand delivered immediately to the central counting center, which was a 2 – 2 ½ hour drive. The Inspector with cards left Ridgecrest at 12:40 a.m. and arrived at Election Headquarters at approximately 2:30 a.m. After that, it took about 45 – 60 minutes to read those cards. The County went final with its unofficial results at 3:29 a.m.

The County is considering a T-1 line to eliminate this issue for future elections.

Conclusion: Neither of the tabulation issues affected the accuracy of the results, although it may have been frustrating for those eagerly waiting Kern County's report of results. The County went final with its results at 3:29 a.m., falling to the middle of the pack of statewide county reporting times. With respect to the 100% reporting issue, the County took immediate and appropriate action upon discovery. With respect to the Ridgecrest issue, the Secretary of State recommends that the County acquire a T-1 line and properly test at high transmission rates to prevent this from happening in future elections.

Since taking office, Secretary of State McPherson has established a strict set of checks and balances to help ensure the security, integrity and accuracy of each vote cast. The problems that occurred in Kern County were unfortunate and local. The County dealt them with quickly. The Secretary of State will continue to work with all counties, including Kern County, to identify and resolve challenges to the administration of elections early, effectively, and completely.