

MEMORANDUM

FROM: Commissioner Richard P. Matthews
TO: Elections Commission and Director Arntz
DATE: March 17, 2010
RE: Director's DRE Memo of December 2009

In December 2009, Director Arntz provided a memo to the Commission in response to questions about San Francisco's experience with the DRE/touch-screen voting device as it relates to the Secretary of State's Conditional Certification, and the Commission's formally adopted policy favoring use of paper ballots over electronic ones.

I am providing some background and analysis of some portions of the Director's memo. The excerpts of the Director's memo are set off in block quotes in his original font.

1. Regarding the DRE usage, in what ways does the Department implement the Policy on Favoring Paper Balloting Over Other Forms of Voting directive in all of the Department's functions?

Through its outreach methods and voter information materials, the Department continuously seeks to balance the use of touch-screen equipment with the conditions stipulated by the California Secretary of State and provisions of the Help America Vote Act. The Department trains poll workers and staff at the early voting counter to provide paper ballots to all voters and to inform voters of the availability of the AVC Edge while specifying that the equipment is designed to assist voters with disabilities to cast their ballot privately and independently; provides voters with instructions on how to use it; trains pollworkers through a uniformed curriculum to adhere to the Department's policy regarding the use of the AVC Edge; and, monitors compliance with this policy through a series of established methods. Furthermore, the Department works with the Mayor's Office on Disability to ensure that the Department is not seen as representing the touch-screen machines as a substandard option, inadequate for people who are not perceived to have disabilities and acceptable only for those voters who are perceived to be disabled.

Commissioner Response:

First, while I appreciate the improvements that the Department has made in its training on this issue since the worst days of 2007-08 when trainers were actively promoting to pollworkers that they should urge voters to use the DRE device as "faster," "more convenient," and "the future," it remained true through 2009 that the consistency and strength of the message of neutrality was not uniform. In 2008, I personally witnessed variability in the training sessions, including one instance of a question from an experienced inspector in which the trainer gave an answer about DRE that did not reinforce the Department's message. As we discussed in a Commission meeting, after a period of training people to a certain message (i.e., encourage the profligate use of DRE

voting device in spite of a lack of need by the voter), it takes extra effort for a sustained period in order to correct that message.

Second, as has been said many times for three years now, there is not a single Commissioner who wants to put the Department or pollworkers in the position of “perceiving” the presence or absence of disabilities. Quite the contrary; the Commission’s point has been that neither the voter nor the pollworker should ever be put in an uncomfortable position, and that the pollworker should never be in a position of exercising discretion on this issue. That is why the uniformity of the scripted language *and the uniformity of its delivery at the polling places* is so important.

Third, I would be most interested in hearing what “working with the Mayor’s Office on Disability” has consisted of. The Department’s instincts in voter assistance have always been so respectful and helpful that it is hard to imagine the kind of help that is described in the memo. Have they suggested specific wording? What does it mean to “work” with that office “in insure” something?

I am sure it does not need to be pointed out that the preferences of the Mayor’s office do not trump state law, the Secretary of State’s conditional certifications, nor the adopted policies of the Elections Commission.

2. What tracking or analysis does the Department do after each election to identify anomalies in usage of DRE, including detecting polling places/pollworkers that have repeatedly high usage; for example, does the Department do a similar type of analysis in sorting the data that Commissioner Matthews does?

The Department monitors the usage of DREs on Election Day. On Election Day, every precinct is called twice by an Election Center Phone Bank Coordinator and asked for the current Insight and Edge vote totals. For DRE vote totals above 5, the precinct is called back by an Election Center Monitor. The Monitor reviews departmental policy with the Inspector and confirms the script on the Roster Clerk Job Card (“You will be issued a paper ballot unless you request the accessible machine”) is the sole communication concerning the DRE relayed to voters by pollworkers. The Monitor also dispatches the Field Election Deputy assigned to that precinct to assess—and if necessary, impose—full compliance.

This is commendable and it is welcome news. Has the FED ever had to “impose full compliance,” as described in the last sentence? If yes, how is that accomplished?

[...]

Of the 34 precincts with more than 5 votes, 12 had fewer votes on the Edge in November than in May.

I have not been able to identify all 34 such precincts, so I am not quite sure what point is being made by this comment. “Fewer” is certainly the right direction (except, of course, for polling places situated in locations that would tend to attract higher numbers of voters who would benefit from using the DRE). Nevertheless, if the number is significantly high

or out of step with the statistical norms, then that's an inspector who didn't get the message, and might still be operating based on messages received in 2007-08 that weren't corrected in 2009.

Of the remaining precincts, where Edge usage increased:

- 3 were senior centers or senior housing facilities that previously had no Edge votes. The procedures of stating the Roster Clerk script may have informed voters with needs of the availability of an accessible machine who were previously unaware of it.

This is excellent, and is the perfect example of the Commission's position since first raising these issues in 2007: Make people aware in case they would benefit from using the DRE, without advocating its use—either overtly or tacitly, and for reasons unrelated to the Secretary of State's conditional certification. This is an excellent example of the script doing its job, and the pollworkers doing exactly what they should.

[...]

- There were only 2 precincts where the Inspectors were assigned to different precincts in the May and November elections and both precincts had greater than usual number of Edge votes.
 - One inspector who switched locations had decreased Edge votes from 15 in May to 7 in November.
 - The other increased Edge voters from 15 in May to 20 in November. In such instances the Department routinely plans to contact poll workers and reinforce the Commission's policy on the use of the Edge and the Department also monitors such identified pollworkers.

Were these inspectors contacted, per the plans described in the last sentence? What was the result of the conversation?

[...]

3. In what ways can the Department work to address this issue, in addition to training? Commissioners have attended the training but it sometimes does not sufficiently emphasize that voters are supposed to use paper ballots unless they have a physical need that would make DRE more convenient for them to complete their ballot.

Training is the primary method by which the Department can comply with the Commission's policy. While the touch-screen equipment continues to be a required component of the City's voting system the Department will continue to reinforce the Commission's policy regarding the use of paper ballots and to monitor pollworkers. The Department will continue to seek methods that balance the use of the Edge with the duty to provide accessible voting equipment in a manner that does not have the unintended effect of "singling out" voters with disabilities so they may be informed of its availability and functions designed to assist voters with disabilities to cast their ballot privately and independently. Prior to every election the Department will continue to review its materials and training of pollworkers to comply with all Commission policies regarding the use

of the Edge. Although the number of voters who use the Edge is small, the percentage of votes cast at the polls on the Edge for each election beginning in November 2008 has decreased. The Department believes with continued emphasis on training and the monitoring of polling place practices that the use of the Edges will continue to comply with the Commission's policy and the needs of voters with disabilities.

I would absolutely agree that training is the primary method by which the Department can achieve compliance with the Commission's policy favoring paper balloting over DRE except for voters who fit within the Secretary of State's conditional certification for our DRE equipment. As has been pointed out repeatedly in Commission evaluations of elections, the training on this point is significantly better than it was in the 2007-08 period, and the pollworker manual is significantly better than when the agreed-upon language about the DRE was mysteriously dropped in early 2008. There is no question that we are on an improving track, though I am unconvinced of language like "continue to comply with the Commission's policy," an assertion that has not been found by the Commission. Still, as has also been pointed out numerous times, the training is still neither uniform nor emphatic enough given that many of the inspectors received some very emphatic messages in the total opposite direction not too long ago. It is a fallacy that just because an audience is told one thing in a very information-packed presentation that they actually received the message as intended. This is especially true when trying to correct previously understood information rather than starting afresh with a previously unexplored topic, and more so when the trainer sometimes misses the opportunity to reinforce the policy when asked a direct question about it.