

2021-2022 Fresno County Civil Grand Jury Report No. 2

Despite Criticism, County Elections Integrity Validated

Summary

Free and fair elections, a constitutional foundation in our democracy, require confidence that each person eligible to vote can cast a ballot and trust that it will be accurately tabulated.

However, before the 2020 presidential election, concerns were expressed over the voting procedures to be used. Following the election, allegations of voter fraud were widely publicized nationally and echoed in Fresno County social and news media.

To determine the integrity of local elections, the 2021-2022 Fresno County Civil Grand Jury investigated policies and practices of the Fresno County Elections Office in that election, and in the 2021 gubernatorial recall election.

Absent evidence from interviewees and based on its own observations, the Grand Jury concluded that the criticism was not substantiated and that the Elections Office is committed to ensuring that each eligible voter can cast a ballot confident that it will be counted accurately.

Glossary

Universal vote by mail: ballots are mailed to every registered voter in the county.

Ballot harvesting: one individual collects completed mail-in ballots from numerous voters and delivers them to a vote center or dropbox or puts them in the US mail.

Provisional ballots: “Provisional ballots are ballots cast by voters who:

Believe they are registered to vote even though their names are not on the official voter registration list at the polling place.

Vote by mail and instead want to vote at their polling place or a vote center, but they did not receive their ballot or do not have their ballot with them (and the elections official is unable to verify that they have not returned their vote-by-mail ballot).” (see <https://www.sos.ca.gov/elections/voting-resources/provisional-voting>)

Background

Under the United States Constitution, Article I, Section 4, each state establishes its own election procedures and laws. In California, each county is made responsible for handling elections. In Fresno County, the County Clerk heads the Elections Office as Registrar of Voters. The office consists of 32 permanent employees, all of whom undergo extensive initial and recurrent training. Temporary employees are brought in during each election as needed. The Grand Jury was told that all employees are trained in the handling of ballots and charged with the importance of fair elections practices using a training manual that was last updated in April 2021.

(<https://www.co.fresno.ca.us/departments/county-clerk-registrar-of-voters/election-information/election-results/results-of-november-3-2020-presidential-general-election>)

Employees are also monitored regularly during an election, both by department employees and volunteer citizen observers.

As a result of allegations of voter fraud in the 2020 national elections, local elections efforts were questioned. The Fresno County Civil Grand Jury interviewed many witnesses with various backgrounds and party affiliations but found no evidence of Fresno County voter fraud in either the 2020 presidential election or the 2021 gubernatorial election.

Several local politicians, political activists, and candidates voiced distrust of the universal vote by mail system (see Glossary), specifically, ballot harvesting (see Glossary) has become a major concern of these complainants. In their minds this practice, while legal under California Elections Code 3017, raises the question of the soundness of the chain of custody of ballots as well as potential misappropriation of ballots by those who would seek to alter voting results.

Methodology

The Grand Jury interviewed numerous individuals of both major political parties and other county residents with knowledge of the Fresno County voting process, both current and past. Included were county elections workers, elected officials, political candidates, and both partisan and nonpartisan residents of Fresno County. In addition, members of the Jury toured the election headquarters in 2021. State election laws and local election policies and procedures were also reviewed.

The specific areas investigated were:

1. Election Department employee training
2. Maintenance of voter rolls
3. Vote-by-mail procedures
4. Ballot drop boxes and chain of custody
5. Election system security and tabulation accuracy
6. Department website content

Discussion by Topic

Elections Office employee recruitment and training:

The Elections Office consists of 32 permanent employees, all of whom undergo extensive initial and recurrent training. Temporary employees are brought in during each election as needed. The Jury was told that all employees are trained in the handling of ballots and charged with the importance of fair elections practices using a training manual that was last updated in April 2021. (See footnote 1) Employees are also monitored regularly during an election, both by department employees and volunteer citizen observers.

Maintenance of voter rolls:

Elections officials told the Grand Jury that, because people move in and out of Fresno County on a regular basis, it is virtually impossible to be 100% certain of the accuracy of voter rolls on any given day.

However, Elections Office employees regularly check obituaries, Social Security data and record address changes provided by official notices from voters and information gleaned from returned mailings and ballots.

The state also provides information to Fresno County when notified of a voter who has moved from Fresno County, workers said, and citizens also volunteer information about others that the Elections Office verifies.

Vote-by-mail procedures:

Originally, the only way a registered voter could vote was in person, on a specified date, at a designated voting location or poll. That changed in 1962 when qualified voters were allowed to apply for an absentee ballot if

they planned to be away from home on election day. That was later expanded to include any voter who applied for a vote-by-mail ballot.

Until 2018, vote-by-mail ballot-return envelopes had places for signatures of both the voter and the individual carrying the ballot, plus a space to describe the relationship between the two individuals, because the law specified what types of relationships were allowed.

Under the 2018 revision of California Elections Code Section 3017 (see Appendix), any person can return another's ballot. Only the voter is required to sign the ballot return envelope. There is no limit to how many ballots a person can return.

In 2016, California's Voters Choice Act (see SB-450) (see Appendix for synopsis) authorized counties to broaden voting options. Ballots are to be mailed to all registered voters. Vote centers were established to replace traditional polling places for early and election-day voting or ballot drop off. Rather than going to a specific precinct, technology allowed for voters to go to any vote center and cast a ballot specific to where they resided.

For voters who didn't want to mail in ballots, official drop boxes were installed throughout the county.

After trials in other counties, Fresno County opted to conduct its 2020 elections under Voters Choice Act rules. In the 2020 presidential election, there were 495,748 registered voters in Fresno County. The official tally shows 370,068 voted and the turnout was 74.65 percent.

<https://www.co.fresno.ca.us/departments/county-clerk-registrar-of-voters/election-information/election-results/results-of-november-3-2020-presidential-general-election>

The Grand Jury was told that 191,118 citizens participated by returning vote-by-mail ballots – a 45 percent rate of vote-by-mail.

Ballot chain of custody:

The integrity of the drop box system and chain of custody were questioned by interviewees. The Grand Jury was told by election officials that official drop boxes are designed and built to insure that they cannot be tampered with. Ballots from these boxes are retrieved and transported to vote centers by a minimum of two county employees which substantially eliminates

concerns over mishandling or destruction of ballots collected from drop boxes.

All ballots collected at vote centers are counted by elections officers and the number of ballots is recorded. They are then placed in locked containers and transported to election headquarters where they are processed. All ballots are hand counted, with signatures verified by two machine verifications and personal verifications by two separate individuals.

Ballot signatures in question are set aside and a follow-up system is in place to confirm their validity. The latter process is used for provisional ballots as well (see Appendix). No evidence of mishandling of ballots was presented. During the 2020 election, unofficial drop boxes were placed in various businesses in Fresno county. The Secretary of State's office declared these boxes to be illegal and they were removed. Election officials stated that the ballots contained in these boxes were handled exactly like those retrieved from legal drop boxes.

Election system security and tabulation accuracy:

Fresno County purchased the Dominion Voting System in 2010 and it has been used in six elections since then. The Grand Jury was told that these machines have served their purposes well and there has been no evidence of system inaccuracies.

The system is closely monitored and guarded to prevent outside interference and updated as recommended by the state and the vendor to maintain integrity. A test vote is performed prior to each election to assure accuracy of results. The Grand Jury was told that in the 2020 presidential election and 2021 gubernatorial recall election, there was no evidence of tampering or malfunction of the vote-processing system.

It was alleged by one interviewee that all handlers of ballots are county employees who belong to the same government employee union, thereby bringing into question their unbiased handling of their jobs. However, the Grand Jury found that not all ballot handlers are county employees. A number of them are citizen volunteers.

Furthermore, the Grand Jury received no evidence of bias in the handling of votes.

Department website content:

The Grand Jury reviewed the Fresno County Elections website, which appears to be easy to navigate. It contains information about past, and future elections, how to register to vote, voting options, and other pertinent topics.

Findings

- F1:** The Fresno County Elections Office staff is well trained to handle elections efficiently and securely.
- F2:** Voter rolls are maintained to the best of the department's ability.
- F3:** Vote-by-mail procedures are being implemented in conformance with state regulations.
- F4:** Ballot boxes and ballot chain of custody were found to be secure.
- F5:** The Dominion Voting System is secure and is monitored and updated regularly to assure accuracy.
- F6:** The Elections Department website is well maintained and user friendly.

Commendation:

The Grand Jury commends the Fresno County Elections Office for its integrity, smooth and efficient operation, secure vote-counting system and commitment to ensuring that each eligible voter can cast a ballot that is counted accurately.

Recommendation:

The Board of Supervisors should recognize the importance of maintaining the commendable integrity of the Fresno County voting process by providing the resources requested by the Registrar of Voters during the 2022-2023 budget process. (F1 - F6)

Disclaimers

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury do not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

One grand juror recused from this investigation because of a conflict of interest and did not participate in the preparation of the report or in the vote authorizing the report's publication.

Appendix

AB 307, Section 3000.5 amended 9/28/21:

SECTION 1.

Section 3000.5 of the Elections Code is amended to read:

3000.5.

(a) Notwithstanding any other law, for each election, the elections official shall, no later than 29 days before the day of the election, begin mailing the materials specified in Section 3010 to every registered voter. The elections official shall have five days to mail a ballot to each person who is registered to vote on the 29th day before the day of the election and five days to mail a ballot to each person who is subsequently registered to vote. The elections official shall not discriminate against any region or precinct in choosing which ballots to mail first within the prescribed five-day mailing period.

(b) The distribution of vote by mail ballots to all registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location.

(c) Consistent with paragraph (2) of subdivision (a) of Section 2226, this section is not intended and shall not be construed to authorize a voter with an inactive voter registration status to receive a vote by mail ballot for an election.

California Elections Code Section 3017 *(pertinent portion)*

CA Elec Code § 3017 (2017)

(a) All vote by mail ballots cast under this division shall be voted on or before the day of the election. After marking the ballot, the vote by mail voter shall do any of the following: (1) return the ballot by mail or in person to the elections official who issued the ballot, (2) return the ballot in person to a member of a precinct board at a polling place or vote center within the state, or (3) return the ballot to a vote by mail ballot dropoff location within the state that is provided pursuant to Section 3025 or 4005. However, a vote by mail voter who is unable to return the ballot may designate any person to return the ballot to the elections official who issued the ballot, to the precinct board at a polling place or vote center within the state, or to a vote by mail ballot dropoff location within the state that is provided pursuant to Section 3025 or 4005.

The ballot must, however, be received by the elections official who issued the ballot, the precinct board, or the vote by mail ballot dropoff location before the

close of the polls on election day. If a vote by mail ballot is returned to a precinct board at a polling place or vote center, or to a vote by mail ballot dropoff location, that is located in a county that is not the county of the elections official who issued the ballot, the elections official for the county in which the vote by mail ballot is returned shall forward the ballot to the elections official who issued the ballot no later than eight days after receipt.

Voter's Choice Act Quick Facts:

All registered voters in participating VCA counties will receive their ballot in the mail 28 days before the election. You have 3 choices for how to vote:

1. You can mail your ballot starting as soon as you receive it. No postage required.
2. You can drop off your ballot at any secure Drop Box starting as soon as you receive it.
3. Vote Center options:

Register and vote the same day

Drop off your ballot

Vote with an accessible voting machine

Get help and voting materials in multiple languages