

Elections Commission
1 Dr. Carlton B. Goodlett Place, Room 48
San Francisco, CA 94102

cc: California Voter Foundation

June 15, 2008

Dear Elections Commission,

We, the undersigned, who are eligible voters in the City and County of San Francisco, request the electoral system for these two governmental levels of City and County to reflect the U.S. Constitution. In the 14th Amendment, we are given equality before the law, and our current electoral systems for City and County do not reflect this command.

Though Article I and the 14th Amendment describe in particular ways the set-up of the electoral systems for Federal and State level, no such specific instruction is given for the local level, except that of equality before the law. Therefore, our current electoral systems at the City and County level do not reflect the Constitution as created by the Framers. Rather, it follows the regulations as set forth specifically for the Federal and State levels.

Though we understand the local officials' approach in this matter, and have no intention to sue for damages incurred in the past, we request an immediate implementation of our Constitutional right.

Please, understand that we do not seek to address the number of seats on the Board of Supervisors. A single vote for a single person in a single election for the entire Board of Supervisors is the only way under which we are served our Constitutional right. Any other way distorts the outcome and creates side effects to our right of equality before the law that are unconstitutional.

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City and County of San Francisco
Elections Commission
Approved: _____
Minutes of the Meeting held
City Hall, Room 408
July 16, 2008

1. President Gleason called the meeting to order at 6:06 pm.

2. **COMMISSION MEMBERS PRESENT:** Commissioners, Gerard Gleason, Richard P. Matthews, Winnie Yu, Jennifer Meek, Joseph B. Phair, Rosabella Safont, Deputy City Attorney Mollie Lee and Director John Arntz. **EXCUSED:** Commissioner Arnold Townsend.

3. **Announcements.** Vice President Jennifer Meek announced that she will be moving to Oakland and this would be her last meeting. She has sent her letter of resignation to the Board of Education and will work on the Commission until the end of the month.

President Gleason announced that items 7 (b) and (d) will be covered in the Director's Report if the Director so chooses.

4. **Public Comment.** *Richard Rothman*, a San Francisco voter, presented his idea for cutting costs - that households receiving more than one VIP (Voter Information Pamphlet) only receive one. He said that both he and his wife receive VIPs for each election and toss the extra one. Mr. Rothman has written a letter to the Board of Supervisors letting them know his idea and is asking the Commission to consider his idea for discussion at a future meeting. *Gerry Hayes* said that voter instructions are sometimes complicated and difficult for voters to understand, and especially for citizens who can't read or write. She suggested more pictures and simple diagrams that demonstrate voting procedures to help those voters.

5. **Director's Report.** Director Arntz reported that the canvass for the June Election has been completed. The manual tallies matched all ballots.

Budget and Personnel – The supplemental appropriation was approved by the Board of Supervisors. Preparations for the November Election have begun with the new budget.

RCV (Ranked Choice Voting) – Sequoia Voting Systems has an application at the Secretary of State's (SoS) office. One part of that application is not completed and the SoS is requesting an explanation for every change of code since the last review. The changes have not been just for RCV, but for other components and the SoS is reviewing this as a

new voting system. Sequoia plans to complete its application with the code changes from its previous version in the next two weeks.

Commissioner Phair asked if the DoE has a contingency plan to count the votes if the Sequoia system is not ready for RCV in November. Director Arntz replied that such a plan was designed in 2002, and is a detailed hand count system for ranked choice voting that is still viable.

Commissioner Phair asked the Director to notify the Commission if it appears that the alternative plan will need to be used. The Director agreed to do so and to keep the Commission posted with RCV updates, which he has done in the past.

Commissioner Matthews asked if the SoS gave permission to use the machines for the first pass (in the November Election), would this be helpful. Director Arntz said it depended on the contest. He said he prefers that votes be audited at the polling place, and this is what the machines provide there.

Campaign Services – The signatures in lieu petitions are being handed out. Local measures and petitions are being returned and are being reviewed. August 1, 2008 is the deadline for measures and July 25, 2008 is the deadline for Charter Amendments.

Outreach – Staff have been attending Naturalization ceremonies, and registered 535 new voters yesterday. This was a one day record for the Division. The latest edition of the Elections Connection Newsletter has been released. Voting materials are being reviewed for language updates.

Poll Locating/ADA – Staff have sent payment stipends letters to past polling sites and enclosed letters requesting to use the sites again this November. Issues that were problematic for the last election are being reviewed. New sites are being scouted to replace some which proved inadequate due to space or amenities during the last election. Polling place equipment is being inventoried with the new bar scanning program.

Publications – Staff, immediately after June, began to ready available information for the November election such as the common pages for the VIP, masthead for the November ballots and requesting tent colors for those ballots.

Ballot Simplification Committee – Begins meeting the end of this month. Although the Committee has lost a member, a new member has been located and is awaiting approval from the Board of Supervisors.

Technology Division – Staff is preparing an on-line look up system for voters to determine if they are registered. Voters will type in their address, birthday and last name and the system will let them know their voting status. This is planned to be completed next week.

Voter Services – Staff is conducting petition reviews and voter roll purges. Forty-two thousand postcards will be sent to voters who have failed to

vote in the last two federal elections and have no change of addresses to determine if these voters are still active. If the cards are returned signed, their status will be active, but if no response is received, they will be inactivated. This does not cancel the voter's registration, they can still go to the polls on election day or come to City Hall, give the DoE their name, and vote. Putting them on the inactive list saves money because they are not sent VIPs and other materials the Department sends to active voters.

Commissioner Phair asked the Director what happens is the card is returned with "return to sender" noted by the post office. Director Arntz responded that that voter would be listed as inactive.

Vice President Meek congratulated the DoE for the new data base that will allow voters to check their voting status.

President Gleason asked if there will be enough time to reflect the existence of the new voter status data base on the Provisional Ballot Envelopes for the November 2008 Election. Director Arntz replied that voters can always call the Department on Election Day to determine their voting status.

President Gleason called the Director's attention to the capacity of the ballot holding compartment in the current voting machines compared to the old Eagles and the potential size of the November 2008 ballot with state and proposed local measures on it. He asked if the Department has plans for handling and storing these voted ballots on election day. The Director replied that the ballots will need to be removed and held outside the machines, as was done in June at some busy polling sites.

President Gleason suggested that the Department notify voters of the size of the ballot, the possibility of long lines and encourage voters to vote by mail. Director Arntz said that staff hasn't talked about those issues yet, but they will.

Vice President Meek suggested that pollworkers be trained that voters do not have to mark their ballot at the booth, but can vote, if they wish, at a table. This could expedite the process, especially if lines are long in November.

Commissioner Phair reminded the Commission and the Director that because the ballot is expected to be a long one, that the process for removing ballots from the voting machine bins and bagging them be explained in the Election Plan.

Public Comment. Gerry Hayes said that some pollworkers who worked the last election did not have the actual voting machines to examine and practice with during their training. She said that this should not be the case for the November 2008 Election.

Commissioner Matthews asked Ms. Hayes if she had first hand knowledge of pollworkers not having machines at their training classes.

Ms. Hayes said that she had trained to be a pollworker and did have machines, but according to a newspaper article she read, some pollworkers did not.

Commissioner Phair said that this concern was mentioned in the recent Civil Grand Jury report. The report cited a visit to one of the classes in which the voting machines were not yet available during training that was held earlier in the year.

6. Commissioners' Reports

Commissioner Matthews reported on observations he made of the June 3, 2008, Consolidated Primary election that he had not shared at the previous meeting. He said the practice described in the Election Plan of extracting the ballots from the Absentee Ballot envelope where in they are to be face down so that the name of the voter is not visible, was not always done when he observed the extraction process. He observed staff carefully looking at the front of the envelope before turning it over and extracting the ballot. When the Commissioner asked the supervisor why this was happening, he was advised that this was a quality control issue. Commissioner Matthews asked the Director the reason for the procedure since it was not in the Election Plan nor the stated policy in the DoE Newsletter nor what has been done in the past.

Director Arntz explained that the mailing of absentee ballots was out-sourced to Sequoia Voting Systems for the June 2008 Election. They mailed 1600 ballots to voters with the wrong precinct, party or ballot type. Those ballots were re-mailed and cancelled once the DoE discovered the problem. Sixty-five of the first mailed ballots were voted and seven to eight hundred of the second ballots were voted. Staff were comparing the party and ballot type information on the top of the ballot to the label on the absentee envelopes to check for more mistakes of which the Department might not be aware. Staff made this decision on their own, and after a few days it was determined that very few mistakes were found, and the procedure was stopped.

Director Arntz said that he notified the vendor that it must have safe guards in place to prevent this situation from happening in the future, and to notify him of those controls and safe guards. The Director said he will keep the Commission informed of this process with Sequoia Systems.

Commissioner Matthews asked if out-sourcing this work saves money for the City. Director Arntz said that, for this work, it saves a lot of time for staff, and therefore saves money.

7. Old Business

Discussion and possible action regarding randomization and posting of precinct election results from use of the DRE (Direct Recording Electronic) voting machines at polling sites and related procedures that occurred during June 3, 2008 Statewide Primary Elections in San

Francisco. Report back on discussion of issue with representatives of the Office of the California Secretary of State. [Gleason]
President Gleason reported that he and Commissioner Matthews discussed this matter last Tuesday with the SoS via telephone. They were able to present Commissioner Matthews' power point presentation during the conversation. Lowell Finney and Evan Goldberg, both Senior Deputies, represented the SoS on the call.

Mr. Finley said "Two key conditions of the October 5, 2007, reapproval of the Sequoia Voting System are (1) a restriction to use one Sequoia Edge DRE per precinct and (2) a requirement that all votes cast on the Edge must be manually tallied using the voter verifiable paper audit trail (VVPAT)."

President Gleason said the SoS is requiring a 100% manual tally of DRE votes. In addition to the manual audit, the SoS requires that "to protect voter privacy, in instances in which as least one voter has cast their ballot on the DRE, jurisdictions are required to ensure that at least five persons voluntarily cast their ballot on the device over the course of Election Day."

President Gleason offered two statements which he proposed be used by pollworkers. The current statement discussed by the Commission last January: "You will be issued a paper ballot unless you prefer a touch screen audio ballot"; or another response in case only a single voter in a precinct has opted to use the DRE, "Would you prefer a paper or touch screen audio ballot?" This statement would be used with each voter until there have been five voters who have used the DRE. Once the goal of five voters has been reached, pollworkers will return to using the first statement. He said he forwarded these suggestions to the Director.

Deputy City Attorney Lee reminded the Commission of its responsibility to create policy but not to interfere with the day-to-day operations of the DoE. She suggested that the Commission consider its proposal as a "general policy" proposal.

President Gleason said that there are other solutions to this SoS requirement and that some are mechanical like those taken by one county, whose vendor is not Sequoia, that turns off the tabulation device which satisfies that there is no report to post at the polling site.

The President reminded the Commission that Sequoia Voting Systems demonstrated a device at an Elections Commission meeting that combined the totals of the DRE and the optical scanning voting machine at each precinct called the HATT (Hybrid Activated Transmitter) device, however this is not what San Francisco has. There are two devices that do this and only one is certified. The SoS reminded the Commissioners during their telephone meeting that what is posted outside the polling sites are unofficial totals. Therefore, President Gleason said, there are ways the SoS can allow us to use a device that does not have full certification

because the results are not official. President Gleason said he is looking for a zero dollar solution.

Commissioner Matthews said that the Commission does have the right to adopt policy and the Department must follow that policy as long as the policy doesn't advocate something illegal like deviating from the SoS's conditional certification. The Commission's policies must be followed, but the Commission doesn't determine how it is implemented.

Deputy City Attorney Lee agreed that this is an accurate interpretation of the law with the clarification that policy stays at the level of policy and doesn't intrude on the day-to-day operations of the Department.

Public Comment. Gloria Everett, a member of the 2007-2008 Grand Jury, Introduced herself and said she was very pleased to hear the Commission's discussion on this item. She said the Grand Jury was very pleased with the cooperation of the Department in their study, and she is present to hear the Commissions' comments regarding the Grand Jury Report later on the agenda.

(b) Discussion and possible action to adopt a policy that preference is given to the use of paper ballots for voting in all public elections in San Francisco, that DRE machines are not regarded as preferable or even equally desirable except for voters who would prefer to use DRE for any reason, and that voters will not be "encouraged" to use DRE machines rather than paper ballots; and that the Department of Elections shall ensure that all employee and pollworker training includes material that reinforces this policy. [Matthews]

Commissioner Matthews asked the Deputy City Attorney if the item was proper in form for a policy. Deputy City Attorney Lee agreed that it was, but it might be helpful to add specific wording that the policy is not requiring the Director to do anything inconsistent with the SoS's conditional recertification.

Commissioner Matthews said that now that he has reviewed the certification, he has found that it is not neutral about DRE. It has five pages that criticise the DRE. He called the Commission's attention to Page 5 of the certification which states in bold: ***Therefore, I, Debra Bowen, Secretary State for the State of California, find and determine all of this equipment which was previously approved, is found and determined to be defective or unexceptable and its certification is withdrawn....except as specifically provided below.*** Commissioner Matthews concluded that the Commission does not have to be neutral and the wording in our policy does not have to be neutral. He said that the policy proposed by the Commission is in complete harmony with the SoS.

Deputy City Attorney Lee pointed out one area of the policy that she said was of concern, "that voters will not be encouraged to use DRE machines rather than paper ballots" this might conflict with the SoS's language

which says, "jurisdictions are required to ensure that at least five persons voluntarily cast their ballots."

Commissioner Matthews pointed out the word "voluntarily" and said that this was discussed in the telephone meeting with the SoS.

Commissioner Phair suggested the following: leave the policy as stated in the item, and at the end add, "all in conformity with the requirements of the California Secretary of State now in effect or as enacted or amended in the future." Commissioner Matthews agreed to this addition.

Commissioner Phair asked the Director about his preference in this policy discussion. Director Arntz said that the main thing for him is that the system works, it's easy to take care off, it's easy to test, it's easy to get out to and return from the polling sites, it doesn't brake down, and for him it doesn't matter what type of balloting is used as long as these conditions are satisfied. He said paper ballots are what voters have trusted most in San Francisco. The Director said that this policy mirrors, minus a few "tweaks", what happens in San Francisco, a paper based system.

Commissioner Safont asked if it was necessary to make a policy to get the Director to change the instructions to pollworkers regarding encouragement of voters to use the DRE machines for the November 2008 Election, or could the Director do this without a policy.

Director Arntz explained that the DoE's intent was never to create the perception that the Department is encouraging pollworkers. To answer Commissioner Safont's question, Director Arntz said that the Department would try to find a way "through this" where people are satisfied.

Commissioner Matthews said that the 100 percent ballot tally is good and essential and it isn't completely valid because the validity depends on each individual voter having read his/her segment on the tape as it scrolls on the DRE. He said usability studies of the machines show that this does not happen, and in the case of visually impaired voters, it can not happen.

THIS ITEM WAS TABLED TO THE CALL OF THE CHAIR FOR DECEMBER 2008.

(c). Discussion and possible action regarding line items related to the City's proposed budget for the Department and Commission, including staffing for Department and Commission. [Commission]

Commissioner Phair reported that he contacted Supervisor Elsbernd by email to encourage him, as a member of the Budget Committee, to do whatever he could to ensure that the Elections Commission Secretary's position was not cut further from 75%, and expressed that the Commission's desire was for full time funding. Commissioner Phair explained in his communication that the Secretary was the only support staff for the seven-member Commission. The Supervisor replied that he appreciated the Commission's comments and that he would do what he could but he wasn't sure what could be done given the fiscal situation.

Commissioner Phair asked the Director if he had any update. Director Arntz responded that the budget has not been changed, and the Secretary's position remains at 50% time. Vice President Meek said that this is of great concern because the Commission is planning to have two meetings a month plus a Committee meeting and this puts a strain on the Secretary who must also take care of the paperwork involved in bringing new Commissioners on board, postings, correspondence from voters, etc. She suggested cutting meetings to one per month, which falls short of the duties the Charter requires of the Elections Commission. Vice President Meek suggested documenting to the Board of Supervisors and the Mayor's Office that we respect their decision, and because the Commission now does not have the staffing it needs to function under its Chartered duties, we will fall short of our responsibilities.

Commissioner Phair asked if the Department proposed a 50% position. Director Arntz responded that the position has been funded by the City at .5 percent for the last two years.

Commission Secretary Rodriques added that the position was .5 percent and the Director of Elections was able to find an additional .25 percent from his budget to bring the salary to .75 percent for the past two years. However, due to cuts in the Department's budget, he is not able to continue the .25 percent addition to the Commission Secretary's salary for the upcoming fiscal year.

Vice President Meek suggested that the Commission send a letter to the Board documenting that the Commission cannot fulfill its role because of the budget cut so that the situation is clearly documented.

Commissioner Safont said that she agreed and that a letter should be sent to the President of the Board of Supervisors, Supervisors and the Mayor's Office with a copy to the Controller's Office so that everyone is aware that this is a serious issue, and the Commissioners will not be able to perform their duties without proper support because they are all volunteers.

Commissioner Safont MOVED and Vice President Meek SECONDED that a letter be sent to the Board, Mayor and City Controller regarding the hardship that having a half time Commission Secretary places on the Commission in performing its duties under the Charter.

Vice President Meek volunteered to write the letter.

The Roll Call Vote was UNANIMOUS to send the letter.

8. New Business

- a. **Discussion and possible action to approve the Minutes of the June 18, 2008 Commission Meeting.** President Gleason requested a change in the wording of what he said under "announcements" to read that he informed the City Treasurer that the Commission cancelled a

meeting recently because it didn't have a quorum, and that his appointment would be very much appreciated. Commissioner Matthews MOVED and Vice President Meek SECONDED approval of the minutes with the changes requested by President Gleason.

The Roll Call Vote was UNANIMOUS to approve the minutes with corrections.

NOTE: Items 8(b) and 8(d) were discussed under the Director's Report earlier in this meeting.

c. **Discussion and possible action regarding response to 2007-2008 Civil Grand Jury Report: *A Year of Five Elections for the City/County of San Francisco*** (released July 3, 2008) [Commission]

Commissioner Richard P. Matthews shared with the Commission that in addition to being a former member of the San Francisco Civil Grand Jury, he has served as trainer of the incoming Civil Grand Juries for the past four years.

Commissioner Matthews presented a first draft of the Commission's response to the 2007-2008 report and he summarized the procedure as: Responding bodies have 60 days to respond, except for the Board of Supervisors. For findings, each body has to respond in one of two ways – yes, we agree with the finding, or we disagree wholly or partially. In either case the body must explain.

Regarding recommendations, the body must respond to each, as "the recommendation has been implemented (with some description of how), the recommendation is not yet been implemented but it will be (with a time frame and explanation of implementation), the recommendation requires further analysis (with some explanation of the scope and parameters of that analysis and a time frame) or no, the recommendation will not be implemented because it is not warranted, or not reasonable (with an explanation).

Commissioner Matthews reviewed his draft with the Commission and a copy of the draft is attached as an addendum to these minutes.

Due to the deadline for responses, the Commission must approve its answer at the next regularly scheduled meeting, or call a special meeting. Commissioner Matthews offered to bring his laptop and make any changes at the time of discussion at that meeting, and asked for suggestions from members. Commissioner Safont thanked Commissioner Matthews for all the effort he put in producing his draft, and this was seconded by several of the members. Commissioner

Phair asked Commissioner Matthews to send him the draft electronically so he could insert his suggestions and return it to him.

Deputy City Attorney Lee suggested that all communication regarding the response to the Grand Jury Report be sent through the Commission Secretary who can distribute information to all members.

ACTION: Commissioner Matthews will incorporate all suggestions made by Commissioners at this meeting, send the second draft to the Commission Secretary who will forward to the full Commission, and make a copy available to the public.

- e. **Review, discussion and possible action regarding Elections Commission member roles and activities related to observation and evaluation of public elections. [Gleason]**

This item was CARRIED OVER to the next meeting at the request of the President.

- f. **Discussion and possible action to evaluate the effectiveness of the Election Plan for the April 8, 2008 Special Election.**

This item was CARRIED OVER to the next meeting at the request of the President.

- g. **Discussion and possible action to evaluate the effectiveness of the Election Plan for the June 3, 2008 Consolidated Primary Election.**

This item was CARRIED OVER to the next meeting at the request of the President.

- h. **Discussion and possible action in response to request from San Francisco Department of Human Resources regarding Department Head Performance Plan and Appraisal (PPA) Report. [Commission]** Director Arntz presented his self-assessment and goals, which he passed out to the Commission.

Deputy City Attorney Lee explained that the criteria for the Director's Performance and Appraisal are discussed in a public forum, while the actual evaluation will occur in Closed Session.

President Gleason asked if a member of the Commission could be assigned to fill out the form. Deputy City Attorney Lee said the Commission has the authority to assign those responsibilities to a particular member.

The Commission goal tonight is to determine the criteria for the appraisal.

Commissioner Matthews MOVED that the plan in the Commission Packet be adopted as the relevant Department Head Performance Plan and Appraisal Form as amended by the Director of Elections with his self-assessment, especially as to pages 6 and 7. Commissioner Phair SECONDED.

The Commission Secretary was assigned to forward the suggestions from the members (from the audio tapes) at this meeting to Commissioner Safont who will make the changes discussed, and sign off on the revised form.

The Roll Call Vote was unanimous to prepare and send this Performance Plan with the changes suggested and Commissioner Safont's sign off to the Citywide PPA Committee by the deadline of July 18, 2008.

ADJOURNMENT at 9:26 pm

D R A F T #3

The Hon. David Ballati, Presiding Judge
Superior Court of the State of California, County of San Francisco
400 McAllister Street
San Francisco, CA 94102

Re: Response of the Elections Commission to Civil Grand Jury Report, "A Year of Five Elections for the City and County of San Francisco"

Dear Judge Ballati:

The Elections Commission of San Francisco received the above-noted Civil Grand Jury report on July 3, 2008. We thank the Civil Grand Jury for its work in its investigation of the operations of the Department of Elections, recognize its valuable work as a citizens' body, and are pleased to submit this response for your and the jury's consideration.

Background on the Elections Commission

The Elections Commission of San Francisco is a unique body that was created by voters and governed by San Francisco Charter Sec. 13.103.5. A seven-member body of unpaid citizens who are appointed by seven different elected officials (or bodies of elected officials), its powers are generally defined as:

The Commission shall set general policies for the Department of Elections and shall be responsible for the proper administration of the general practices of the Department, subject to the budgetary and fiscal provisions of this Charter. These duties shall include but not be limited to approving written plans prior to each election, submitted by the Director of Elections, detailing the policies, procedures, and personnel that will be used to conduct the election as well as an assessment of how well the plan succeeded in carrying out a free, fair and functional election. (Emphasis added.)

The Charter invests the Director of Elections with the day-to-day conduct and management of the Department of Elections.

Because the Commission is a policy-setting body, the implementation of the Recommendations of the Civil Grand Jury do not fall within its statutory purview, and

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thus does not have the power to enact any of the Recommendations. Nevertheless, as a citizens' body that is ultimately "responsible for the general practices of the Department" (S.F. Charter Sec. 13.103.5.), the Commission offers the following responses to the jury's Findings and Recommendations.

Elections Commission's Responses to Jury Findings

"1. The Department of Elections' City Hall space is inadequate for the performance of all of its functions, so the Department utilizes various locations throughout the City."

Response: The Commission agrees with this finding.

"2. The use of multiple locations impacts the efficiency of DOE operations and potentially compromises the security and even the integrity of elections."

Response: The Commission agrees in part and disagrees in part with this finding. The Commission agrees that the use of multiple locations affects the efficiency of DOE operations, but does not agree that it potentially compromises the security or integrity of elections. It is a general principle of elections that security and integrity of elections are chiefly accomplished through well-designed and published procedures to be followed when ballots are moved, canvassed, remade, tabulated, or in any way handled as part of the elections process; and strict adherence to those procedures. The Commission believes that the DOE does a proper job of adhering to published procedures that ensure the security and integrity of elections.

"3. Five years after the 2002-2003 Civil Grand Jury recommended that 'the City should identify and secure a single site for consolidation of DOE operations,' the DOE is still without consolidated, permanent space."

Response: The Commission agrees with this finding.

"4. The current off-site location at Pier 48 does not offer DOE personnel consistent access to a reliable supply of drinking water."

Response: The Commission agrees with this finding.

"5. Sequoia must obtain the Secretary of State's certification that Sequoia voting machines have the capacity to count [Ranked Choice Voting] ballots."

Response: The Commission agrees with this finding.

“6. If Sequoia fails to obtain the needed certification, the Department of Elections must have a plan for counting [Ranked Choice Voting] ballots.”

Response: The Commission agrees with this finding.

“7. As of the date of this report, the DOE does not have a contingency plan for counting the RCV ballots.”

Response: The Commission disagrees with this finding. The Director of Elections produced and promulgated such a plan in 2003, and it remains valid.

“8. The perception of fair and accurate elections requires that voters know in advance and understand the alternative plan for counting [Ranked Choice Voting] ballots.”

Response: The Commission agrees with this finding.

“9. For partisan primary elections, some voters with a declared party affiliation believed incorrectly that they could appear at the polling place and request the ballot of another party.”

Response: The Commission agrees with this finding.

“10. These voters were unaware of the fact that they had to re-register and change their party affiliation prior to voting for another party’s candidate[s].”

Response: The Commission agrees that this might have been the case.

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“11. Some pollworkers and voters do not understand the procedures for voting for candidates where Ranked-Choice ballots are used.”

Response: The Commission agrees with this finding, although it is unclear from the Jury’s report how prevalent it finds this problem to be.

“12. There is a lack of understanding by some voters of the requirements for submitting a valid Absentee Ballot.”

Response: The Commission agrees with this finding, although it is unclear from the Jury’s report how prevalent it finds this problem to be.

“13. The Department of Elections is subject to federal, state, and local laws regarding voter outreach and education.”

Response: The Commission agrees with this finding.

“14. While the DOE does meet these legal requirements, additional outreach efforts are needed on voter registration requirements and deadlines, the Ranked-Choice Voting process and the requirements for submitting a valid Absentee Ballot.”

Response: The Commission agrees in part and disagrees in part with this finding. The Commission agrees that the DOE meets its legal requirements regarding voter outreach and education—and in some cases it exceeds these requirements. The Commission further agrees that some voters did not and do not understand certain aspects of registration requirements, the Ranked Choice Voting process, and the requirements for submitting a valid Absentee Ballot. However, there is no data in the Jury’s report to illustrate either (a) that those are the result of insufficient instruction, (b) how prevalent a problem these are, or (c) that devoting greater amounts of scarce DOE resources to these particular issues – necessarily at the expense of other issues – would likely result in fairer, freer, or more functional elections.

The Commission does not wish to appear callous or indifferent to even a single voter’s ballot not being counted. Indeed, the Commission, as a body of fellow citizens, laments the loss of the opportunity to count even one ballot card of a voter who has put forth the effort to vote. Nonetheless, at least two things are inevitably true: (a) some voters will, unfortunately, misunderstand instructions despite all reasonable efforts of any department of elections and despite the fact that each of the phenomena described by the Civil Grand Jury are accompanied by clear written instructions to those voters; (b) elections cannot be perfect, nor are they expected to be perfect—but the imperfections should fall randomly, fairly, and not affect any outcomes. In the Commission’s experience with San Francisco’s elections and in its knowledge of other counties’ elections, nothing described in this section of the Jury’s report is at all out of the ordinary for any election held anywhere, regrettable though it is to lose the vote of even one person who has gone to the effort to try to vote.

Elections Commission’s Responses to Jury Recommendations

“1. The Office of the Mayor and the Board of Supervisors must provide an adequate budget and direct the Division of Real Estate to find permanent,

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unified, secure, and safe space for the San Francisco Department of Elections where all DOE staff can efficiently perform all their duties.”

Response: Nothing in this Recommendation falls within the jurisdiction or chartered authority of this Commission, but the Commission would defer to the operational preferences of the Director of Elections.

“2. An appropriate source of drinking water must be made available at all times for the on-site employees.”

Response: Nothing in this Recommendation falls within the jurisdiction or chartered authority of this Commission. However, the Commission supports this recommendation.

“3. The DOE should publicly establish a date certain by which Sequoia must receive the Secretary of State’s certification regarding the counting of [Ranked Choice Voting] ballots. This date should be no later than September 15, 2008.”

Response: The Commission cannot implement this Recommendation, as doing so would exceed its chartered authority to set policy for elections and would infringe on the Director of Elections’ statutory responsibility to conduct the day-to-day operations. (S.F. Charter Secs. 13.103.5, 13.104.) However, the Commission is aware of this issue, monitoring it closely through the reports of the Director of Elections, and will continue to do so.

“4. To prepare for the possibility that Sequoia fails to obtain the required certification, DOE must develop a contingency plan for counting [Ranked Choice Voting] ballots, which should be in final form by October 6, 2008.”

Response: The Commission cannot implement this Recommendation, as doing so would exceed its chartered authority to set policy for elections and would infringe on the Director of Elections’ statutory responsibility to conduct the day-to-day operations. (S.F. Charter Secs. 13.103.5, 13.104.) However, the Commission is aware of this issue, and will monitor it closely. Certainly, in the event that Sequoia does not receive state certification of Ranked Choice Voting equipment by the time the Commission considers the Election Plan submitted by the Director in advance of the November 2008 election, it will expect to see reference to the 2003 contingency plan within that Election Plan.

“5. The DOE should keep the public apprised of the status of the Secretary of State’s certification of the Sequoia voting machine for counting [Ranked Choice Voting] ballots and the status of the contingency plan if required.”

Response: The Commission cannot implement this Recommendation, as doing so would exceed its chartered authority to set policy for elections and would infringe on the

Director of Elections' statutory responsibility to conduct the day-to-day operations. (S.F. Charter Secs. 13.103.5, 13.104.) However, the Commission supports and encourages all efforts of the Department to be as transparent as possible with information about how the elections are conducted. The Commission also notes that if a contingency plan is needed, it will be referred to in the Election Plan for the November 2008 election, which is a public document.

“6. For a partisan primary election, where separate ballots are used based on a voter’s party affiliation, the DOE’s training and voter outreach programs need greater emphasis on the fact that in order to vote for a candidate in another party, voters must re-register and change their party affiliation by the voter registration deadline.”

Response: The Commission cannot implement this Recommendation, as doing so would exceed its chartered authority to set policy for elections and would infringe on the Director of Elections' statutory responsibility to conduct the day-to-day operations. (S.F. Charter Secs. 13.103.5, 13.104.) However, the Commission is mindful of these concerns, and will have public discussions with the Director and discuss publicly among its members to determine whether greater efforts in these areas – necessarily at the expense of other things – would be expected to achieve significant improvement in the areas the Jury describes.

The Commission acknowledges that while some aspects of voting requirements are not intuitive for all voters, it is also true that all of this information is publicly posted, and it is worth noting that the overwhelming majority of voters managed to comply with the requirements.

“7. The DOE’s pollworker training needs to emphasize the Ranked-Choice Voting process.”

Response: The Commission cannot implement this Recommendation, as doing so would exceed its chartered authority to set policy for elections and would infringe on the Director of Elections' statutory responsibility to conduct the day-to-day operations. (S.F. Charter Secs. 13.103.5, 13.104.) However, the Commission is mindful of these concerns, and will have public discussions with the Director and discuss publicly among its members to determine whether greater efforts in these areas – necessarily at the expense of other things – would be expected to achieve significant improvement in the areas the Jury describes.

The Commission acknowledges that while some aspects of voting requirements are not intuitive for all voters, it is also true that the pertinent RCV information is printed in three languages directly on the voting materials as well as in the Voter Information Pamphlet supplied to each registered voter in the language requested by that voter, and it is worth noting that the overwhelming majority of voters managed to comply with the requirements.

J. C. G.

“8. The DOE’s outreach program needs to improve voter instructions on the Ranked-Choice process and the use of Absentee Ballots.”

Response: The Commission cannot implement this Recommendation, as doing so would exceed its chartered authority to set policy for elections and would infringe on the Director of Elections’ statutory responsibility to conduct the day-to-day operations. (S.F. Charter Secs. 13.103.5, 13.104.) However, the Commission is mindful of these concerns, and will have public discussions with the Director and discuss publicly among its members to determine whether greater efforts in these areas – necessarily at the expense of other things – would be expected to achieve significant improvement in the areas the Jury describes.

The Commission acknowledges that while some aspects of voting requirements are not intuitive for all voters, it is also true that all of this information is printed in three languages directly on the voting materials, and it is worth noting that the overwhelming majority of voters managed to comply with the requirements.

“9. In addition to its established communication approaches, the DOE should explore enhanced techniques to communicate information on the less understood aspects of voting such as partisan primary elections, Ranked-Choice Voting and Absentee Ballots.”

Response: The Commission cannot implement this Recommendation, as doing so would exceed its chartered authority to set policy for elections and would infringe on the Director of Elections’ statutory responsibility to conduct the day-to-day operations. (S.F. Charter Secs. 13.103.5, 13.104.) However, the Commission supports and encourages all efforts of the Department to be as transparent as possible with information about how the elections are conducted.

Respectfully submitted,

Gerard Gleason
President, San Francisco Elections Commission

J.C.7.

1 **DRAFT POLICY ON FAVORING PAPER**
2 **BALLOTING OVER OTHER FORMS**

3
4 Whereas, direct recording entry (DRE) voting systems capture a vote and store it on a
5 memory card rather than mark a paper ballot, after which the votes are tabulated
6 from the memory cards rather than optical scan of paper ballots, and

7 Whereas, California Secretary of State Debra Bowen decertified all DRE voting systems
8 in use in California and only recertified them for the limited purpose of providing
9 one machine per precinct for disabled voters so as to comply with the federal Help
10 America Vote Act (see, e.g., WITHDRAWAL OF APPROVAL OF SEQUOIA
11 VOTING SYSTEMS, INC., WINEDS V 3.1.012/AVC
12 EDGE/INSIGHT/OPTECH 400-C DRE & OPTICAL SCAN VOTING SYSTEM
13 AND CONDITIONAL RE-APPROVAL OF USE OF SEQUOIA VOTING
14 SYSTEMS, INC., WINEDS V 3.1.012/AVC EDGE/INSIGHT/OPTECH 400-C
15 DRE & OPTICAL SCAN VOTING SYSTEM (October 25,2007 Revision) for
16 the system that San Francisco currently uses, and see
17 http://sos.ca.gov/elections/elections_vsr.htm for the Secretary’s similar actions on
18 all other manufacturer’s voting systems as well), and

19 Whereas, significant numbers of voters continue to have misgivings about votes not
20 being cast on a paper ballot, believing that it provides inferior security and
21 inferior ability to conduct a meaningful recount if one is necessary, and

22 Whereas, significant numbers of voters, scholars, and engineers continue to have
23 misgivings about a voting system in which the same device both captures and
24 tabulates votes (which DRE devices do, as opposed to paper ballots which are
25 then scanned, or touch-screen devices which mark a paper ballot that is then
26 scanned), and

27 Whereas, the San Francisco Elections Commission has expressed its concerns about the
28 use of DRE machine by voters who do not need to do so, both out of concern for
29 vote security and because all votes cast on DRE machines must be manually
30 tallied during the post-election canvass, as required by the Secretary of State in

1 the Conditional Re-Approval cited above, adding real time and expense to the
2 canvass for this necessary security measure, and

3 Whereas, the San Francisco Department of Elections' Pollworker Training Manual for
4 the elections of February 2008 and June 2008 dictated that pollworkers would say
5 to voters, "You will be given a paper ballot unless you would prefer to use a
6 touchscreen or audio ballot," and that this language was agreeable to the Elections
7 Commission, and

8 Whereas, there was notable deviation from this provision in the Pollworker Manual in a
9 small number of polling places in the February 2008 election but much more
10 widespread deviation from this provision in the June 2008 election, owing at least
11 in part to mixed messages provided to pollworkers in their training, and resulting
12 in a seven-fold increase in the rate of usage of DRE devices without any evidence
13 of a corresponding seven-fold increase in the number of disabled voters,
14

15 NOW THEREFORE the San Francisco Elections Commissions adopts as FORMAL
16 POLICY that the San Francisco Department of Elections shall operate in all its
17 functions so as to prefer the use of paper ballots (either marked by hand with the
18 current system or marked with the assistance of a machine designed for disabled
19 access in future systems) over the use of DRE voting, allowing of course for legal
20 requirements and Secretary of State directives mandating the availability of voting
21 equipment which is accessible for disabled voters, including insuring that a
22 minimum of five voters use the DRE in cases where one voter has used the DRE.
23 Indeed, it is contemplated by the Elections Commission that this policy does not
24 conflict with any requirements, but rather supports the Secretary of State's
25 Conditional Re-Approval cited above, which recertified the Sequoia system solely
26 for use by disabled persons. Neither is it expected that this policy will ever
27 conflict with the Help America Vote Act, as ballot-marking devices, including
28 touch-screen ones, are available for use by disabled persons and comport with this
29 policy perfectly.

30 It is further contemplated by the Elections Commission that this policy will be
31 implemented in all Department functions, including but not limited to pollworker

1 training and future purchases of voting equipment, and commencing with the
2 election to be held on November 3, 2008.

8. d. 2.