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## Poll Monitoring Project NOVEMBER 4, 2008, PRESIDENTIAL GENERAL ELECTION

Preliminary Report, November 13, 2008

The Law Foundation of Silicon Valley conducted poll monitoring during the November 4, 2008, Presidential General Election. Our preliminary findings are as follows:

### *Poll Monitoring Observations*

#### **Multilingual Written Materials and Bilingual Election Officers**

In Santa Clara County, the majority of precincts (541 of 785) trigger the state language assistance threshold. Under the federal Voting Rights Act and the California Elections Code, the Santa Clara County ROV (ROV) must provide language assistance in a number of ways, including translated voting guides, translated ballots and signs, Bilingual Election Officers, and voter hotlines staffed by bilingual operators. On November 4, 2008, the Law Foundation monitored 158 precincts and fielded calls from other community organizations. Some preliminary findings reveal:

- At least 30 of the polling sites did not have or did not display bilingual sample ballots, voter bill of rights, or how-to-vote instruction cards.
- Election Officers at 47 of the sites did not have, were not aware of, or did not display a handout (which the ROV refers to as calling cards) regarding the language assistance hotline for the ROV. The ROV has indicated that it does provide a welcome poster in multiple languages with phone numbers; however, we think it is important that Election Officers have these handouts to provide to voters with limited English proficiency who need assistance with voting.
- No poll sites had signs indicating where bilingual workers were seated, although such signage is a regular practice in other diverse counties such as Los Angeles County and San Francisco County.
- At 7 poll sites, Bilingual Election Officers failed to appear. In several instances, our monitoring staff had to call the ROV to request replacement Bilingual Election Officers. Monitors also observed sites which needed additional Bilingual Election Officers, even though the ROV reports that it generally overstaffed Bilingual Elections Officers for this

election. Bilingual Law Foundation poll monitors and staff members from at least one other community organization assisted some voters who needed bilingual assistance. In some of these instances, those poll monitors who attempted to interpret for voters with limited English proficiency encountered resistance from Precinct Inspectors.

- Monitors found that bilingual election officers routinely failed to wear badges identifying themselves as bilingual. We found this deficiency at 23 precincts. In one instance, the Precinct Inspector erroneously told the monitor that the site was not required to have Bilingual Election Officers and refused to instruct workers to wear badges indicating their language capability.
- Thirty-nine poll sites did not display bilingual provisional voting instructions. None of the provisional ballot envelopes were translated; in some cases, copies of translated provisional ballot envelopes were provided.
- Some Precinct Inspectors seemed to be ignorant of the language needs of their precincts or of their duty to provide language-appropriate assistance. For example, in one precinct that was designated as needing a bilingual Chinese-speaking Election Officer, the Precinct Inspector insisted repeatedly that there are no non-English-speaking voters in that precinct and that they were not required to provide bilingual assistance.

Trained poll monitors observed that, when poll sites failed to provide translated voting materials or Bilingual Election Officers as required by law, voters with limited English proficiency faced difficulty in casting their ballots when they attempted to vote at these sites.

It is apparent that Santa Clara County made efforts to provide language assistance to voters with limited English proficiency. We understand that ensuring the presence of bilingual assistance in every precinct with a significant number of voters with limited English proficiency is difficult. Still, we hope we can help improve the ROV's plan to ensure access for these voters. For many voters with limited English proficiency, access to language assistance is the determining factor in whether they can cast a ballot. In light of the growing linguistic diversity of California's population, robust voter participation can be achieved only if jurisdictions fully comply with their legal obligation to provide language assistance.

### **Identification**

Only first time voters in a Federal election who registered by mail are required to present identification in order to be processed as a regular voter. If a first time voter is unable to present acceptable identification, he or she can vote provisionally. No other voter should be asked for identification.

- In at least 4 poll sites, Election Officers inappropriately asked voters to show identification.
- In at least 1 of these instances, the Precinct Inspector mistakenly believed that all voters must present ID before voting.

### **Voting Machines**

All polling places must have at least one voting machine; voting machines help to ensure that individuals with disabilities are able to vote. Voters may receive assistance throughout the voting

process. However, not all voters feel comfortable receiving assistance with such an important matter from a stranger. For some disabled voters, using a voting machine is the only way to guarantee an anonymous, independent vote. Law Foundation volunteers visited 12 sites with broken voting machines. Another community organization reported a broken voting machine at one other site.

### **Lines**

Poll monitors observed long lines (over 20 voters) of voters at 7 poll sites. One poll site had a line of 150 voters. These lines, which may have been caused by the long and complex ballot, highlight the need for language assistance, as poll monitors at several poll sites observed Bilingual Election Officers helping voters navigate the process of voting. As mentioned above, bilingual poll monitors and community workers had to assist a number of voters who needed bilingual assistance due to the lack of Bilingual Election Officers.

### **Provisional Ballots**

Volunteer poll monitors observed a number of irregularities with respect to the use of provisional ballots. Frequently, Election Officers did not explain the difference between provisional ballots and regular ballots to voters; they also failed to provide voters with information about their options before furnishing provisional ballots.

- In at least 9 precincts, voters whose names did not appear on the roster were automatically given provisional ballots by Election Officers without any explanation of the meaning of a provisional ballot or investigation into whether the voter might be able to vote on a regular ballot in another precinct. In some instances, Election Officers would attempt to find out where the voter was registered but did not utilize all of the methods suggested in the Election Officer Manual.
- In at least 6 precincts, when vote-by-mail voters appeared at a polling site without their vote-by-mail ballot, Election Officers failed to give voters a choice between using a provisional ballot and retrieving a vote-by-mail ballot from home, nor did these Election Officers explain the implications of filing one type of ballot instead of the other.
- In at least 2 instances, poll monitors observed Election Officers turning voters away to retrieve their vote-by-mail ballots rather than offering them the choice between voting provisionally and returning with the vote-by-mail ballot later in the day.
- In at least 2 precincts, voters whose names did not appear in the address index were forced to vote provisionally even though their names appeared in the official roster. In those instances, the Precinct Inspectors mistakenly believed that voters' names had to appear on both lists. In 1 of those instances, the polling site ran out of provisional ballots and temporarily sent voters to a neighboring site to cast provisional ballots. The ROV delivered more provisional ballots to the site.
- As mentioned above, 39 poll sites did not display bilingual provisional voting instructions. None of the provisional ballot envelopes were translated; in some cases, copies of translated provisional ballot envelopes were provided.

Santa Clara County voters cast 27,000 of California's hundreds of thousands of provisional ballots. Although Santa Clara County reports a high acceptance rate for provisional ballots, there are other known problems with this form of voting that give reason to be concerned about the potential for disenfranchisement of our county's registered and eligible voters. While there are legitimate reasons voters may be instructed to complete a provisional ballot, delays in vote tabulations—which could be important in close races—and unacceptable risks that valid votes will be rejected due to avoidable errors suggests that provisional ballots should be used only when the voter is fully informed of his or her options. Additionally, failing to inform voters of their options before advising them to vote provisionally may have caused voters to unwittingly and unnecessarily vote at a precinct other than their home precinct. As a result, voters may have been denied the chance to vote on certain issues which pertain only to their home precinct.

### **Poll Monitors**

Pursuant to the California Elections Code, poll monitors are permitted to enter polling sites, observe the elections process, ask questions, and have questions answered by Election Officers. Law Foundation poll monitors were trained to comply with Santa Clara County ROV guidelines for poll watchers. Most Precinct Inspectors and Election Officers cooperated with the poll monitors. However, a surprising number were uncooperative.

- In 3 instances, Precinct Inspectors refused to answer poll monitors' routine questions. One said she did not "do surveys." Another monitor was informed that a Field Inspector instructed the Precinct Inspector to answer any questions "except language access questions." A poll monitor left the precinct she was monitoring because of hostility from the Precinct Inspector.
- In another 5 instances, Law Foundation poll monitors were asked to leave the precincts they were attempting to monitor. In one of those instances, an Election Officer threatened to call the police if the monitor did not leave (which he did).

### **ROV Responsiveness**

We understand that it is extremely difficult for the ROV to respond to all of the calls it receives on Election Day. However, we commend the ROV for being able to address many of the problems we encountered as they arose. Our own calls to the ROV about the issues we have described above were uniformly met with a positive and helpful response as well as a "we'll-fix-it" attitude. We do, however, recommend that the County explore ways of providing status updates to organizations conducting poll monitoring efforts.

More importantly, our poll monitors observed that the County's own internal troubleshooting processes—including establishing ROV hotlines for poll-workers and instructing Election Officers to call the Field Inspectors for technical assistance—appeared to be disregarded at times. Although it is obviously ideal for Election Officers to handle some troubleshooting themselves, we observed that a number of Election Officers seemed unaware of or unwilling to use the internal solutions that had been provided to them.

### **Recommendations**

The Law Foundation intends to develop detailed recommendations to the ROV in its final report which is scheduled for completion at the end of November. As a preliminary matter, we recommend that the ROV:

- Develop strategies to help increase attendance of Bilingual Election Officers on Election Day and to encourage Poll Inspectors to contact the ROV immediately when a Bilingual Election Officer fails to appear.
- Emphasize the importance of posting signs indicating the availability of Bilingual Election Officers accurately and in areas obvious to voters. Such posting should reduce any confusion for voters with limited English proficiency about where they can find assistance.
- Display the telephone referral card at the polling site so that voters with limited English proficiency know that language assistance hotlines are available to them. Although Bilingual Election Officers were available to assist voters with limited English proficiency at many poll sites, it is important to have an alternative for such voters to in case the Bilingual Election Officers are ineffective, too busy to help, or fail to appear at the polling site.
- Supply all precincts with sufficient provisional ballot envelopes, especially translated provisional ballot envelopes, in case of any unforeseen circumstances. The County should provide actual translated provisional ballot envelopes that voters can fill out, rather than simply provide translated copies of the envelopes for voters to use to complete English-only envelopes; the latter process creates confusion among voters and Election Officers.
- Continue to caution against improper voter identification checks during Election Officer trainings. We suggest that the County hold post-election counseling sessions with Election Officers who improperly asked voters for identification in past elections. The counseling sessions will help reduce the number of improper identification checks in future elections.
- Discuss voting machine breakdowns with the ROV's voting machine vendor and if the vendor fails to address the breakdown problem by developing an adequate testing and repair program, consider changing vendors.
- Place greater emphasis in its Election Officer trainings on the posting of multilingual materials in visible and identifiable locations.
- Place increased emphasis on the importance of displaying translated sample ballots and other translated voting materials during Election Officer trainings.
- Provide more extensive training to Election Officers on the use and meaning of provisional ballots, as well as on procedures for ensuring that voters are provided the option to cast precinct or vote-by-mail ballots when possible and when the voter so chooses.
- Make clear in its Election Officer training that all poll workers and, in particular, Precinct Inspectors should cooperate with poll monitors. The ROV should instruct Precinct Inspectors that questions and requests by poll monitors do not of themselves constitute interference with the election process.

- Hold post-election counseling sessions with Election Officers who failed, in this election, to follow Election Officer rules and procedures. We also recommend that the ROV systematically evaluate and address complaints that came in from the public about problems at precincts.

### *Conclusion*

The Law Foundation's poll monitors observed many things going right in many precincts on Election Day. However, we did observe irregularities in a number of different areas, most prominently in the ROV's implementation of its language access plan and its apparent failure to provide adequate instructions to Election Officers about how to handle provisional ballots. We are convinced that many of our findings of irregularities can be addressed by improving Election Officer training.

Unfortunately, our poll monitor observations are not inconsistent with the findings of a recent report from State Auditor Elaine M. Howle concerning the county elections officials' training of Election Officers. The September 18, 2008, report entitled "County Poll Workers: The Office of the Secretary of State Has Developed Statewide Guidelines, but County Training Programs Need Some Improvement" calls into question the accuracy of the ROV's training attendance lists, stating that the training lists for previous elections were unreliable and that auditors could not be certain that all Precinct Inspectors attended training. The report also found that the ROV could not provide auditors with a complaint log showing how the county responded to complaints in previous elections. We understand that the ROV has now established a unified complaint log for election-related complaints, which we applaud. We would strongly suggest that the ROV analyze the complaints that it received in this election, together with the recommendations that we make here and will make in our final report, and come up with a fresh plan to further minimize irregularities in future elections.