

D R A F T

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

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 with that this might have been the case.

“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, 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,

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.

“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.